trading principals need not be included in the prescribed statement.


§ 4.36 Use, amendment and filing of Disclosure Document.

(a) Subject to paragraph (c) of this section, all information contained in the Disclosure Document must be current as of the date of the Document; Provided, however, that performance information must be current as of a date not more than three months preceding the date of the Document.

(b) No commodity trading advisor may use a Disclosure Document dated more than nine months prior to the date of its use.

(c)(1) If the commodity trading advisor knows or should know that the Disclosure Document is materially inaccurate or incomplete in any respect, it must correct that defect and must distribute the correction to:

(i) All existing clients in the trading program within 21 calendar days of the date upon which the trading advisor first knows or has reason to know of the defect; and

(ii) Each previously solicited prospective client for the trading program prior to entering into an agreement to direct or to guide such prospective client’s commodity interest account pursuant to the program. The trading advisor may furnish the correction by way of an amended Disclosure Document, a sticker on the Document, or other similar means.

(2) The trading advisor may not use the Disclosure Document until such correction is made.

(d)(1) The commodity trading advisor must electronically file with the National Futures Association, pursuant to the electronic filing procedures of the National Futures Association, the Disclosure Document for each trading program that it offers or that it intends to offer within 21 calendar days of the date upon which the trading advisor first knows or has reason to know of the defect requiring the amendment.


Subpart D—Advertising

§ 4.40 [Reserved]

§ 4.41 Advertising by commodity pool operators, commodity trading advisors, and the principals thereof.

(a) No commodity pool operator, commodity trading advisor, or any principal thereof, may advertise in a manner which:

(1) Employs any device, scheme or artifice to defraud any participant or client or prospective participant or client;

(2) Involves any transaction, practice or course of business which operates as a fraud or deceit upon any participant or client or any prospective participant or client; or

(3) Refers to any testimonial, unless the advertisement or sales literature providing the testimonial prominently discloses:

(i) That the testimonial may not be representative of the experience of other clients;

(ii) That the testimonial is no guarantee of future performance or success; and

(iii) If, more than a nominal sum is paid, the fact that it is a paid testimonial.

(b)(1) No person may present the performance of any simulated or hypothetical commodity interest account, transaction in a commodity interest or series of transactions in a commodity interest of a commodity pool operator, commodity trading advisor, or any principal thereof, unless such performance is accompanied by one of the following:
(i) The following statement: ‘‘These
results are based on simulated or hypo-
thetical performance results that have
certain inherent limitations. Unlike
the results shown in an actual perform-
ance record, these results do not rep-
resent actual trading. Also, because
these trades have not actually been ex-
ecuted, these results may have under-
or over-compensated for the impact, if
any, of certain market factors, such as
lack of liquidity. Simulated or hypo-
thetical trading programs in general
are also subject to the fact that they
are designed with the benefit of hind-
sight. No representation is being made
that any account will or is likely to
achieve profits or losses similar to
these being shown.’’; or

(ii) A statement prescribed pursuant
to rules promulgated by a registered
futures association pursuant to section
17(j) of the Act.

(2) If the presentation of such simu-
lated or hypothetical performance is
other than oral, the prescribed state-
ment must be prominently disclosed
and in immediate proximity to the
simulated or hypothetical performance
being presented.

(c) The provisions of this section
shall apply:

(1) To any publication, distribution
or broadcast of any report, letter, cir-
cular, memorandum, publication, writ-
ing, advertisement or other literature
or advice, whether by electronic media
or otherwise, including information
provided via internet or e-mail, the
texts of standardized oral presenta-
tions and of radio, television, sem-
inar or similar mass media presenta-
tions; and

(2) Regardless of whether the com-
modity pool operator or commodity
trading advisor is exempt from reg-
istration under the Act.

(Approved by the Office of Management and
Budget under control number 3038–0005)

[46 FR 26913, May 8, 1981, as amended at 60