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F. Material Changes to WPPs (§3.3(e)(6))

When describing any material changes to the WPPs, a description of the standard of materiality used should be provided. This description will provide meaningful context for any reported changes to the WPPs.

[83 FR 43523, Aug. 27, 2018]

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

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APPENDIX C TO PART 4—FORM CTA–PR

AUTHORITY: 7 U.S.C. 1a, 2, 6(c), 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

SOURCE: 46 FR 26013, May 8, 1981, unless otherwise noted.

Subpart A—General Provisions, Definitions and Exemptions

§4.1 Requirements as to form.

(a) Each document distributed pursuant to this part 4 must be:

(1) Clear and legible;

(2) Paginated; and

(3) Fastened in a secure manner.

(b) Information that is required to be ''prominently'' disclosed under this part 4 must be displayed in capital letters and in boldface type.

(c) Where a document is distributed through an electronic medium:

(1) The requirements of paragraphs (a) of this section shall mean that required information must be presented in a format that is readily communicated to the recipient. For purposes of this paragraph (c), information is readily communicated to the recipient if it is accessible to the ordinary user by means of commonly available hardware and software and if the electronically delivered document is organized in substantially the same manner as would be required for a paper document with respect to the order of presentation and the relative prominence of information. Where a table of contents is required, the electronic document must either include page numbers in the text or employ a substantially equivalent cross-reference or indexing method or tool;

(2) The requirements of paragraph (b) of this section shall mean that such information must be presented in capital letters and boldface type or, as warranted in the context, another manner reasonably calculated to draw the recipient's attention to the information and accord it greater prominence than the surrounding text; and

(3) A complete paper version of the document that complies with the applicable provisions of this part 4 must be provided to the recipient upon request.

(d) If graphic, image or audio material is included in a document delivered to a prospective or existing client or pool participant, and such material cannot be reproduced in an electronic filing, a fair and accurate narrative description, tabular representation or transcript of the omitted material must be included in the filed version of the document. Inclusion of such material in a Disclosure Document shall be subject to the requirements of § 4.24(v) in the case of pool Disclosure Documents, and § 4.34(n) in the case of commodity trading advisor Disclosure Documents.

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

[46 FR 26013, May 8, 1981, as amended at 46 FR 63035, Dec. 30, 1981; 62 FR 39115, July 22, 1997]

§§ 4.2–4.4 [Reserved]

§ 4.5 Exclusion for certain otherwise regulated persons from the definition of the term "commodity pool operator."

(a) Subject to compliance with the provisions of this section, the following persons, and any principal or employee thereof, shall be excluded from the definition of the term ''commodity pool operator'' with respect to the operation of a qualifying entity specified in paragraph (b) of this section:

(1) An investment adviser registered under the Investment Advisers Act of 1940, as amended;

(2) An insurance company subject to regulation by any State;

(3) A bank, trust company or any other such financial depository institution subject to regulation by any State or the United States; and

(4) A trustee of, a named fiduciary of (or a person designated or acting as a fiduciary pursuant to a written delegation from or other written agreement with the named fiduciary) or an employer maintaining a pension plan that is subject to title I of the Employee Retirement Income Security Act of 1974; *Provided, however,* That for purposes of this § 4.5 the following employee benefit plans shall not be construed to be pools:

(i) A noncontributory plan, whether defined benefit or defined contribution, covered under title I of the Employee Retirement Income Security Act of 1974;

(ii) A contributory defined benefit plan covered under title IV of the Employee Retirement Income Security Act of 1974; *Provided, however,* That with respect to any such plan to which an employee may voluntarily contribute, no portion of an employee's contribution is committed as margin or premiums for futures or options contracts;

(iii) A plan defined as a governmental plan in section 3(32) of title I of the Employee Retirement Income Security Act of 1974;

(iv) Any employee welfare benefit plan that is subject to the fiduciary responsibility provisions of the Employee Retirement Income Security Act of 1974; and

(v) A plan defined as a church plan in Section 3(33) of title I of the Employee Retirement Income Security Act of 1974 with respect to which no election has been made under 26 U.S.C. 410(d).

(b) For the purposes of this section, the term ''qualifying entity'' means:

(1) With respect to any person specified in paragraph (a)(1) of this section, an investment company registered under the Investment Company Act of 1940, as amended, or a business development company that elected an exemption from registration as an investment company under the Investment Company Act of 1940;

(2) With respect to any person specified in paragraph (a)(2) of this section, a separate account established and maintained or offered by an insurance company pursuant to the laws of any State or territory of the United States, under which income gains and losses,

whether or not realized, from assets allocated to such account, are, in accordance with the applicable contract, credited to or charged against such account, without regard to other income, gains, or losses of the insurance company;

(3) With respect to any person specified in paragraph (a)(3) of this section, the assets of any trust, custodial account or other separate unit of investment for which it is acting as a fiduciary and for which it is vested with investment authority; and

(4) With respect to any person specified in paragraph (a)(4) of this section, and subject to the proviso thereof, a pension plan that is subject to title I of the Employee Retirement Income Security Act of 1974; *Provided, however,* That such entity will be operated in the manner specified in paragraph (c)(2) of this section.

(c) Any person who desires to claim the exclusion provided by this section shall file electronically a notice of eligibility with the National Futures Association through its electronic exemption filing system; *Provided, however,* That a plan fiduciary who is not a named fiduciary as described in paragraph (a)(4) of this section may claim the exclusion through the notice filed by the named fiduciary.

(1) The notice of eligibility must contain the following information:

(i) The name of such person;

(ii) The applicable subparagraph of paragraph (a) of this section pursuant to which such person is claiming exclusion;

(iii) The name of the qualifying entity which such person intends to operate pursuant to the exclusion; and

(iv) The applicable subparagraph of paragraph (b) of this section pursuant to which such entity is a qualifying entity.

(2) The notice of eligibility must contain representations that such person will operate the qualifying entity specified therein in the following ways, as applicable:

(i) The person will disclose in writing to each participant, whether existing or prospective, that the qualifying entity is operated by a person who has claimed an exclusion from the definition of the term ''commodity pool operator'' under the Act and, therefore, is not subject to registration or regulation as a pool operator under the Act; Provided, that such disclosure is made in accordance with the requirements of any other federal or state regulatory authority to which the qualifying entity is subject. The qualifying entity may make such disclosure by including the information in any document that its other Federal or State regulator requires to be furnished routinely to participants or, if no such document is furnished routinely, the information may be disclosed in any instrument establishing the entity's investment policies and objectives that the other regulator requires to be made available to the entity's participants; and

(ii) The person will submit to such special calls as the Commission may make to require the qualifying entity to demonstrate compliance with the provisions of this paragraph (c); Provided, however, that the making of such representations shall not be deemed a substitute for compliance with any criteria applicable to commodity futures or commodity options trading established by any regulator to which such person or qualifying entity is subject; and

(iii) If the person is an investment adviser claiming an exclusion with respect to the operation of a qualifying entity under paragraph (b)(1) of this section, then the notice of eligibility must also contain representations that such person will operate that qualifying entity in a manner such that the qualifying entity:

(A) Will use commodity futures or commodity options contracts, or swaps solely for bona fide hedging purposes within the meaning and intent of the definition of bona fide hedging transactions and positions for excluded commodities in §§1.3 and 151.5 of this chapter; Provided however, That, in addition, with respect to positions in commodity futures or commodity options contracts, or swaps which do not come within the meaning and intent of the definition of bona fide hedging transactions and positions for excluded commodities in §§1.3 and 151.5 of this chapter, a qualifying entity may represent that the aggregate initial margin and premiums required to establish such

positions will not exceed five percent of the liquidation value of the qualifying entity's portfolio, after taking into account unrealized profits and unrealized losses on any such contracts it has entered into; and, Provided further, That in the case of an option that is in-the-money at the time of the purchase, the in-the-money amount as defined in § 190.01(x) of this chapter may be excluded in computing such five percent; or

(B) The aggregate net notional value of commodity futures, commodity options contracts, or swaps positions not used solely for bona fide hedging purposes within the meaning and intent of the definition of bona fide hedging transactions and positions for excluded commodities in §§ 1.3 and 151.5 of this chapter determined at the time the most recent position was established, does not exceed 100 percent of the liquidation value of the pool's portfolio, after taking into account unrealized profits and unrealized losses on any such positions it has entered into. For purposes of this paragraph:

(*1*) The term ''notional value'' shall be calculated for each futures position by multiplying the number of contracts by the size of the contract, in contract units (taking into account any multiplier specified in the contract), by the current market price per unit, for each such option position by multiplying the number of contracts by the size of the contract, adjusted by its delta, in contract units (taking into account any multiplier specified in the contract), by the strike price per unit, for each such retail forex transaction, by calculating the value in U.S. Dollars for such transaction, at the time the transaction was established, excluding for this purpose the value in U.S. Dollars of offsetting long and short transactions, if any, and for any cleared swap by the value as determined consistent with the terms of 17 CFR part 45; and

(*2*) The person may net futures contracts with the same underlying commodity across designated contract markets and foreign boards of trade; and swaps cleared on the same designated clearing organization where appropriate; and (C) Will not be, and has not been, marketing participations to the public as or in a commodity pool or otherwise as or in a vehicle for trading in the commodity futures, commodity options, or swaps markets.

(3) The notice of eligibility must be filed with the National Futures Association prior to the date upon which such person intends to operate the qualifying entity pursuant to the exclusion provided by this section.

(4) The notice of eligibility shall be effective upon filing.

(5) *Annual notice.* Each person who has filed a notice of exclusion under this section must affirm on an annual basis the notice of exemption from registration, withdraw such exemption due to the cessation of activities requiring registration or exemption therefrom, or withdraw such exemption and apply for registration within 60 days of the calendar year end through National Futures Association's electronic exemption filing system.

(d)(1) Each person who has claimed an exclusion hereunder must, in the event that any of the information contained or representations made in the notice of eligibility becomes inaccurate or incomplete, amend the notice electronically through National Futures Association's electronic exemption filing system as may be necessary to render the notice of eligibility accurate and complete.

(2) This amendment required by paragraph (d)(1) of this section shall be filed within fifteen business days after the occurrence of such event.

(e) An exclusion claimed hereunder shall cease to be effective upon any change which would render:

(1) A person as to whom such exclusion has been claimed ineligible under paragraph (a) of this section;

(2) The entity for which such exclusion has been claimed ineligible under paragraph (b) of this section; or

(3) Either the representations made pursuant to paragraph (c)(2) of this section inaccurate or the continuation of such representations false or misleading.

(f) Any notice required to be filed hereunder must be filed by a representative duly authorized to bind the person specified in paragraph (a) of this section.

(g) The filing of a notice of eligibility or the application of ''non-pool status'' under this section will not affect the ability of a person to qualify for an exemption from registration as a commodity pool operator under §4.13 in connection with the operation of another trading vehicle that is not covered under this §4.5.

[50 FR 15882, Apr. 23, 1985; 50 FR 18859, May 3, 1985, as amended at 58 FR 6374, Jan. 28, 1993; 58 FR 43793, Aug. 18, 1993; 65 FR 24128, Apr. 25, 2000; 65 FR 25980, May 4, 2000; 67 FR 77410, Dec. 18, 2002; 68 FR 47230, Aug. 8, 2003; 72 FR 1662, Jan. 16, 2007; 77 FR 11283, Feb. 24, 2012; 77 FR 17328, Mar. 26, 2012; 83 FR 7995, Feb. 23, 2018; 84 FR 67353, Dec. 10, 2019]

§4.6 Exclusion for certain otherwise regulated persons from the definition of the term "commodity trading advisor."

(a) Subject to compliance with the provisions of this section, the following persons, and any principal or employee thereof, shall be excluded from the definition of the term ''commodity trading advisor:''

(1) An insurance company subject to regulation by any State, or any wholly-owned subsidiary or employee thereof; *Provided, however,* That its commodity interest advisory activities are solely incidental to the conduct of the insurance business of the insurance company as such; and

(2) A person who is excluded from the definition of the term ''commodity pool operator'' by §4.5; *Provided, however,* That:

(i) Its commodity interest advisory activities are solely incidental to its operation of those trading vehicles for which §4.5 provides relief; and

(ii) Where necessary, prior to providing any commodity interest trading advice to any such trading vehicle the person files a notice of eligibility as specified in §4.5 to claim the relief available under that section.

(3) A swap dealer registered with the Commission as such pursuant to the Act or excluded or exempt from registration under the Act or the Commission's regulations; *Provided, however,* That the commodity interest and swap advisory activities of the swap dealer are solely incidental to the conduct of its business as a swap dealer.

(b) Any person who has claimed an exclusion under this §4.6 must submit to such special calls as the Commission may make to require the person to demonstrate compliance with the provisions of paragraph (a) of this section.

(c) An exclusion claimed under this §4.6 shall cease to be effective upon any change which would render the person claiming the exclusion ineligible under paragraph (a) of this section.

[52 FR 41984, Nov. 2, 1987, as amended at 77 FR 9822, Feb. 17, 2012]

§4.7 Exemption from certain part 4 requirements for commodity pool operators with respect to offerings to qualified eligible persons and for commodity trading advisors with respect to advising qualified eligible persons.

This section is organized as follows: Paragraph (a) contains definitions for the purposes of §4.7; paragraph (b) contains the relief available to commodity pool operators under §4.7; paragraph (c) contains the relief available to commodity trading advisors under §4.7; paragraph (d) concerns the Notice of Claim for Exemption under §4.7; and paragraph (e) addresses the effect of an insignificant deviation from a term, condition or requirement of §4.7.

(a) *Definitions.* Paragraph (a)(1) of this section contains general definitions, paragraph (a)(2) of this section contains the definition of the term *qualified eligible person* with respect to those persons who do not need to satisfy the Portfolio Requirement and paragraph (a)(3) of this section contains the definition of the term *qualified eligible person* with respect to those persons who must satisfy the Portfolio Requirement. For the purposes of this section:

(1) *In general*—(i) *Affiliate* of, or a person *affiliated* with, a specified person means a person that directly or indirectly through one or more persons, controls, is controlled by, or is under common control with the specified person.

(ii) *Exempt account* means the account of a qualified eligible person that is directed or guided by a commodity trading advisor pursuant to an effective claim for exemption under §4.7.

(iii) *Exempt pool* means a pool that is operated pursuant to an effective claim for exemption under § 4.7.

(iv) *Non-United States person* means:

(A) A natural person who is not a resident of the United States;

(B) A partnership, corporation or other entity, other than an entity organized principally for passive investment, organized under the laws of a foreign jurisdiction and which has its principal place of business in a foreign jurisdiction;

(C) An estate or trust, the income of which is not subject to United States income tax regardless of source;

(D) An entity organized principally for passive investment such as a pool, investment company or other similar entity; *Provided,* That units of participation in the entity held by persons who do not qualify as Non-United States persons or otherwise as qualified eligible persons represent in the aggregate less than 10% of the beneficial interest in the entity, and that such entity was not formed principally for the purpose of facilitating investment by persons who do not qualify as Non-United States persons in a pool with respect to which the operator is exempt from certain requirements of part 4 of the Commission's regulations by virtue of its participants being Non-United States persons; and

(E) A pension plan for the employees, officers or principals of an entity organized and with its principal place of business outside the United States.

(v) *Portfolio Requirement* means that a person:

(A) Owns securities (including pool participations) of issuers not affiliated with such person and other investments with an aggregate market value of at least $2,000,000;

(B) Has had on deposit with a futures commission merchant, for its own account at any time during the six-month period preceding either the date of sale to that person of a pool participation in the exempt pool or the date that the person opens an exempt account with the commodity trading advisor, at least $200,000 in exchange-specified initial margin and option premiums, together with required minimum security deposit for retail forex transactions (as defined in § 5.1(m) of this chapter) for commodity interest transactions; or

(C) Owns a portfolio comprised of a combination of the funds or property specified in paragraphs (a)(1)(v)(A) and (B) of this section in which the sum of the funds or property includable under paragraph (a)(1)(v)(A), expressed as a percentage of the minimum amount required thereunder, and the amount of futures margin and option premiums includable under paragraph (a)(1)(v)(B), expressed as a percentage of the minimum amount required thereunder, equals at least one hundred percent. An example of a composite portfolio acceptable under this paragraph (a)(1)(v)(C) would consist of $1,000,000 in securities and other property (50% of paragraph (a)(1)(v)(A)) and $100,000 in exchange-specified initial margin and option premiums (50% of paragraph (a)(1)(v)(B)).

(vi) *United States* means the United States, its states, territories or possessions, or an enclave of the United States government, its agencies or instrumentalities.

(2) *Persons who do not need to satisfy the Portfolio Requirement to be qualified eligible persons. Qualified eligible person* means any person, acting for its own account or for the account of a qualified eligible person, who the commodity pool operator reasonably believes, at the time of the sale to that person of a pool participation in the exempt pool, or who the commodity trading advisor reasonably believes, at the time that person opens an exempt account, is:

(i)(A) A futures commission merchant registered pursuant to section 4d of the Act, or a principal thereof;

(B) A retail foreign exchange dealer registered pursuant to section 2(c)(2)(B)(i)(II)(gg) of the Act, or a principal thereof;

(C) A swap dealer registered pursuant to section 4s(a)(1) of the Act, or a principal thereof;

(ii) A broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934, or a principal thereof;

(iii) A commodity pool operator registered pursuant to section 4m of the Act, or a principal thereof; *Provided,* That the pool operator:

(A) Has been registered and active as such for two years; or

(B) Operates pools which, in the aggregate, have total assets in excess of $5,000,000;

(iv) A commodity trading advisor registered pursuant to section 4m of the Act, or a principal thereof; *Provided,* That the trading advisor:

(A) Has been registered and active as such for two years; or

(B) Provides commodity interest trading advice to commodity accounts which, in the aggregate, have total assets in excess of $5,000,000 deposited at one or more futures commission merchants;

(v) An investment adviser registered pursuant to section 203 of the Investment Advisers Act of 1940 (''Investment Advisers Act'') or pursuant to the laws of any state, or a principal thereof; *Provided,* That the investment adviser:

(A) Has been registered and active as such for two years; or

(B) Provides securities investment advice to securities accounts which, in the aggregate, have total assets in excess of $5,000,000 deposited at one or more registered securities brokers;

(vi) A ''qualified purchaser'' as defined in section 2(a)(51)(A) of the Investment Company Act of 1940 (the ''Investment Company Act'');

(vii) A ''knowledgeable employee'' as defined in §270.3c-5 of this title;

(viii)(A) With respect to an exempt pool:

(*1*) The commodity pool operator, commodity trading advisor or investment adviser of the exempt pool offered or sold, or an affiliate of any of the foregoing;

(*2*) A principal of the exempt pool or the commodity pool operator, commodity trading advisor or investment adviser of the exempt pool, or of an affiliate of any of the foregoing;

(*3*) An employee of the exempt pool or the commodity pool operator, commodity trading advisor or investment adviser of the exempt pool, or of an affiliate of any of the foregoing (other than an employee performing solely clerical, secretarial or administrative functions with regard to such person or its investments) who, in connection with his or her regular functions or duties, participates in the investment activities of the exempt pool, other commodity pools operated by the pool operator of the exempt pool or other accounts advised by the trading advisor or the investment adviser of the exempt pool, or by the affiliate; *Provided,* That such employee has been performing such functions and duties for or on behalf of the exempt pool, pool operator, trading advisor, investment adviser or affiliate, or substantially similar functions or duties for or on behalf of another person engaged in providing commodity interest, securities or other financial services, for at least 12 months;

(*4*) Any other employee of, or an agent engaged to perform legal, accounting, auditing or other financial services for, the exempt pool or the commodity pool operator, commodity trading advisor or investment adviser of the exempt pool, or any other employee of, or agent so engaged by, an affiliate of any of the foregoing (other than an employee or agent performing solely clerical, secretarial or administrative functions with regard to such person or its investments); *Provided,* That such employee or agent:

(*i*) Is an accredited investor as defined in §230.501(a)(5) or (6) of this title; and

(*ii*) Has been employed or engaged by the exempt pool, commodity pool operator, commodity trading advisor, investment adviser or affiliate, or by another person engaged in providing commodity interest, securities or other financial services, for at least 24 months;

(*5*) The spouse, child, sibling or parent of a person who satisfies the criteria of paragraph (a)(2)(viii)(A)(*1*), (*2*), (*3*) or (*4*) of this section; *Provided,* That:

(*i*) An investment in the exempt pool by any such family member is made with the knowledge and at the direction of the person; and

(*ii*) The family member is not a qualified eligible person for the purposes of paragraph (a)(3)(xi) of this section;

(*6*)(*i*) Any person who acquires a participation in the exempt pool by gift, bequest or pursuant to an agreement relating to a legal separation or divorce from a person listed in paragraph (a)(2)(viii)(A)(*1*), (*2*), (*3*), (*4*) or (*5*) of this section;

(*ii*) The estate of any person listed in paragraph (a)(2)(viii)(A)(*1*), (*2*), (*3*), (*4*) or (*5*) of this section; or

(*iii*) A company established by any person listed in paragraph (a)(2)(viii)(A)(*1*), (*2*), (*3*), (*4*) or (5) of this section exclusively for the benefit of (or owned exclusively by) that person and any person listed in paragraph (a)(2)(viii)(A)(*6*)(*i*) or (*ii*) of this section;

(B) With respect to an exempt account:

(*1*) An affiliate of the commodity trading advisor of the exempt account;

(*2*) A principal of the commodity trading advisor of the exempt account or of an affiliate of the trading advisor;

(*3*) An employee of the commodity trading advisor of the exempt account or of an affiliate of the trading advisor (other than an employee performing solely clerical, secretarial or administrative functions with regard to such person or its investments) who, in connection with his or her regular functions or duties, participates in the investment activities of the trading advisor or the affiliate; *Provided*, That such employee has been performing such functions and duties for or on behalf of the trading advisor or the affiliate, or substantially similar functions or duties for or on behalf of another person engaged in providing commodity interest, securities or other financial services, for at least 12 months;

(*4*) Any other employee of, or an agent engaged to perform legal, accounting, auditing or other financial services for, the commodity trading advisor of the exempt account or any other employee of, or agent so engaged by, an affiliate of the trading advisor (other than an employee or agent performing solely clerical, secretarial or administrative functions with regard to such person or its investments); *Provided*, That such employee or agent:

(*i*) Is an accredited investor as defined in §230.501(a)(5) or (a)(6) of this title; and

(*ii*) Has been employed or engaged by the commodity trading advisor or the affiliate, or by another person engaged in providing commodity interest, securities or other financial services, for at least 24 months; or

(*5*) The spouse, child, sibling or parent of the commodity trading advisor of the exempt account or of a person who satisfies the criteria of paragraph (a)(2)(viii)(B)(*1*), (*2*), (*3*) or (*4*) of this section; *Provided*, That:

(*i*) The establishment of an exempt account by any such family member is made with the knowledge and at the direction of the person; and

(*ii*) The family member is not a qualified eligible person for the purposes of paragraph (a)(3)(xi) of this section;

(*6*)(*i*) Any person who acquires an interest in an exempt account by gift, bequest or pursuant to an agreement relating to a legal separation or divorce from a person listed in paragraph (a)(2)(viii)(B)(*1*), (*2*), (*3*), (*4*) or (*5*) of this section;

(*ii*) The estate of any person listed in paragraph (a)(2)(viii)(B)(*1*), (*2*), (*3*), (*4*) or (*5*) of this section; or

(*iii*) A company established by any person listed in paragraph (a)(2)(viii)(B)(*1*), (*2*), (*3*), (*4*) or (*5*) of this section exclusively for the benefit of (or owned exclusively by) that person and any person listed in paragraph (a)(2)(viii)(B)(*6*)(*i*) or (*ii*) of this section;

(ix) A trust; *Provided*, That:

(A) The trust was not formed for the specific purpose of either participating in the exempt pool or opening an exempt account; and

(B) The trustee or other person authorized to make investment decisions with respect to the trust, and each settlor or other person who has contributed assets to the trust, is a qualified eligible person;

(x) An organization described in section 501(c)(3) of the Internal Revenue Code (the ''IRC''); *Provided*, That the trustee or other person authorized to make investment decisions with respect to the organization, and the person who has established the organization, is a qualified eligible person;

(xi) A Non-United States person;

(xii)(A) An entity in which all of the unit owners or participants, other than the commodity trading advisor claiming relief under this section, are qualified eligible persons;

(B) An exempt pool; or

(C) Notwithstanding paragraph (a)(3) of this section, an entity as to which a notice of eligibility has been filed pursuant to §4.5 which is operated in accordance with such rule and in which

all unit owners or participants, other than the commodity trading advisor claiming relief under this section, are qualified eligible persons.

(3) *Persons who must satisfy the Portfolio Requirement to be qualified eligible persons. Qualified eligible person* means any person who the commodity pool operator reasonably believes, at the time of the sale to that person of a pool participation in the exempt pool, or any person who the commodity trading advisor reasonably believes, at the time that person opens an exempt account, satisfies the Portfolio Requirement and is:

(i) An investment company registered under the Investment Company Act or a business development company as defined in section 2(a)(48) of such Act not formed for the specific purpose of either investing in the exempt pool or opening an exempt account;

(ii) A bank as defined in section 3(a)(2) of the Securities Act of 1933 (the ''Securities Act'') or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Securities Act acting for its own account or for the account of a qualified eligible person;

(iii) An insurance company as defined in section 2(13) of the Securities Act acting for its own account or for the account of a qualified eligible person;

(iv) A plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of $5,000,000;

(v) An employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974; *Provided,* That the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is a bank, savings and loan association, insurance company, or registered investment adviser; or that the employee benefit plan has total assets in excess of $5,000,000; or, if the plan is self-directed, that investment decisions are made solely by persons that are qualified eligible persons;

(vi) A private business development company as defined in section 202(a)(22) of the Investment Advisers Act;

(vii) An organization described in section 501(c)(3) of the IRC, with total assets in excess of $5,000,000;

(viii) A corporation, Massachusetts or similar business trust, or partnership, limited liability company or similar business venture, other than a pool, which has total assets in excess of $5,000,000, and is not formed for the specific purpose of either participating in the exempt pool or opening an exempt account;

(ix) A natural person whose individual net worth, or joint net worth with that person's spouse at the time of either his purchase in the exempt pool or his opening of an exempt account would qualify him as an accredited investor as defined in §230.501(a)(5) of this title;

(x) A natural person who would qualify as an accredited investor as defined in §203.501(a)(6) of this title;

(xi) A pool, trust, insurance company separate account or bank collective trust, with total assets in excess of $5,000,000, not formed for the specific purpose of either participating in the exempt pool or opening an exempt account, and whose participation in the exempt pool or investment in the exempt account is directed by a qualified eligible person; or

(xii) Except as provided for the governmental entities referenced in paragraph (a)(3)(iv) of this section, if otherwise authorized by law to engage in such transactions, a governmental entity (including the United States, a state, or a foreign government) or political subdivision thereof, or a multinational or supranational entity or an instrumentality, agency, or department of any of the foregoing.

(b) *Relief available to commodity pool operators*—(1) *Eligibility.* Relief from specific compliance obligations is available to certain registered commodity pool operators with respect to the pool(s) they operate, provided that the registered commodity pool operator files the required notice under paragraph (d) of this section and otherwise complies with the conditions of paragraph (d) of this section in operating the exempt pool(s).

(i) *Types of commodity pools.* (A) Regarding an offering that is exempt from registration under section 4(a)(2) of the Securities Act of 1933, any registered commodity pool operator who offers or sells participations in such a pool solely to qualified eligible persons, without marketing to the public, may claim any or all of the relief described in this paragraph (b) with respect to such pool; Provided, that the prohibition on marketing to the public shall not apply to a registered commodity pool operator who offers or sells participations in a pool offered pursuant to § 230.506(c) of this title.

(B) Regarding an offering that is offered and sold pursuant to Regulation S, §§ 230.901 through 230.905 of this title, any registered commodity pool operator who offers or sells participations in such a pool solely to qualified eligible persons, without marketing to the public, may claim any or all of the relief described in this paragraph (b) with respect to such pool.

(C) Regarding a pool that is a collective trust fund, the securities of which are exempt from registration pursuant to section 3(a)(2) of the Securities Act of 1933, any bank registered as a commodity pool operator that offers or sells participations in such a pool solely to qualified eligible persons, without marketing to the public, may claim any or all of the relief described in this paragraph (b) with respect to such pool.

(ii) *Resales.* A registered commodity pool operator may claim any or all of the relief described in this paragraph (b) with respect to the pools described in paragraphs (b)(1)(i)(A) through (C) of this section, if participations in such pools are resold pursuant to Rule 144A (§ 230.144A of this title).

(2) *Disclosure relief.* (i) Exemption from the specific requirements of §§ 4.21, 4.24, 4.25 and 4.26 with respect to each exempt pool; *Provided,* That if an offering memorandum is distributed in connection with soliciting prospective participants in the exempt pool, such offering memorandum must include all disclosures necessary to make the information contained therein, in the context in which it is furnished, not misleading; and that the following statement is prominently disclosed on the cover page of the offering memorandum, or, if none is provided, immediately above the signature line on the subscription agreement or other document that the prospective participant must execute to become a participant in the pool:

"PURSUANT TO AN EXEMPTION FROM THE COMMODITY FUTURES TRADING COMMISSION IN CONNECTION WITH POOLS WHOSE PARTICIPANTS ARE LIMITED TO QUALIFIED ELIGIBLE PERSONS, AN OFFERING MEMORANDUM FOR THIS POOL IS NOT REQUIRED TO BE, AND HAS NOT BEEN, FILED WITH THE COMMISSION. THE COMMODITY FUTURES TRADING COMMISSION DOES NOT PASS UPON THE MERITS OF PARTICIPATING IN A POOL OR UPON THE ADEQUACY OR ACCURACY OF AN OFFERING MEMORANDUM. CONSEQUENTLY, THE COMMODITY FUTURES TRADING COMMISSION HAS NOT REVIEWED OR APPROVED THIS OFFERING OR ANY OFFERING MEMORANDUM FOR THIS POOL."

(ii) Exemption from disclosing the past performance of exempt pools in the Disclosure Document of non-exempt pools except to the extent that such past performance is material to the non-exempt pool being offered; *Provided,* That a pool operator that has claimed exemption hereunder and elects not to disclose any such performance in the Disclosure Document of non-exempt pools shall state in a footnote to the performance disclosure therein that the operator is operating or has operated exempt pools whose performance is not disclosed in this Disclosure Document.

(3) *Periodic reporting relief.* (i) Exemption from the specific requirements of § 4.22(a) and (b), provided, that a statement signed and affirmed in accordance with § 4.22(h) is prepared and distributed to pool participants no less frequently than quarterly within 30 calendar days after the end of the reporting period. This statement must be presented and computed in accordance with generally accepted accounting principles and indicate:

(A) The net asset value of the exempt pool as of the end of the reporting period;

(B) The change in net asset value from the end of the previous reporting period; and

(C) Either the net asset value per outstanding participation unit in the exempt pool as of the end of the reporting period, or the total value of the participant's interest or share in the exempt pool as of the end of the reporting period.

(ii) Where the pool is comprised of more than one ownership class or series, the net asset value of the series or class on which the account statement is reporting, and the net asset value per unit or value of the participant's share, also must be included in the statement required by this paragraph (b)(3); except that, for a pool that is a series fund structured with limitation on liability among the different series, the account statement required by this paragraph (b)(3) is not required to include the consolidated net asset value of all series of the pool.

(iii) A commodity pool operator that meets the conditions specified in §4.22(d)(2)(i) to present and compute the pool's financial statements contained in the Annual Report other than in accordance with generally accepted accounting principles, and has filed notice pursuant to §4.22(d)(2)(iii), may also use the alternative accounting principles, standards or practices identified in that notice with respect to the computation and presentation of the account statement.

(4) *Annual report relief*. (i) Exemption from the specific requirements of §4.22(c) of this part; *Provided*, that within 90 calendar days after the end of the exempt pool's fiscal year or the permanent cessation of trading, whichever is earlier, the commodity pool operator electronically files with the National Futures Association and distributes to each participant in lieu of the financial information and statements specified by that section, an annual report for the exempt pool, affirmed in accordance with §4.22(h) which contains, at a minimum:

(A) A Statement of Financial Condition as of the close of the exempt pool's fiscal year (elected in accordance with §4.22(g));

(B) A Statement of Operations for that year;

(C) Appropriate footnote disclosure and such further material information as may be necessary to make the required statements not misleading. For a pool that invests in other funds, this information must include, but is not limited to, separately disclosing the amounts of income, management and incentive fees associated with each investment in an investee fund that exceeds five percent of the pool's net assets. The income, management and incentive fees associated with an investment in an investee fund that is less than five percent of the pool's net assets may be combined and reported in the aggregate with the income, management and incentive fees of other investee funds that, individually, represent an investment of less than five percent of the pool's net assets. If the commodity pool operator is not able to obtain the specific amounts of management and incentive fees charged by an investee fund, the commodity pool operator must disclose the percentage amounts and computational basis for each such fee and include a statement that the CPO is not able to obtain the specific fee amounts for this fund;

(D) Where the pool is comprised of more than one ownership class or series, information for the series or class on which the financial statements are reporting should be presented in addition to the information presented for the pool as a whole; except that, for a pool that is a series fund structured with a limitation on liability among the different series, the financial statements are not required to include consolidated information for all series.

(ii) *Legend*. If a claim for exemption has been made pursuant to this section, the commodity pool operator must make a statement to that effect on the cover page of each annual report.

(5) *Recordkeeping relief*. Exemption from the specific requirements of §4,23; Provided, That the commodity pool operator must maintain the reports referred to in paragraphs (b)(2) and (3) of this section and all books and records prepared in connection with his activities as the pool operator of the exempt pool (including, without limitation, records relating to the qualifications of qualified eligible persons and substantiating any performance representations). Books and records that are not maintained at the pool operator's main

business office shall be maintained by one or more of the following: the pool's administrator, distributor or custodian, or a bank or registered broker or dealer acting in a similar capacity with respect to the pool. Such books and records must be made available to any representative of the Commission, the National Futures Association and the United States Department of Justice in accordance with the provisions of § 1.31.

(6) If the pool operator does not maintain its books and records at its main business office, the pool operator shall:

(i) At the time it registers with the Commission or delegates its recordkeeping obligations, whichever is later, file a statement that:

(A) Identifies the name, main business address, and main business telephone number of the person(s) who will be keeping required books and records in lieu of the pool operator;

(B) Sets forth the name and telephone number of a contact for each person who will be keeping required books and records in lieu of the pool operator;

(C) Specifies, by reference to the respective paragraph of this section, the books and records that such person will be keeping; and

(D) Contains representations from the pool operator that:

(*1*) It will promptly amend the statement if the contact information or location of any of the books and records required to be kept by this section changes, by identifying in such amendment the new location and any other information that has changed;

(*2*) It remains responsible for ensuring that all books and records required by this section are kept in accordance with § 1.31;

(*3*) Within 48 hours after a request by a representative of the Commission, it will obtain the original books and records from the location at which they are maintained, and provide them for inspection at the pool operator's main business office; *Provided, however,* that if the original books and records are permitted to be, and are maintained, at a location outside the United States, its territories or possessions, the pool operator will obtain and provide such original books and records for inspection at the pool operator's main business office within 72 hours of such a request; and

(*4*) It will disclose in the pool's Disclosure Document the location of its books and records that are required under this section.

(ii) The pool operator shall also file electronically with the National Futures Association a statement from each person who will be keeping required books and records in lieu of the pool operator wherein such person:

(A) Acknowledges that the pool operator intends that the person keep and maintain required pool books and records;

(B) Agrees to keep and maintain such records required in accordance with § 1.31 of this chapter; and

(C) Agrees to keep such required books and records open to inspection by any representative of the Commission, the National Futures Association, or the United States Department of Justice in accordance with § 1.31 of this chapter.

(c) *Relief available to commodity trading advisors.* Upon filing the notice required by paragraph (d) of this section, and subject to compliance with the conditions specified in paragraph (d) of this section, any registered commodity trading advisor who anticipates directing or guiding the commodity interest accounts of qualified eligible persons may claim any or all of the following relief with respect to the accounts of qualified eligible persons who have given due consent to their account being an exempt account under § 4.7:

(1) *Disclosure relief.* (i) Exemption from the specific requirements of §§ 4.31, 4.34, 4.35 and 4.36; *Provided,* That if the commodity trading advisor delivers a brochure or other disclosure statement to such qualified eligible persons, such brochure or statement shall include all additional disclosures necessary to make the information contained therein, in the context in which it is furnished, not misleading; and that the following statement is prominently displayed on the cover page of the brochure or statement or, if none is provided, immediately above the signature line of the agreement that the client must execute before it

opens an account with the commodity trading advisor:

''PURSUANT TO AN EXEMPTION FROM THE COMMODITY FUTURES TRADING COMMISSION IN CONNECTION WITH ACCOUNTS OF QUALIFIED ELIGIBLE PERSONS, THIS BROCHURE OR ACCOUNT DOCUMENT IS NOT REQUIRED TO BE, AND HAS NOT BEEN, FILED WITH THE COMMISSION. THE COMMODITY FUTURES TRADING COMMISSION DOES NOT PASS UPON THE MERITS OF PARTICIPATING IN A TRADING PROGRAM OR UPON THE ADEQUACY OR ACCURACY OF COMMODITY TRADING ADVISOR DISCLOSURE. CONSEQUENTLY, THE COMMODITY FUTURES TRADING COMMISSION HAS NOT REVIEWED OR APPROVED THIS TRADING PROGRAM OR THIS BROCHURE OR ACCOUNT DOCUMENT.''

(ii) Exemption from disclosing the past performance of exempt accounts in the Disclosure Document for non-exempt accounts except to the extent that such past performance is material to the non-exempt account being offered; *Provided*, That a commodity trading advisor that has claimed exemption hereunder and elects not to disclose any such performance in the Disclosure Document for non-exempt accounts shall state in a footnote to the performance disclosure therein that the advisor is advising or has advised exempt accounts for qualified eligible persons whose performance is not disclosed in this Disclosure Document.

(2) *Recordkeeping relief*. Exemption from the specific requirements of §4.33; *Provided*, That the commodity trading advisor must maintain, at its main business office, all books and records prepared in connection with his activities as the commodity trading advisor of qualified eligible persons (including, without limitation, records relating to the qualifications of such qualified eligible persons and substantiating any performance representations) and must make such books and records available to any representative of the Commission, the National Futures Association and the United States Department of Justice in accordance with the provisions of §1.31.

(d) *Notice of claim for exemption*. (1) A notice of a claim for exemption under this section must:

(i) Provide the name, main business address, main business telephone number and the National Futures Association commodity pool operator or commodity trading advisor identification number of the person claiming the exemption;

(ii)(A) Where the claimant is a commodity pool operator, provide the name(s) of the pool(s) for which the request is made; Provided, That a single notice representing that the pool operator anticipates operating single-investor pools may be filed to claim exemption for single-investor pools and such notice need not name each such pool;

(B) Where the claimant is a commodity trading advisor, contain a representation that the trading advisor anticipates providing commodity interest trading advice to qualified eligible persons;

(iii) Contain representations that:

(A) Neither the commodity pool operator or commodity trading advisor nor any of its principals is subject to any statutory disqualification under section 8a(2) or 8a(3) of the Act unless such disqualification arises from a matter which was previously disclosed in connection with a previous application for registration if such registration was granted or which was disclosed more than thirty days prior to the filing of the notice under this paragraph (d);

(B) The commodity pool operator or commodity trading advisor will comply with the applicable requirements of §4.7; and

(C) Where the claimant is a commodity pool operator, that the exempt pool will be offered and operated in compliance with the applicable requirements of §4.7;

(iv) Specify the relief claimed under §4.7;

(v) Where the claimant is a commodity pool operator, state the closing date of the offering or that the offering will be continuous;

(vi) Be filed by a representative duly authorized to bind the commodity pool operator or commodity trading advisor;

(vii) Be filed electronically with the National Futures Association through its electronic exemption filing system; and

(viii)(A)(*1*) Where the claimant is a commodity pool operator, except as

provided in paragraph (d)(1)(ii)(A) of this section with respect to single-investor pools and in paragraph (d)(1)(viii)(A)(*2*) of this section, be received by the National Futures Association:

(*i*) Before the date the pool first enters into a commodity interest transaction, if the relief claimed is limited to that provided under paragraphs (b)(2), (3) and (4) of this section; or

(*ii*) Prior to any offer or sale of any participation in the exempt pool if the claimed relief includes that provided under paragraph (b)(1) of this section.

(*2*) Where participations in a pool have been offered or sold in full compliance with part 4, the notice of a claim for exemption may be filed with the National Futures Association at any time; Provided, That the claim for exemption is otherwise consistent with the duties of the commodity pool operator and the rights of pool participants and that the commodity pool operator notifies the pool participants of his intention, absent objection by the holders of a majority of the units of participation in the pool who are unaffiliated with the commodity pool operator within twenty-one days after the date of the notification, to file a notice of claim for exemption under § 4.7 and such holders have not objected within such period. A commodity pool operator filing a notice under this paragraph (d)(1)(viii)(A)(*2*) shall either provide disclosure and reporting in accordance with the requirements of part 4 to those participants objecting to the filing of such notice or allow such participants to redeem their units of participation in the pool within three months of the filing of such notice.

(B) Where the claimant is a commodity trading advisor, be received by the Commission before the date the trading advisor first enters into an agreement to direct or guide the commodity interest account of a qualified eligible person pursuant to § 4.7.

(2) The notice will be effective upon receipt by the National Futures Association with respect to each pool for which it was made where the claimant is a commodity pool operator and otherwise generally where the claimant is a commodity trading advisor; *Provided*, That any notice which does not include all the required information shall not be effective, and that if at the time the National Futures Association receives the notice an enforcement proceeding brought by the Commission under the Act or the regulations is pending against the pool operator or trading advisor or any of its principals, the exemption will not be effective until twenty-one calendar days after receipt of the notice by the National Futures Association and that in such case an exemption may be denied by the Commission or the National Futures Association or made subject to such conditions as the Commission or the National Futures Association may impose.

(3) Any exemption claimed hereunder shall cease to be effective upon any change which would cause the commodity pool operator of an exempt pool to be ineligible for the relief claimed with respect to such pool or which would cause a commodity trading advisor to be ineligible for the relief claimed. The pool operator or trading advisor must promptly file a notice advising the National Futures Association of such change.

(4)(i) Any exemption from the requirements of § 4.21, § 4.22, § 4.23, § 4.24, § 4.25 or § 4.26 claimed hereunder with respect to a pool shall not affect the obligation of the commodity pool operator to comply with all other applicable provisions of part 4, the Act and the Commission's rules and regulations, with respect to the pool and any other pool the pool operator operates or intends to operate.

(ii) Any exemption from the requirements of § 4.31, § 4.33, § 4.34, § 4.35 or § 4.36 claimed hereunder shall not affect the obligation of the commodity trading advisor to comply with all other applicable provisions of part 4, the Act and the Commission's rules and regulations, with respect to any qualified eligible person and any other client to which the commodity trading advisor provides or intends to provide commodity interest trading advice.

(e) *Insignificant deviations from a term, condition or requirement of § 4.7.* (1) A failure to comply with a term or condition of § 4.7 will not result in the loss of the exemption with respect to a particular pool or client if the commodity

pool operator or the commodity trading advisor relying on the exemption shows that:

(i) The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular qualified eligible person;

(ii) The failure to comply was insignificant with respect to the exempt pool as a whole or to the particular exempt account; and

(iii) A good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of §4.7.

(2) A transaction made in reliance on §4.7 must comply with all applicable terms, conditions and requirements of §4.7. Where an exemption is established only through reliance upon paragraph (e)(1) of this section, the failure to comply shall nonetheless be actionable by the Commission.

[65 FR 47854, Aug. 4, 2000, as amended at 67 FR 77411, Dec. 18, 2002; 68 FR 47231, Aug. 8, 2003; 71 FR 8942, Feb. 22, 2006; 72 FR 1662, Jan. 16, 2007; 74 FR 57590, Nov. 9, 2009; 75 FR 55428, Sept. 10, 2010; 77 FR 11284, Feb. 24, 2012; 77 FR 17329, Mar. 26, 2012; 77 FR 54358, Sept. 5, 2012; 78 FR 52333, Aug. 22, 2013; 81 FR 85154, Nov. 25, 2016; 84 FR 67367, Dec. 10, 2019]

§4.8 Exemption from certain requirements of rule 4.26 with respect to pools offered or sold in certain offerings exempt from registration under the Securities Act.

(a) Notwithstanding paragraph (d) of §4.26 and subject to the conditions specified herein, the registered commodity pool operator of a pool offered or sold solely to ''accredited investors'' as defined in 17 CFR 230.501 in an offering exempt from the registration requirements of the Securities Act of 1933 pursuant to Rule 505 or 506 of Regulation D, 17 CFR 230.505 or 230.506, may solicit, accept and receive funds, securities and other property from prospective participants in that pool upon filing with the National Futures Association and providing to such participants the Disclosure Document for the pool.

(b) Notwithstanding paragraph (d) of §4.26 and subject to the conditions specified herein, the registered commodity pool operator of a pool offered or sold in an offering exempt from the registration requirements of the Securities Act of 1933 pursuant to Rule 505 or 506 of Regulation D, 17 CFR 230.505 or 230.506, that is operated in compliance with, and has filed the notice required by §4.12(b) may solicit, accept and receive funds, securities and other property from prospective participants in that pool upon filing with the National Futures Association and providing to such participants the Disclosure Document for the pool.

(c) The relief provided under §4.8 is not available if an enforcement proceeding brought by the Commission under the Act or the regulations is pending against the commodity pool operator or any of its principals or if the commodity pool operator or any of its principals is subject to any statutory disqualification under §§8a(2) or 8a(3) of the Act.

[57 FR 34865, Aug. 7, 1992; 57 FR 41173, Sept. 9, 1992, as amended at 60 FR 38182, July 25, 1995; 72 FR 1662, Jan. 16, 2007]

§4.9 [Reserved]

§4.10 Definitions.

For purposes of this part:

(a) [Reserved]

(b) *Net asset value* means total assets minus total liabilities, determined in accord with generally accepted accounting principles, with each position in a commodity interest accounted for at fair market value.

(c) *Participant* means any person that has any direct financial interest in a pool (e.g., a limited partner).

(d)(1) *Pool* means any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests.

(2) *Multi-advisor pool* means a pool in which:

(i) No commodity trading advisor is allocated or intended to be allocated more than twenty-five percent of the pool's funds available for commodity interest trading; and

(ii) No investee pool is allocated or intended to be allocated more than twenty-five percent of the pool's net asset value.

(3) *Principal-protected pool* means a pool (commonly referred to as a ''guaranteed pool'') that is designed to limit the loss of the initial investment of its participants.

(4) *Investee pool* means any pool in which another pool or account participates or invests, e.g., as a limited partner thereof.

(5) *Major investee pool* means, with respect to a pool, any investee pool that is allocated or intended to be allocated at least ten percent of the net asset value of the pool.

(e)(1) *Principal,* when referring to a person that is a principal of a particular entity, shall have the same meaning as the term ''principal'' under § 3.1(a) of this chapter.

(2) *Trading principal* means:

(i) With respect to a commodity pool operator, a principal who participates in making trading decisions for a pool, or who supervises, or has authority to allocate pool assets to, persons so engaged; and

(ii) With respect to a commodity trading advisor, a principal who participates in making trading decisions for the account of a client or who supervises or selects persons so engaged.

(f) *Direct,* as used in the context of trading commodity interest accounts, refers to agreements whereby a person is authorized to cause transactions to be effected for a client's commodity interest account without the client's specific authorization.

(g) *Trading program* refers to the program pursuant to which a person (1) directs a client's commodity interest account, or (2) guides the client's commodity interest trading by means of a systematic program that recommends specific transactions.

(h) *Trading manager* means, with respect to a pool, any person, other than the commodity pool operator of the pool, having sole or partial authority to allocate pool assets to commodity trading advisors or investee pools.

(i) *Major commodity trading advisor* means, with respect to a pool, any commodity trading advisor that is allocated or is intended to be allocated at least ten percent of the pool's funds available for commodity interest trading. For this purpose, the percentage allocation shall be the amount of funds allocated to the trading advisor by agreement with the commodity pool operator (or trading manager) on behalf of the pool, expressed as a percentage of the lesser of the aggregate value of the assets allocated to the pool's trading advisors or the net assets of the pool at the time of allocation.

(j) *Break-even point*—(1) Means the trading profit that a pool must realize in the first year of a participant's investment to equal all fees and expenses such that such participant will recoup its initial investment, as calculated pursuant to rules promulgated by a registered futures association pursuant to section 17(j) of the Act; and

(2) Must be expressed both as a dollar amount and as a percentage of the minimum unit of initial investment and assume redemption of the initial investment at the end of the first year of investment.

(k) *Draw-down* means losses experienced by a pool or account over a specified period.

(l) *Worst peak-to-valley draw-down* means the greatest cumulative percentage decline in month-end net asset value due to losses sustained by a pool, account or trading program during any period in which the initial month-end net asset value is not equaled or exceeded by a subsequent month-end net asset value. Such decline must be expressed as a percentage of the initial month-end net asset value, together with an indication of the months and year(s) of such decline from the initial month-end net asset value to the lowest month-end net asset value of such decline.[1] For purposes of §§ 4.25 and 4.35, a peak-to-valley draw-down which began prior to the beginning of the most recent five calendar years is deemed to have occurred during such five- calendar-year period.

(m) *Partially-funded account* means a client participation in the program of a commodity trading advisor in which the amount of funds in the client's commodity interest account over which such commodity trading advisor has trading authority is less than the

[1] For example, a worst peak-to-valley draw-down of ''4 to 8–92/25%'' means that the peak-to-valley draw-down lasted from April to August of 1992 and resulted in a twenty-five percent cumulative draw-down.

account size that establishes the client's level of trading in a commodity trading advisor's program.

[46 FR 26013, May 9, 1981, as amended at 49 FR 8225, Mar. 5, 1984; 60 FR 38182, July 25, 1995; 66 FR 53522, Oct. 23, 2001; 68 FR 42967, July 21, 2003; 72 FR 63979, Nov. 14, 2007]

§4.11 Exemption from section 4n(3)(B).

The provisions of section 4n(3)(B) of the Act shall not apply to any commodity pool operator or commodity trading advisor that is registered under the Act as such or that is exempt from such registration.

§4.12 Exemption from provisions of part 4.

(a) *In general*. (1) The Commission may exempt any person or any class or classes of persons from any provision of this part 4 if it finds that the exemption is not contrary to the public interest and the purposes of the provisions from which the exemption is sought.

(2) The Commission may grant the exemption subject to such terms and conditions as it may find appropriate.

(b) *Exemption from subpart B for certain commodity pool operators based on amount and nature of commodity interest trading*—(1) *Eligibility*. Subject to compliance with the provisions of paragraph (d) of this section, any person who is registered as a commodity pool operator, or has applied for such registration, may claim any or all of the relief available under paragraph (b)(2) of this section if:

(i) The pool for which it makes such claim:

(A) Will be offered and sold pursuant to the Securities Act of 1933 or pursuant to an exemption from said Act;

(B) Will generally and routinely engage in the buying and selling of securities and securities derived instruments;

(C) Will not enter into commodity interest transactions for which the aggregate initial margin and premiums, and required minimum security deposit for retail forex transactions (as defined in §5.1(m) of this chapter) exceed 10 percent of the fair market value of the pool's assets, after taking into account unrealized profits and unrealized losses on any such contracts it has entered into; *Provided, however,* That in the case of an option that is in-the-money at the time of purchase, the in-the-money amount as defined in §190.01(x) of this chapter may be excluded in computing such 10 percent; and

(D) Will trade such commodity interests in a manner solely incidental to its securities trading activities.

(ii) Each existing participant and prospective participant in the pool for which it makes such request is informed in writing of the restrictions set forth in paragraph (b)(1)(i) (C) and (D) of this section prior to the date the pool commences trading commodity interests. The pool operator may furnish this information by way of the pool's Disclosure Document, Account Statement, a separate notice or other similar means, including written communication delivered through electronic transmission.

(2) *Relief available to pool operator*. The commodity pool operator of a pool which meets the criteria of paragraph (b)(1) of this section may claim the following relief:

(i) In the case of §4.21, that the Commission accept in lieu and in satisfaction of the Disclosure Document specified by that section an offering memorandum for the pool which does not contain the information required by §§4.24(a), 4.24(b), and 4.24(n); *Provided, however,* that the offering memorandum:

(A) Is prepared pursuant to the requirements of the Securities Act of 1933, as amended, or the exemption from said Act pursuant to which the pool is being offered and sold;

(B) Contains the information required by §§4.24(c) through (m) and (o) through (u); and

(C) Complies with the requirements of §§4.24(v) and (w).

(ii) In the case of §4.22 (a) and (b), that the Commission accept in lieu and in satisfaction of the Account Statement and prescribed frequency respectively specified by those sections a statement which indicates the net asset value of the pool as of the end of the reporting period and the change in net asset value from the end of the previous reporting period, to be prepared and distributed no less frequently than quarterly; *Provided, however,* That each such statement complies with the

other requirements of § 4.22 (a) and (b), including the references in those sections to § 4.22 (g) and (h).

(iii) In the case of § 4.22 (c) through (e), that the Commission accept in lieu and in satisfaction of the financial information and statements in the Annual Report specified by those sections an annual report for the pool which contains, at a minimum, a Statement of Financial Condition as of the close of the pool's fiscal year and a Statement of Income (Loss) for that year; *Provided, however*, That:

(A) Each such annual report complies with the other requirements of § 4.22(c), including the reference in that section to § 4.22(h) and the requirement in § 4.22(c)(5) that the annual report must contain appropriate footnote disclosure and further material information; and

(B) The financial statements in such annual report must be presented and computed in accordance with generally accepted accounting principles consistently applied and must be certified by an independent public accountant.

(iv) In the case of § 4.23(a) (10) and (11), to exempt the pool operator from the requirements of those sections with respect to the pool.

(c) *Exemption from subpart B for certain commodity pool operators based on registration under the Securities Act of 1933 or the Investment Company Act of 1940*—(1) *Eligibility*. Subject to compliance with the provisions of paragraph (d) of this section, any person who is registered as a commodity pool operator, or has applied for such registration, may claim any or all of the relief available under paragraph (c)(2) of this section if, with respect to the pool for which it makes such claim:

(i) The units of participation will be offered and sold pursuant to an effective registration statement under the Securities Act of 1933; or

(ii) The pool is registered under the Investment Company Act of 1940.

(2) *Relief available to pool operator claiming relief under paragraph (c)(1)(i)*. The commodity pool operator of a pool whose units of participation meet the criteria of paragraph (c)(1)(i) if this section may claim the following relief:

(i) In the case of § 4.21, exemption from the Disclosure Document delivery and acknowledgment requirements of that section, *Provided, however*, that the pool operator:

(A) Cause the pool's Disclosure Document to be readily accessible on an Internet Web site maintained by the pool operator;

(B) Cause the Disclosure Document to be kept current in accordance with the requirements of § 4.26(a);

(C) Clearly inform prospective pool participants with whom it has contact of the Internet address of such Web site and direct any broker, dealer or other selling agent to whom the pool operator sells units of participation in the pool to so inform prospective pool participants; and

(D) Comply with all other requirements applicable to pool Disclosure Documents under part 4. The pool operator may satisfy the requirement of § 4.26(b) to attach to the Disclosure Document a copy of the pool's most current Account Statement and Annual Report if the pool operator makes such Account Statement and Annual Report readily accessible on an Internet Web site maintained by the pool operator.

(ii) In the case of § 4.22, exemption from the Account Statement distribution requirement of that section; *Provided, however*, that the pool operator:

(A) Cause the pool's Account Statements, including the certification required by § 4.22(h), to be readily accessible on an Internet Web site maintained by the pool operator within 30 calendar days after the last day of the applicable reporting period and continuing for a period of not less than 30 calendar days; and

(B) Cause the Disclosure Document for the pool to clearly indicate:

(*1*) That the information required to be included in the Account Statements will be readily accessible on an Internet Web site maintained by the pool operator; and

(*2*) The Internet address of such Web site.

(3) *Relief available to pool operator claiming relief under paragraph (c)(1)(ii)*. The commodity pool operator of a pool whose units of participation meet the criteria of paragraph (c)(1)(ii) of this section may claim the following relief:

(i) The pool operator of an offered pool will be exempt from the requirements of §§4.21, 4.24, 4.25, and 4.26; *Provided, that*

(A) The pool operator of an offered pool with less than a three-year operating history discloses the performance of all accounts and pools that are managed by the pool operator and that have investment objectives, policies, and strategies substantially similar to those of the offered pool; and,

(B) The disclosure provided with respect to the offered pool complies with the provisions of the Investment Company Act of 1940, the Securities Act of 1933, the Securities Exchange Act of 1934, the regulations promulgated thereunder, and any guidance issued by the Securities and Exchange Commission or any division thereof.

(ii) Exemption from the Account Statement distribution requirement of §§4.22(a) and (b); *Provided, however*, that the pool operator:

(A) Causes the current net asset value per share to be available to participants;

(B) Causes the pool to clearly disclose:

(*1*) That the information will be readily accessible on an Internet Web site maintained by the pool operator or its designee or otherwise made available to participants and the means through which the information will be made available; and

(*2*) The Internet address of such Web site, if applicable; and

(iii) Exemption from the provisions of §4.23 that require that a pool operator's books and records be made available to participants for inspection and/or copying at the request of the participant.

(d)(1) *Notice of claim for exemption*. Any registered commodity pool operator, or applicant for commodity pool operator registration, who desires to claim the relief available under paragraph (b) or (c) of this §4.12 must file electronically a claim of exemption with the National Futures Association through its electronic exemption filing system. Such claim must:

(i) Provide the name, main business address and main business telephone number of the registered commodity pool operator, or applicant for such registration, making the request;

(ii) Provide the name of the commodity pool for which the request is being made;

(iii) Contain representations that:

(A) The pool will be operated in compliance with paragraph (b)(1)(i) of this section and the pool operator will comply with the requirements of paragraph (b)(1)(ii) of this section;

(B) The pool will be operated in compliance with paragraph (c)(1) of this section and the pool operator will comply with the requirements of paragraph (c)(2) of this section; or

(C) The pool will be operated in compliance with paragraph (c)(1) of this section and the pool operator will comply with the requirements of paragraph (c)(3) of this section;

(iv) Specify the relief sought under paragraph (b)(2), (c)(2), or (c)(3) of this section, as the case may be;

(v) Be filed by a representative duly authorized to bind the pool operator.

(2)(i) The claim of exemption must be filed before the date the commodity pool first enters into a commodity interest transaction.

(ii) The claim of exemption shall be effective upon filing; *Provided, however*, That any exemption claimed hereunder:

(A) Will not be effective unless and until the notice required by this paragraph (d) contains all information called for herein and any statements required under paragraph (c)(2)(iii) have been provided; and

(B) Will cease to be effective upon any change which would render the representations made pursuant to paragraph (d)(1)(iii) of this section inaccurate or the continuation of such representations false or misleading.

(3)(i) If a claim of exemption has been made under §4.12(b)(2)(i), the commodity pool operator must make a statement to that effect on the cover page of each offering memorandum, or amendment thereto, that it is required to file with the National Futures Association pursuant to §4.26.

(ii) If a claim of exemption has been made with respect to paragraph (b)(2)(iii) of this section, the pool operator must make a statement to that effect on the cover page of each annual

report that it is required to file with the National Futures Association pursuant to § 4.22(c).

(4)(i) Any claim of exemption effective hereunder shall be effective only with respect to the pool for which it has been made.

(ii) The effectiveness of such claim shall not affect the obligations of the commodity pool operator to comply with all other applicable provisions of this part 4, the Act and the Commission's rules and regulations issued thereunder with respect to the pool and any other pool the pool operator operates or intends to operate.

[52 FR 41984, Nov. 2, 1987, as amended at 60 FR 38183, July 25, 1995; 67 FR 77411, Dec. 18, 2002; 72 FR 1663, Jan. 16, 2007; 75 FR 55428, Sept. 10, 2010; 76 FR 28644, May 18, 2011; 78 FR 52333, Aug. 22, 2013]

§ 4.13 Exemption from registration as a commodity pool operator.

This section is organized as follows: Paragraph (a) of this section specifies the criteria that must be met to qualify for exemption from registration under this section; paragraph (b) of this section governs the notice that must be filed to claim exemption from registration; paragraph (c) of this section sets forth the continuing obligations of a person who has claimed exemption under this section; paragraph (d) of this section specifies information certain persons must provide if they subsequently register; paragraph (e) of this section specifies the effect of registration on a person who has claimed an exemption from registration under this section or who is eligible to claim an exemption from registration hereunder; and paragraph (f) of this section specifies the effect of this section on § 4.5 of this chapter.

(a) A person is not required to register under the Act as a commodity pool operator if:

(1)(i) It does not receive any compensation or other payment, directly or indirectly, for operating the pool, except reimbursement for the ordinary administrative expenses of operating the pool;

(ii) It operates only one commodity pool at any time;

(iii) It is not otherwise required to register with the Commission and is not a business affiliate of any person required to register with the Commission; and

(iv) Neither the person nor any other person involved with the pool does any advertising in connection with the pool (for purposes of this section, advertising includes the systematic solicitation of prospective participants by telephone or seminar presentation);

(2)(i) None of the pools operated by it has more than 15 participants at any time; and

(ii) The total gross capital contributions it receives for units of participation in all of the pools it operates or that it intends to operate do not in the aggregate exceed $400,000.

(iii) For the purpose of determining eligibility for exemption under paragraph (a)(2) of this section, the person may exclude the following participants and their contributions:

(A) The pool's operator, commodity trading advisor, and the principals thereof;

(B) A child, sibling or parent of any of these participants;

(C) The spouse of any participant specified in paragraph (a)(2)(iii)(A) or (B) of this section; and

(D) Any relative of a participant specified in paragraph (a)(2)(iii)(A), (B) or (C) of this section, its spouse or a relative of its spouse, who has the same principal residence as such participant;

(3) For each pool for which the person claims exemption from registration under this paragraph (a)(3):

(i) Interests in the pool are exempt from registration under the Securities Act of 1933, and the interests are marketed and advertised to the public in the United States solely, if at all, in compliance with § 230.506(c) of this title, or with Rule 144A, § 230.144A of this title, as applicable;

(ii) At all times, the pool meets one or the other of the following tests with respect to its commodity interest positions, including positions in security futures products, whether entered into for *bona fide* hedging purposes or otherwise:

(A) The aggregate initial margin, premiums, and required minimum security deposit for retail forex transactions (as defined in § 5.1(m) of this

chapter) required to establish such positions, determined at the time the most recent position was established, will not exceed 5 percent of the liquidation value of the pool's portfolio, after taking into account unrealized profits and unrealized losses on any such positions it has entered into; *Provided,* That in the case of an option that is in-the-money at the time of purchase, the in-the-money amount as defined in §190.01(x) of this chapter may be excluded in computing such 5 percent; or

(B) The aggregate net notional value of such positions, determined at the time the most recent position was established, does not exceed 100 percent of the liquidation value of the pool's portfolio, after taking into account unrealized profits and unrealized losses on any such positions it has entered into. For the purpose of this paragraph:

(*1*) The term ''notional value'' shall be calculated for each futures position by multiplying the number of contracts by the size of the contract, in contract units (taking into account any multiplier specified in the contract), by the current market price per unit, for each such option position by multiplying the number of contracts by the size of the contract, adjusted by its delta, in contract units (taking into account any multiplier specified in the contract), by the strike price per unit, for each such retail forex transaction, by calculating the value in U.S. Dollars of such transaction, at the time the transaction was established, excluding for this purpose the value in U.S. Dollars of offsetting long and short transactions, if any, and for any cleared swap by the value as determined consistent with the terms of 17 CFR part 45; and

(*2*) The person may net futures contracts with the same underlying commodity across designated contract markets and foreign boards of trade; and swaps cleared on the same derivatives clearing organization where appropriate; and

(iii) The person reasonably believes, at the time of investment (or, in the case of an existing pool, at the time of conversion to a pool meeting the criteria of paragraph (a)(3) of this section), that each person who participates in the pool is:

(A) An ''accredited investor,'' as that term is defined in §230.501 of this title;

(B) A trust that is not an accredited investor but that was formed by an accredited investor for the benefit of a family member;

(C) A ''knowledgeable employee,'' as that term is defined in §270.3c-5 of this title; or

(D) A ''qualified eligible person,'' as that term is defined in §4.7; and

(iv) Participations in the pool are not marketed as or in a vehicle for trading in the commodity futures or commodity options markets; *Provided,* That nothing in paragraph (a)(3) of this section shall prohibit the person from claiming an exemption under this section if it additionally operates one or more pools for which it meets the criteria of paragraph (a)(4) of this section;

(4) [Reserved]

(5) The person is acting as a director or trustee with respect to a pool whose operator is registered as a commodity pool operator and is eligible to claim relief under §4.12(c) of this chapter, *Provided, however,* that:

(i) The person acts in such capacity solely to comply with the requirements under section 10A of the Securities Exchange Act of 1934, as amended, and any Securities and Exchange Commission rules and exchange listing requirements adopted pursuant thereto, that the pool have an audit committee comprised exclusively of independent directors or trustees;

(ii) The person has no power or authority to manage or control the operations or activities of the pool except as necessary to comply with such requirement; and

(iii) The registered pool operator of the pool is and will be liable for any violation of the Act or the Commission's regulations by the person in connection with the person's serving as a director or trustee with respect to the pool.

(6) For each pool for which the person claims exemption under this paragraph (a)(6):

(i) Interests in the pool are exempt from registration under the Securities Act of 1933, and such interests are offered and sold only to ''family clients,'' as defined in §275.202(a)(11)(G)-1 of this title;

(ii) The person qualifies as a ''family office,'' as defined in § 275.202(a)(11)(G)-1 of this title; and

(iii) The person reasonably believes, at the time of investment, or in the case of an existing pool, at the time of conversion to a pool meeting the criteria of this paragraph (a)(6) of this section, that each person who participates in the pool is a ''family client'' of the ''family office,'' as defined in § 275.202(a)(11)(G)-1 of this title.

(7)(i) Eligibility for exemption under paragraph (a)(1), (a)(2), (a)(3) or (a)(4) of this section is subject to the person furnishing in written communication physically delivered or delivered through electronic transmission to each prospective participant in the pool:

(A) A statement that the person is exempt from registration with the Commission as a commodity pool operator and that therefore, unlike a registered commodity pool operator, it is not required to deliver a Disclosure Document and a certified annual report to participants in the pool; and

(B) A description of the criteria pursuant to which it qualifies for such exemption from registration.

(ii) The person must make these disclosures by no later than the time it delivers a subscription agreement for the pool to a prospective participant in the pool.

(b)(1) Any person who desires to claim the relief from registration provided by this section, except for any person claiming the exemption for family offices in paragraph (a)(6) of this section, must file electronically a notice of exemption from commodity pool operator registration with the National Futures Association through its electronic exemption filing system. The notice must:

(i) Provide the name, main business address, main business telephone number, main facsimile number and main email address of the person claiming the exemption and the name of the pool for which it is claiming exemption;

(ii) Specify the paragraph number pursuant to which the person is filing the notice (*i.e.*, § 4.13(a)(1), (2), (3), or (5)) and represent that the pool will be operated in accordance with the criteria of that paragraph;

(iii) Represent that neither the person nor any of its principals has in its background a statutory disqualification that would require disclosure under section 8a(2) of the Act if such person sought registration, unless such disqualification arises from a matter which was disclosed in connection with a previous application for registration, where such registration was granted; and

(iv) Be filed by a representative duly authorized to bind the person.

(2) The person must file the notice by no later than the time that the pool operator delivers a subscription agreement for the pool to a prospective participant in the pool; *Provided, however,* that in the case of a claim for relief under § 4.13(a)(5), the person must file the notice by the later of the effective date of the pool's registration statement under the Securities Act of 1933 or the date on which the person first becomes a director or trustee; and *Provided, further,* that where a person registered with the Commission as a commodity pool operator intends to withdraw from registration in order to claim exemption hereunder, the person must notify its pool's participants in written communication physically delivered or delivered through electronic transmission that it intends to withdraw from registration and claim the exemption, and it must provide each such participant with a right to redeem its interest in the pool prior to the person filing a notice of exemption from registration

(3) The notice will be effective upon filing, provided the notice is materially complete.

(4) *Annual notice.* Each person who has filed a notice of exemption from registration under this section must affirm on an annual basis the notice of exemption from registration, withdraw such exemption due to the cessation of activities requiring registration or exemption therefrom, or withdraw such exemption and apply for registration within 60 days of the calendar year end through National Futures Association's electronic exemption filing system.

(5) Each person who has filed a notice of exemption from registration under this section must, in the event that any of the information contained or representations made in the notice becomes inaccurate or incomplete, amend the notice through National Futures Association's electronic exemption filing system as may be necessary to render the notice accurate and complete. This amendment must be filed electronically within 15 business days after the pool operator becomes aware of the occurrence of such event.

(c)(1) Each person who has claimed an exemption from registration under this section must:

(i) Make and keep all books and records prepared in connection with its activities as a pool operator for a period of five years from the date of preparation;

(ii) Keep such books and records readily accessible during the first two years of the five-year period. All such books and records must be available for inspection upon the request of any representative of the Commission, the United States Department of Justice, or any other appropriate regulatory agency; and

(iii) Submit to such special calls as the Commission may make to demonstrate eligibility for and compliance with the applicable criteria for exemption under this section.

(2) Each person who has filed a notice of exemption from registration pursuant to paragraph (a)(1) or (a)(2) of this section must:

(i) Promptly furnish to each participant in the pool a copy of each monthly statement for the pool that the pool operator received from a futures commission merchant pursuant to §1.33 of this chapter; and

(ii) Clearly show on such statement, or on an accompanying supplemental statement, the net profit or loss on all commodity interests closed since the date of the previous statement.

(d) Each person who applies for registration as a commodity pool operator subsequent to claiming relief under paragraph (a)(1) or (a)(2) of this section must include with its application the financial statements and other information required by §4.22(c)(1) through (5) for each pool that it has operated as an operator exempt from registration. That information must be presented and computed in accordance with generally accepted accounting principles consistently applied. If the person is granted registration as a commodity pool operator, it must comply with the provisions of this part with respect to each such pool.

(e)(1) Subject to the provisions of paragraph (e)(2) of this section, if a person who is eligible for exemption from registration as a commodity pool operator under this section nonetheless registers as a commodity pool operator, the person must comply with the provisions of this part with respect to each commodity pool identified on its registration application or supplement thereto.

(2) If a person operates one or more commodity pools described in paragraph (a)(3) of this section, and one or more commodity pools for which it must be, and is, registered as a commodity pool operator, the person is exempt from the requirements applicable to a registered commodity pool operator with respect to the pool or pools described in paragraph (a)(3) of this section; *Provided*, That the person:

(i) Furnishes in written communication physically delivered or delivered through electronic transmission to each prospective participant in a pool described in paragraph (a)(3) of this section that it operates:

(A) A statement that it will operate the pool as if the person was exempt from registration as a commodity pool operator;

(B) A description of the criteria pursuant to which it will so operate the pool;

(ii) Complies with paragraph (c) of this section; and

(iii) Provides each existing participant in a pool that the person elects to operate as described in paragraph (a)(3) of this section a right to redeem the participant's interest in the pool, and informs each such participant of that right no later than the time the person commences to operate the pool as described in paragraph (a)(3) of this section.

(f) The filing of a notice of exemption from registration under this section will not affect the ability of a person to

qualify for exclusion from the definition of the term ''commodity pool operator'' under § 4.5 in connection with its operation of another trading vehicle that is not covered under this § 4.13.

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

(Secs. 2(a)(1), 4c(a)–(d), 4d, 4f, 4g, 4k, 4m, 4n, 8a, 15 and 17, Commodity Exchange Act (7 U.S.C. 2, 4, 6c(a)–(d), 6f, 6g, 6k, 6m, 6n, 12a, 19 and 21; 5 U.S.C. 552 and 552b))

[46 FR 26013, May 8, 1981, as amended at 46 FR 63035, Dec. 30, 1981; 47 FR 57011, Dec. 22, 1982; 50 FR 15883, Apr. 23, 1985; 67 FR 77411, Dec. 18, 2002; 68 FR 47231, Aug. 8, 2003; 68 FR 59113, Oct. 14, 2003; 69 FR 41426, July 9, 2004; 72 FR 1663, Jan. 16, 2007; 74 FR 57590, Nov. 9, 2009; 75 FR 55428, Sept. 10, 2010; 76 FR 28645, May 18, 2011; 77 FR 11284, Feb. 24, 2012; 77 FR 17329, Mar. 26, 2012; 84 FR 67368, Dec. 10, 2019; 85 FR 40890, July 8, 2020]

§ 4.14 Exemption from registration as a commodity trading advisor.

This section is organized as follows: Paragraph (a) of this section specifies the criteria that must be met to qualify for exemption from registration under this section, including the notice of exemption from registration and continuing obligations of persons who have claimed exemption under paragraph (a)(8) of this section; paragraph (b) of this section concerns ''cash market transactions''; and paragraph (c) of this section specifies the effect of registration on a person who has claimed an exemption from registration under this section or who is eligible to claim an exemption from registration hereunder.

(a) A person is not required to register under the Act as a commodity trading advisor if:

(1) It is a dealer, processor, broker, or seller in cash market transactions of any commodity (or product thereof) and the person's commodity trading advice is solely incidental to the conduct of its cash market business;

(2) It is a non-profit, voluntary membership, trade association or farm organization and the person's commodity trading advice is solely incidental to the conduct of its business as such association or organization;

(3) It is registered under the Act as an associated person and the person's commodity trading advice is issued solely in connection with its employment as an associated person;

(4) It is registered under the Act as a commodity pool operator and the person's commodity trading advice is directed solely to, and for the sole use of, the pool or pools for which it is so registered;

(5) It is exempt from registration as a commodity pool operator and the person's commodity trading advice is directed solely to, and for the sole use of, the pool or pools for which it is so exempt;

(6) It is registered under the Act as an introducing broker and the person's trading advice is solely in connection with its business as an introducing broker;

(7)(i) It is registered under the Act as a leverage transaction merchant and the person's trading advice is solely in connection with its business as a leverage transaction merchant;

(ii) It is registered under the Act as a retail foreign exchange dealer and the person's trading advice is solely in connection with its business as a retail foreign exchange dealer.

(8) It is registered as an investment adviser under the Investment Advisers Act of 1940 or with the applicable securities regulatory agency of any State, or it is exempt from such registration, or it is excluded from the definition of the term ''investment adviser'' pursuant to the provisions of sections 202(a)(2) and 202(a)(11) of the Investment Advisers Act of 1940, *Provided,* That:

(i) The person's commodity interest trading advice is directed solely to, and for the sole use of, one or more of the following:

(A) ''Qualifying entities,'' as that term is defined in § 4.5(b), for which a notice of eligibility has been filed;

(B) Collective investment vehicles that are excluded from the definition of the term commodity ''pool'' under § 4.5(a)(4); and

(C) Commodity pools that are organized and operated outside of the United States, its territories or possessions, where:

(*1*) The commodity pool operator of each such pool has not so organized and is not so operating the pool for the

purpose of avoiding commodity pool operator registration;

(*2*) With the exception of the pool's operator, advisor and their principals, solely ''Non-United States persons,'' as that term is defined in §4.7(a)(1)(iv), will contribute funds or other capital to, and will own beneficial interests in, the pool; *Provided*, That units of participation in the pool held by persons who do not qualify as Non-United States persons or otherwise as qualified eligible persons represent in the aggregate less than 10 percent of the beneficial interest of the pool;

(*3*) No person affiliated with the pool conducts any marketing activity for the purpose of, or that could reasonably have the effect of, soliciting participation from other than Non-United States persons; and

(*4*) No person affiliated with the pool conducts any marketing activity from within the United States, its territories or possessions; and

(D) A commodity pool operator who has claimed an exemption from registration under §4.13(a)(3), or, if registered as a commodity pool operator, who may treat each pool it operates that meets the criteria of §4.13(a)(3) as if it were not so registered; and

(ii) The person:

(A) Provides commodity interest trading advice solely incidental to its business of providing securities or other investment advice to qualifying entities, collective investment vehicles and commodity pools as described in paragraph (a)(8)(i) of this section; and

(B) Is not otherwise holding itself out as a commodity trading advisor.

(iii)(A) A person who desires to claim the relief from registration provided by this §4.14(a)(8) must file electronically a notice of exemption from commodity trading advisor registration with the National Futures Association through its electronic exemption filing system. The notice must:

(*1*) Provide the name, main business address, main business telephone number, main facsimile number and main email address of the trading advisor claiming the exemption;

(*2*) Contain the section number pursuant to which the advisor is filing the notice (*i.e.*, under §4.14(a)(8)(i)) and represent that it will provide commodity interest advice to its clients in accordance with the criteria of that paragraph or paragraphs; and

(*3*) Be filed by a representative duly authorized to bind the person.

(B) The person must file the notice by no later than the time it delivers an advisory agreement for the trading program pursuant to which it will offer commodity interest advice to a client; *Provided*, That where the advisor is registered with the Commission as a commodity trading advisor, it must notify its clients in written communication physically delivered or delivered through electronic transmission that it intends to withdraw from registration and claim the exemption and must provide each such client with a right to terminate its advisory agreement prior to the person filing a notice of exemption from registration.

(C) The notice will be effective upon filing, provided the notice is materially complete.

(D) *Annual notice.* Each person who has filed a notice of exemption from registration under this section must affirm on an annual basis the notice of exemption from registration, withdraw such exemption due to the cessation of activities requiring registration or exemption therefrom, or withdraw such exemption and apply for registration within 60 days of the calendar year end through National Futures Association's electronic exemption filing system.

(E) Each person who has filed a notice of exemption from registration under this section must, in the event that any of the information contained or representations made in the notice becomes inaccurate or incomplete, amend the notice electronically through National Futures Association's electronic exemption filing system as may be necessary to render the notice accurate and complete. This amendment must be filed within 15 business days after the trading advisor becomes aware of the occurrence of such event.

(iv) Each person who has filed a notice of registration exemption under this §4.14(a)(8) must:

(A)(*1*) Make and keep all books and records prepared in connection with its

activities as a trading advisor, including all books and records demonstrating eligibility for and compliance with the applicable criteria for exemption under this section, for a period of five years from the date of preparation; and

(*2*) Keep such books and records readily accessible during the first two years of the five-year period. All such books and records must be available for inspection upon the request of any representative of the Commission, the United States Department of Justice, or any other appropriate regulatory agency; and

(B) Submit to such special calls as the Commission may make to demonstrate eligibility for and compliance with the applicable criteria for exemption under this section;

(9) It does not engage in any of the following activities:

(i) Directing client accounts; or

(ii) Providing commodity trading advice based on, or tailored to, the commodity interest or cash market positions or other circumstances or characteristics of particular clients; or

(10) If, as provided for in section 4m(1) of the Act, during the course of the preceding 12 months, it has not furnished commodity trading advice to more than 15 persons and it does not hold itself out generally to the public as a commodity trading advisor.

(i) For the purpose of paragraph (a)(10) of this section, the following are deemed a single person:

(A) A natural person, and:

(*1*) Any minor child of the natural person;

(*2*) Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence;

(*3*) All accounts of which the natural person and/or the persons referred to in paragraph (a)(10)(i)(A) of this section are the only primary beneficiaries; and

(*4*) All trusts of which the natural person and/or the persons referred to in paragraph (a)(10)(i)(A) of this section are the only primary beneficiaries;

(B)(*1*) A corporation, general partnership, limited partnership, limited liability company, trust (other than a trust referred to in paragraph (a)(10)(i)(A)(*4*) of this section), or other legal organization (any of which are referred to hereinafter as a ''legal organization'') that receives commodity interest trading advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members, or beneficiaries (any of which are referred to hereinafter as an ''owner''); and

(*2*) Two or more legal organizations referred to in paragraph (a)(10)(i)(B)(*1*) of this section that have identical owners.

(ii) *Special Rules*. For the purpose of paragraph (a)(10) of this section:

(A) An owner must be counted in its own capacity as a person if the commodity trading advisor provides advisory services to the owner separate and apart from the advisory services provided to the legal organization; *Provided*, That the determination that an owner is a client will not affect the applicability of paragraph (a)(10) of this section with regard to any other owner;

(B)(*1*) A general partner of a limited partnership, or other person acting as a commodity trading advisor to the partnership, may count the limited partnership as one person; and

(*2*) A manager or managing member of a limited liability company, or any other person acting as a commodity trading advisor to the company, may count the limited liability company as one person.

(C) A commodity trading advisor that has its principal office and place of business outside of the United States, its territories or possessions must count only clients that are residents of the United States, its territories and possessions; a commodity trading advisor that has its principal office and place of business in the United States or in any territory or possession thereof must count all clients.

(iii) *Holding Out*. Any commodity trading advisor relying on paragraph (a)(10) of this section shall not be deemed to be holding itself out generally to the public as a commodity trading advisor, within the meaning of section 4m(1) of the Act, solely because it participates in a non-public offering of interests in a collective investment

vehicle under the Securities Act of 1933.

(11) The person's commodity trading advice is solely directed to, and is for the sole use of, ''family clients,'' as defined in §275.202(a)(11)(G)-1 of this title.

(b) For purposes of this section, ''cash market transactions'' shall not include transactions involving contracts for the purchase or sale of a commodity for future delivery or transactions subject to Commission regulation under section 4c or 19 of the Act.

(c)(1) Subject to the provisions of paragraph (c)(2) of this section, if a person who is eligible for exemption from registration as a commodity trading advisor under this section nonetheless registers as a commodity trading advisor, the person must comply with the provisions of this part with respect to those clients for which it could have claimed an exemption from registration hereunder.

(2) If a person provides commodity interest trading advice to a client described in paragraph (a) of this section and to a client for which it must be, and is, registered as a commodity trading advisor, the person is exempt from the requirements applicable to a registered commodity trading advisor with respect to the clients so described; *Provided*, That the person furnishes in writing to each prospective client described in paragraph (a) of this section a statement that it will provide commodity interest trading advice to the client as if it was exempt from registration as a commodity trading advisor; *Provided Further*, That the person provides to each existing client described in paragraph (a) of this section a right to terminate its advisory agreement, and informs such client of that right no later than the time the person commences to provide commodity interest trading advice to the client as if the person was exempt from registration.

(Secs. 8a(5) and 19 of the Commodity Exchange Act, as amended, 7 U.S.C. 12a(5) and 23 (1982); 5 U.S.C. 552 and 552b)

[46 FR 26013, May 8, 1981; 46 FR 26761, May 15, 1981; 48 FR 35298, Aug. 3, 1983; 49 FR 5526, Feb. 13, 1984; 52 FR 41985, Nov. 2, 1987; 52 FR 43827, Nov. 16, 1987; 65 FR 12943, Mar. 10, 2000; 67 FR 77411, Dec. 18, 2002; 68 FR 47233, Aug. 8, 2003; 68 FR 52837, Sept. 8, 2003; 68 FR 59114, Oct. 14, 2003; 72 FR 1664, Jan. 16, 2007; 75 FR 55428, Sept. 10, 2010; 77 FR 11284, Feb. 24, 2012; 77 FR 17330, Mar. 26, 2012; 84 FR 67368, Dec. 10, 2019]

§4.15 Continued applicability of anti-fraud section.

The provisions of section 4*o* of the Act shall apply to any person even though such person is exempt from registration under this part 4, and it shall continue to be unlawful for any such person to violate section 4*o* of the Act.

[50 FR 15884, Apr. 23, 1985]

§4.16 Prohibited representations.

It shall be unlawful for any commodity pool operator, commodity trading advisor, principal thereof or person who solicits therefor to represent or imply in any manner whatsoever that such commodity pool operator or commodity trading advisor has been sponsored, recommended or approved, or that its abilities or qualifications have in any respect been passed upon, by the Commission, the Federal government or any agency thereof.

§4.17 Severability.

If any provision of this part, or the application thereof to any person or circumstances, is held invalid, such invalidity shall not affect other provisions or application of such provision to other persons or circumstances which can be given effect without the invalid provision or application.

[78 FR 52333, Aug. 22, 2013]

Subpart B—Commodity Pool Operators

§4.20 Prohibited activities.

(a)(1) Except as provided in paragraph (a)(2) of this section, a commodity pool operator must operate its pool as an entity cognizable as a legal

entity separate from that of the pool operator.

(2) The Commission may exempt a corporation from the requirements of paragraph (a)(1) of this section if;

(i) The corporation represents in writing to the Commission that each participant in its pool will be issued stock or other evidences of ownership in the corporation for all funds, securities or other property that the participant contributes for the purchase of an ownership interest in the pool;

(ii) The corporation demonstrates to the satisfaction of the Commission that it has established procedures adequate to assure compliance with paragraphs (b) and (c) of this section; and

(iii) The Commission finds that the exemption is not contrary to the public interest and to the purposes of the provision from which the exemption is sought.

(b) All funds, securities or other property received by a commodity pool operator from an existing or prospective pool participant for the purchase of an interest or as an assessment (whether voluntary or involuntary) on an interest in a pool that it operates or that it intends to operate must be received in the pool's name.

(c) No commodity pool operator may commingle the property of any pool that it operates or that it intends to operate with the property of any other person.

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

[46 FR 26013, May 8, 1981, as amended at 46 FR 34311, July 1, 1981; 46 FR 63035, Dec. 30, 1981]

§ 4.21 Required delivery of pool Disclosure Document.

(a)(1) Subject to the provisions of paragraph (a)(2) of this section, each commodity pool operator registered or required to be registered under the Act must deliver or cause to be delivered to a prospective participant in a pool that it operates or intends to operate a Disclosure Document for the pool prepared in accordance with §§ 4.24 and 4.25 by no later than the time it delivers to the prospective participant a subscription agreement for the pool; *Provided,* That any information distributed in advance of the delivery of the Disclosure Document to a prospective participant is consistent with or amended by the information contained in the Disclosure Document and with the obligations of the commodity pool operator under the Act, the Commission's regulations issued thereunder, and the laws of any other applicable federal or state authority; *Provided, further,* That in the event such previously distributed information is amended by the Disclosure Document in any material respect, the prospective participant must be in receipt of the Disclosure Document at least 48 hours prior to its subscription being accepted by the pool operator.

(2) For the purpose of the Disclosure Document delivery requirement, including any offering memorandum delivered pursuant to § 4.7(b)(1) or 4.12(b)(2)(i), the term ''prospective pool participant'' does not include a commodity pool operated by a pool operator that is the same as, or that controls, is controlled by, or is under common control with, the pool operator of the offered pool.

(b) [Reserved]

[60 FR 38183, July 25, 1995, as amended at 62 FR 39115, July 22, 1997; 65 FR 58649, Oct. 2, 2000; 68 FR 47234, Aug. 8, 2003; 78 FR 52333, Aug. 22, 2013]

§ 4.22 Reporting to pool participants.

(a) Except as provided in paragraph (a)(4) or (a)(6) of this section, each commodity pool operator registered or required to be registered under the Act must periodically distribute to each participant in each pool that it operates, within 30 calendar days after the last date of the reporting period prescribed in paragraph (b) of this section, an Account Statement, which shall be presented in the form of a Statement of Operations and a Statement of Changes in Net Assets, for the prescribed period. These financial statements must be presented and computed in accordance with generally accepted accounting principles consistently applied. The Account Statement must be signed in accordance with paragraph (h) of this section.

(1) The portion of the Account Statement which must be presented in the form of a Statement of Operations must separately itemize the following information:

(i) The total amount of realized net gain or loss on commodity interest positions liquidated during the reporting period;

(ii) The change in unrealized net gain or loss on commodity interest positions during the reporting period;

(iii) The total amount of net gain or loss from all other transactions in which the pool engaged during the reporting period, including interest and dividends earned on funds not paid as premiums or used to margin the pool's commodity interest positions;

(iv) The total amount of all management fees during the reporting period;

(v) The total amount of all advisory fees during the reporting period;

(vi) The total amount of all brokerage commissions during the reporting period;

(vii) The total amount of other fees for commodity interest and other investment transactions during the reporting period; and

(viii) The total amount of all other expenses incurred or accrued by the pool during the reporting period.

(2) The portion of the Account Statement that must be presented in the form of a Statement of Changes in Net Assets must separately itemize the following information:

(i) The net asset value of the pool as of the beginning of the reporting period;

(ii) The total amount of additions to the pool, whether voluntary or involuntary, made during the reporting period;

(iii) The total amount of withdrawals from and redemption of participation units in the pool, whether voluntary or involuntary, for the reporting period;

(iv) The total net income or loss of the pool during the reporting period;

(v) The net asset value of the pool as of the end of the reporting period; and

(vi)(A) The net asset value per outstanding participation unit in the pool as of the end of the reporting period, or

(B) The total value of the participant's interest or share in the pool as of the end of the reporting period.

(3) The Account Statement must also disclose any material business dealings between the pool, the pool's operator, commodity trading advisor, futures commission merchant, retail foreign exchange dealer, swap dealer, or the principals thereof that previously have not been disclosed in the pool's Disclosure Document or any amendment thereto, other Account Statements or Annual Reports.

(4) For the purpose of the Account Statement delivery requirement, including any Account Statement distributed pursuant to §4.7(b)(2) or 4.12(b)(2)(ii), the term ''participant'' does not include a commodity pool operated by a pool operator that is the same as, or that controls, is controlled by, or is under common control with, the pool operator of a pool in which the commodity pool has invested.

(5) Where the pool is comprised of more than one ownership class or series, information for the series or class on which the account statement is reporting should be presented in addition to the information presented for the pool as a whole; except that, for a pool that is a series fund structured with a limitation on liability among the different series, the account statement is not required to include consolidated information for all series.

(6) A commodity pool operator of a pool that meets the conditions specified in paragraph (d)(2)(i) of this section and has filed notice pursuant to paragraph (d)(2)(iii) of this section may elect to follow the same accounting treatment with respect to the computation and presentation of the account statement.

(b) The Account Statement must be distributed at least monthly in the case of pools with net assets of more than $500,000 at the beginning of the pool's fiscal year, and otherwise at least quarterly; *Provided, however,* That an Account Statement for the last reporting period of the pool's fiscal year need not be distributed if the Annual Report required by paragraph (c) of this section is sent to pool participants within 45 calendar days after the end of the fiscal year. The requirement to distribute an Account Statement shall commence as of the date the pool is formed as specified in paragraph (g)(1) of this section.

(c) Except as provided in paragraph (c)(7) or (c)(8) of this section, each commodity pool operator registered or required to be registered under the Act

must distribute an Annual Report to each participant in each pool that it operates, and must electronically submit a copy of the Report and key financial balances from the Report to the National Futures Association pursuant to the electronic filing procedures of the National Futures Association, within 90 calendar days after the end of the pool's fiscal year or the permanent cessation of trading, whichever is earlier; *Provided, however,* that if during any calendar year the commodity pool operator did not operate a commodity pool, the pool operator must so notify the National Futures Association within 30 calendar days after the end of such calendar year. The Annual Report must be affirmed pursuant to paragraph (h) of this section and must contain the following:

(1) The net asset value of the pool as of the end of each of the pool's two preceding fiscal years.

(2)(i) The net asset value per outstanding participation unit in the pool as of the end of each of the pool's two preceding fiscal years, or

(ii) The total value of the participant's interest or share in the pool as of the end of each of the pool's two preceding fiscal years.

(3) A Statement of Financial Condition as of the close of the pool's fiscal year and preceding fiscal year.

(4) Statements of Operations, and Changes in Net Assets, for the period between—

(i) The later of:

(A) The date of the most recent Statement of Financial Condition delivered to the National Futures Association pursuant to this paragraph (c); or

(B) The date of the formation of the pool; and

(ii) The close of the pool's fiscal year, together with Statements of Operations, and Changes in Net Assets for the corresponding period of the previous fiscal year.

(5) Appropriate footnote disclosure and such further material information as may be necessary to make the required statements not misleading. For a pool that invests in other funds, this information must include, but is not limited to, separately disclosing the amounts of income, management and incentive fees associated with each investment in an investee fund that exceeds five percent of the pool's net assets. The management and incentive fees associated with an investment in an investee fund that is less than five percent of the pool's net assets may be combined and reported in the aggregate with the income, management and incentive fees of other investee funds that, individually, represent an investment of less than five percent of the pool's net assets. If the commodity pool operator is not able to obtain the specific amounts of management and incentive fees charged by an investee fund, the commodity pool operator must disclose the percentage amounts and computational basis for each such fee and include a statement that the CPO is not able to obtain the specific fee amounts for this fund;

(6) Where the pool is comprised of more than one ownership class or series, information for the series or class on which the financial statements are reporting should be presented in addition to the information presented for the pool as a whole; except that, for a pool that is a series fund structured with a limitation on liability among the different series, the financial statements are not required to include consolidated information for all series.

(7) For a pool that has ceased operation prior to, or as of, the end of the fiscal year, the commodity pool operator may provide the following, within 90 days of the permanent cessation of trading, in lieu of the annual report that would otherwise be required by § 4.22(c) or § 4.7(b)(3):

(i) Statements of Operations and Changes in Net Assets for the period between—

(A) The later of:

(*1*) The date of the most recent Statement of Financial Condition filed with the National Futures Association pursuant to this paragraph (c); or

(*2*) The date of the formation of the pool; and

(B) The close of the pool's fiscal year or the date of the cessation of trading, whichever is earlier; and

(ii)(A) An explanation of the winding down of the pool's operations and written disclosure that all interests in, and assets of, the pool have been redeemed,

distributed or transferred on behalf of the participants;

(B) If all funds have not been distributed or transferred to participants by the time that the final report is issued, disclosure of the value of assets remaining to be distributed and an approximate timeframe of when the distribution will occur. If the commodity pool operator does not distribute the remaining pool assets within the timeframe specified, the commodity pool operator must provide written notice to each participant and to the National Futures Association that the distribution of the remaining assets of the pool has not been completed, the value of assets remaining to be distributed, and a time frame of when the final distribution will occur.

(C) If the commodity pool operator will not be able to liquidate the pool's assets in sufficient time to prepare, file and distribute the final annual report for the pool within 90 days of the permanent cessation of trading, the commodity pool operator must provide written notice to each participant and to National Futures Association disclosing:

(*1*) The value of investments remaining to be liquidated, the timeframe within which liquidation is expected to occur, any impediments to liquidation, and the nature and amount of any fees and expenses that will be charged to the pool prior to the final distribution of the pool's funds;

(*2*) Which financial reports the commodity pool operator will continue to provide to pool participants from the time that trading ceased until the final annual report is distributed, and the frequency with which such reports will be provided, pursuant to the pool's operative documents; and

(*3*) The timeframe within which the commodity pool operator will provide the final report.

(iii) A report filed pursuant to paragraph (c)(7) of this section that would otherwise be required by paragraph (c) of this section is not required to be audited in accordance with paragraph (d) of this section if the commodity pool operator:

(A) Obtains a written waiver of their right to receive an audited Annual Report from each participant other than the pool operator, the pool's commodity trading advisor, any person controlling, controlled by, or under common control with the pool operator or trading advisor, and any principal of the foregoing; and

(B) At the time of filing the Annual Report with the National Futures Association, certifies that it has received a written waiver from each participant from whom it is required to obtain a waiver to qualify for the relief available under this paragraph (c)(7). The commodity pool operator must maintain the waivers in accordance with §4.23 and must make the waivers available to the Commission or National Futures Association upon request. Notwithstanding the provisions of paragraph (g)(2)(ii) of this section, the relief made available by this paragraph (c)(7)(iii) will not be available where the commodity pool operator has not previously distributed an audited Annual Report to pool participants and submitted an audited Annual Report to the National Futures Association.

(8) For the purpose of the Annual Report distribution requirement, including any annual report distributed pursuant to §4.7(b)(3) or 4.12(b)(2)(iii), the term ''participant'' does not include a commodity pool operated by a pool operator that is the same as, or that controls, is controlled by, or is under common control with, the pool operator of a pool in which the commodity pool has invested; *Provided*, That the Annual Report of such investing pool contain financial statements that include such information as the Commission may specify concerning the operations of the pool in which the commodity pool has invested.

(d)(1) Subject to the provisions of paragraphs (d)(2) and (g)(2) of this section, the financial statements in the Annual Report required by this section or by §4.7(b)(3) must be presented and computed in accordance with United States generally accepted accounting principles consistently applied and must be audited by an independent public accountant; *Provided, however*, and subject to the exception in paragraph (c)(7)(iii)(B) of this section, that the requirement that the Annual Report be audited by an independent public accountant does not apply for any

fiscal year during which the only participants in the pool are one or more of the pool operator, the pool's commodity trading advisor, any person controlling, controlled by, or under common control with the pool operator or trading advisor, and any principal of the foregoing; and *Provided further*, that the CPO obtains a written waiver from each such pool participant of their right to receive an audited Annual Report for such fiscal year, maintains such waivers in accordance with § 4.23, and makes such waivers available to the Commission or National Futures Association upon request. The requirements of § 1.16(g) of this chapter shall apply with respect to the engagement of such independent public accountants, except that any related notifications to be made may be made solely to the National Futures Association, and the certification must be in accordance with § 1.16 of this chapter, except that the following requirements of that section shall not apply:

(i) The audit objectives of § 1.16(d)(1) concerning the periodic computation of minimum capital and property in segregation;

(ii) All other references in § 1.16 to the segregation requirements; and

(iii) Section 1.16(c)(5), (d)(2), (e)(2), and (f).

(2)(i) Where a commodity pool is organized in a jurisdiction other than the United States, the financial statements in the Annual Report required by this section or by § 4.7(b)(3) may be presented and computed in accordance with the generally accepted accounting principles, standards or practices followed in such other jurisdiction; *Provided*, That:

(A) The other jurisdiction follows accounting principles, standards or practices set forth in paragraph (d)(2)(ii) of this section and the Annual Report presents and computes the financial statements of the pool in accordance with the applicable accounting principles, standards or practices followed by such other jurisdiction;

(B) The Annual Report includes a condensed schedule of investments, or, if required by the applicable accounting principles, standards or practices followed by such other jurisdiction, a full schedule of investments;

(C) The Annual Report reports special allocations of ownership equity in accordance with paragraph (e)(2) of this section;

(D) The Disclosure Document or offering memorandum for the pool identifies the accounting principles, standards or practices of the other jurisdiction pursuant to which the Annual Report presents and computes the financial statements of the pool; and

(E) Where the accounting principles, standards or practices of the other jurisdiction require consolidated financial statements for the pool, such as a feeder fund consolidating with its master fund, all applicable disclosures required by United States generally accepted accounting principles for the feeder fund must be presented with the reporting pool's consolidated financial statements.

(ii) For purposes of paragraph (d)(2)(i) of this section, the following alternative accounting principles, standards or practices may be employed in the preparation and computation of the financial statements in the Annual Report of the commodity pool; *Provided*, That any such alternative accounting principles, standards or practices so employed are those followed by the jurisdiction other than the United States in which the commodity pool is organized:

(A) International Financial Reporting Standards;

(B) Generally Accepted Accounting Practice in the United Kingdom;

(C) New Irish Generally Accepted Accounting Practice;

(D) Luxembourg Generally Accepted Accounting Principles; or

(E) Canadian Generally Accepted Accounting Principles.

(iii) To claim the relief available under this paragraph (d)(2), a commodity pool operator must file a notice with the National Futures Association within 90 calendar days after the end of the pool's first fiscal year.

(A) The notice must contain: The name, main business address, main telephone number and National Futures Association registration identification number of the commodity pool operator; the name and identification number of the commodity pool for

which the pool operator is claiming relief; and the alternative accounting principles, standards or practices pursuant to which the financial statements in the Annual Report will be presented and computed;

(B) The notice must include a representation that the commodity pool operator complies with each of the conditions specified in paragraphs (d)(2)(i)(A) through (D) of this section and, if applicable, paragraph (d)(2)(i)(E) of this section; and

(C) The notice must be signed by the commodity pool operator in accordance with paragraph (h) of this section.

(e)(1) The Statement of Operations required by this section must itemize brokerage commissions, management fees, advisory fees, incentive fees, interest income and expense, total realized net gain or loss from commodity interest trading, and change in unrealized net gain or loss on commodity interest positions during the pool's fiscal year. Gains and losses on commodity interests need not be itemized by commodity or by specific delivery or expiration date.

(2)(i) Any share of a pool's profits or transfer of a pool's equity which exceeds the general partner's or any other class's share of profits computed on the general partner's or other class's pro rata capital contribution are ''special allocations.'' Special allocations of partnership equity or other interests must be recognized in the pool's Statement of Operations in the same period as the net income, interest income, or other basis of computation of the special allocation is recognized. Special allocations must be recognized and classified either as an expense of the pool or, if not recognized as an expense of the pool, presented in the Statement of Operations as a separate, itemized allocation of the pool's net income to arrive at net income available for pro rata distribution to all partners.

(ii) Special allocations of ownership interest also must be reported separately in the Statement of Partners' Equity, in addition to the pro-rata allocations of net income, as to each class of ownership interest.

(3) Realized gains or losses on regulated commodities transactions presented in the Statement of Operations of a commodity pool may be combined with realized gains or losses from trading in non-commodity interest transactions, provided that the gains or losses to be combined are part of a related trading strategy. Unrealized gains or losses on open regulated commodity positions presented in the Statement of Operations of a commodity pool may be combined with unrealized gains or losses from open positions in non-commodity positions, provided that the gains or losses to be combined are part of a related trading strategy.

(f)(1)(i) In the event the commodity pool operator finds that it cannot distribute the Annual Report for a pool that it operates within the time specified in paragraph (c) of this section without substantial undue hardship, it may file with the National Futures Association an application for extension of time to a specified date not more than 90 calendar days after the date as of which the Annual Report was to have been distributed. The application must be made by the pool operator and must:

(A) State the name of the pool for which the application is being made;

(B) State the reasons for the requested extension;

(C) Indicate that the inability to make a timely filing is due to circumstances beyond the control of the pool operator, if such is the case, and describe briefly the nature of such circumstances;

(D) Contain an undertaking to file the Annual Report on or before the date specified in the application; and

(E) Be filed with the National Futures Association prior to the date on which the Annual Report is due.

(ii) The application must be accompanied by a letter from the independent public accountant answering the following questions:

(A) What specifically are the reasons for the extension request?

(B) Do you have any indication from the part of your audit completed to date that would lead you to believe that the commodity pool operator was or is not meeting the recordkeeping requirements of this part 4 or was or is

not complying with the § 4.20(c) prohibition on commingling of property of any pool with the property of any other person?

(iii) Within ten calendar days after receipt of an application for an extension of time, the National Futures Association shall:

(A) Notify the commodity pool operator of the grant or denial of the requested extension, or

(B) Indicate to the pool operator that additional time is required to analyze the request, in which case the amount of time needed will be specified.

(2) In the event a commodity pool operator finds that it cannot obtain information necessary to prepare annual financial statements for a pool that it operates within the time specified in either paragraph (c) of this section or § 4.7(b)(3)(i), as a result of the pool investing in another collective investment vehicle, it may claim an extension of time under the following conditions:

(i) The commodity pool operator must, within 90 calendar days of the end of the pool's fiscal year, file a notice with the National Futures Association, except as provided in paragraph (f)(2)(v) of this section.

(ii) The notice must contain the name, main business address, main telephone number and the National Futures Association registration identification number of the commodity pool operator, and name and the identification number of the commodity pool.

(iii) The notice must state the date by which the Annual Report will be distributed and filed (the ''Extended Date''), which must be no more than 180 calendar days after the end of the pool's fiscal year. The Annual Report must be distributed and filed by the Extended Date.

(iv) The notice must include representations by the commodity pool operator that:

(A) The pool for which the Annual Report is being prepared has investments in one or more collective investment vehicles (the ''Investments'');

(B) For all reports prepared under paragraph (c) of this section and for reports prepared under § 4.7(b)(3)(i) that are audited by an independent public accountant, the commodity pool operator has been informed by the independent public accountant engaged to audit the commodity pool's financial statements that specified information required to complete the pool's annual report is necessary in order for the accountant to render an opinion on the commodity pool's financial statements. The notice must include the name, main business address, main telephone number, and contact person of the accountant; and

(C) The information specified by the accountant cannot be obtained in sufficient time for the Annual Report to be prepared, audited, and distributed before the Extended Date.

(D) For unaudited reports prepared under § 4.7(b)(3)(i), the commodity pool operator has been informed by the operators of the Investments that specified information required to complete the pool's annual report cannot be obtained in sufficient time for the Annual Report to be prepared and distributed before the Extended Date.

(v) For each fiscal year following the filing of the notice described in paragraph (f)(2)(i) of this section, for a particular pool, it shall be presumed that the particular pool continues to invest in another collective investment vehicle and the commodity pool operator may claim the extension of time; *Provided, however,* that if the particular pool is no longer investing in another collective investment vehicle, then the commodity pool operator must file electronically with the National Futures Association an Annual Report within 90 days after the pool's fiscal year-end accompanied by a notice indicating the change in the pool's status.

(vi) Any notice or statement filed pursuant to this paragraph (f)(2) must be signed by the commodity pool operator in accordance with paragraph (h) of this section.

(g)(1) A commodity pool operator may initially elect any fiscal year for a pool, but the first fiscal year may not end more than one year after the pool's formation. For purposes of this section, a pool shall be deemed to be formed as of the date the pool operator first receives funds, securities or other property for the purchase of an interest in the pool.

(2)(i) If a commodity pool operator elects a fiscal year other than the calendar year, it must give written notice of the election to all participants and must file the notice with the National Futures Association within 90 calendar days after the date of the pool's formation. If this notice is not given, the pool operator will be deemed to have elected the calendar year as the pool's fiscal year.

(ii) For purposes of this paragraph (g)(2), the time period from the date on which the commodity pool operator first receives funds, securities or other property from a participant in the pool that is not a person listed in paragraphs (g)(2)(ii)(A)(*1*) through (g)(2)(ii)(A)(*5*) of this section to the end of the pool's first fiscal year is the stub period of the pool. Where the stub period is four months or less, the first Annual Report for the pool may be unaudited; *Provided, however,* That:

(A) Throughout the stub period, the pool had no more than fifteen participants and no more than $3,000,000 in aggregate gross capital contributions. For the purpose of satisfying these criteria, the commodity pool operator may exclude the following persons and their contributions:

(*1*) The pool operator, the pool's commodity trading advisor, any person controlling, controlled by, or under common control with the pool operator or trading advisor, and any principal of the foregoing;

(*2*) A child, sibling, or parent of any of these participants;

(*3*) The spouse of any participant specified in paragraph (g)(2)(ii)(A)(*1*) or (*2*) of this section;

(*4*) Any relative of a participant specified in paragraph (g)(2)(ii)(A)(*1*), (*2*) or (*3*) of this section, their spouse or a relative of their spouse, who has the same principal residence as such participant; and

(*5*) An entity that is wholly-owned by one or more participants specified in paragraph (g)(2)(ii)(A)(*1*), (*2*), (*3*) or (*4*) of this section; and

(B) The next Annual Report for the pool is audited and covers the stub period plus the pool's first 12-month fiscal year.

(C) To claim the relief available under paragraph (g)(2)(ii) of this section, a commodity pool operator must:

(*1*) Prior to the date upon which it is required to distribute and submit an audited Annual Report for the pool's first fiscal year, obtain a written waiver of the pool participant's right to receive an audited Annual Report for the pool's first fiscal year from each participant other than a participant who is the pool operator, the pool's commodity trading advisor, any person controlling, controlled by, or under common control with the pool operator or trading advisor, or any principal of the foregoing. The waiver may be included in the subscription agreement for the pool or other agreement with the participant; *Provided, however,* That the waiver is a separate page in the agreement and the pool operator requires the participant to separately sign and date it. The waiver must be in a form substantially as follows: ''[Name of participant], a participant in [Name of pool], voluntarily waives the right under CFTC Regulation 4.22(d) to receive an audited Annual Report for the fiscal year ended [end date of the pool's first fiscal year] and will accept in lieu thereof an unaudited Annual Report covering [the stub period] and an audited Annual Report covering [the start date of the stub period] through [the end date of the pool's first twelve-month fiscal year].''; and

(*2*) On or before the date upon which it is required to distribute and submit the Annual Report for the pool's first fiscal year, file a notice with the National Futures Association, along with a certification that it has received the required written waiver from each participant who is not the pool operator, the pool's commodity trading advisor, any person controlling, controlled by, or under common control with the pool operator or trading advisor, or any principal of the foregoing, and who has been a participant in the pool for its first fiscal year.

(*i*) The notice must contain: The name, main business address, main telephone number and National Futures Association registration identification number of the commodity pool operator; the name and identification number of the commodity pool for

which the pool operator is claiming relief; and the beginning and end dates of the stub period of the pool;

(*ii*) The notice must include a representation that the commodity pool operator meets the criteria of paragraph (g)(2)(ii)(A) of this section and that it will comply with the condition of paragraph (g)(2)(ii)(B) of this section; and

(*iii*) The notice must be signed by the commodity pool operator in accordance with paragraph (h) of this section.

(D)(*1*) Each unaudited Annual Report for which the relief available under paragraph (g)(2)(ii) of this section has been claimed must prominently disclose on the cover page thereof: ''Pursuant to an exemption from the Commodity Futures Trading Commission, this unaudited Annual Report covers the period from [beginning date of the stub period of the pool] to the end of the pool's first fiscal year, a period of [number] months.''

(*2*) The next Annual Report for the pool must prominently disclose on the cover page thereof: ''Pursuant to an exemption from the Commodity Futures Trading Commission, this audited Annual Report covers the period from [beginning date of the stub period of the pool] to the end of the pool's first 12-month fiscal year, a period of [number] months.''

(E) The commodity pool operator must maintain in accordance with § 4.23 of this chapter each waiver it has obtained to claim the relief available under paragraph (g)(2)(ii) of this section.

(3) The commodity pool operator must continue to use the elected fiscal year for the pool unless it provides written notice of any proposed change to all participants and files such notice with the National Futures Association at least 90 days before the change and the National Futures Association does not disapprove the change within 30 days after the filing of the notice.

(h)(1) Each Account Statement and Annual Report, including an Account Statement or Annual Report provided pursuant to § 4.7(b) or 4.12(b), must contain an oath or affirmation that, to the best of the knowledge and belief of the individual making the oath or affirmation, the information contained in the document is accurate and complete; *Provided, however*, That it shall be unlawful for the individual to make such oath or affirmation if the individual knows or should know that any of the information in the document is not accurate and complete.

(2) Each oath or affirmation must be made by a representative duly authorized to bind the pool operator, and

(i) for the copy of a commodity pool's Annual Report submitted to the National Futures Association, such representative shall satisfy the required oath or affirmation through compliance with the National Futures Association's electronic filing procedures, and

(ii) for a commodity pool Account Statement or Annual Report distributed to participants, a facsimile of the manually signed oath or affirmation of such representative may be used so long as the manually signed original is retained in accordance with § 4.23.

(3) For each manually signed oath or affirmation, there must be typed beneath the signed oath or affirmation:

(i) The name of the individual signing the document;

(ii) The capacity in which he is signing;

(iii) The name of the commodity pool operator for whom he is signing; and

(iv) The name of the commodity pool for which the document is being distributed.

(i) The Account Statement or Annual Report may be distributed to a pool participant by means of electronic media if the participant so consents; *Provided*, That prior to the transmission of any Account Statement or Annual Report by means of electronic media, a commodity pool operator must disclose to the participant that it intends to distribute electronically the Account Statement or Annual Report or both documents, as the case may be, absent objection from the participant, which objection, if any, the participant must make no later than 10 business

days following its receipt of the disclosure.

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

(Secs. 2(a)(1), 4c(a)–(d), 4d, 4f, 4g, 4k, 4m, 4n, 8a, 15 and 17, Commodity Exchange Act (7 U.S.C. 2, 4, 6c(a)–(d), 6f, 6g, 6k, 6m, 6n, 12a, 19 and 21; 5 U.S.C. 552 and 552b))

[46 FR 26013, May 8, 1981, as amended at 46 FR 63035, Dec. 30, 1981; 47 FR 57011, Dec. 22, 1982; 52 FR 41986, Nov. 2, 1987; 65 FR 81334, Dec. 26, 2000; 67 FR 77411, Dec. 18, 2002; 68 FR 47234, Aug. 8, 2003; 68 FR 52837, Sept. 8, 2003; 71 FR 8942, Feb. 22, 2006; 74 FR 57590, Nov. 9, 2009; 77 FR 54358, Sept. 5, 2012; 81 FR 85154, Nov. 25, 2016]

§4.23 Recordkeeping.

Each commodity pool operator registered or required to be registered under the Act must make and keep the following books and records in an accurate, current and orderly manner. Books and records that are not maintained at the pool operator's main business office shall be maintained by one or more of the following: the pool's administrator, distributor or custodian, or a bank or registered broker or dealer acting in a similar capacity with respect to the pool. All books and records shall be maintained in accordance with §1.31. All books and records required by this section except those required by paragraphs (a)(3), (a)(4), (b)(1), (b)(2) and (b)(3) must be made available to participants for inspection and copying during normal business hours. Upon request, copies must be sent by mail to any participant within five business days if reasonable reproduction and distribution costs are paid by the pool participant. If the books and records are maintained at the commodity pool operator's main business office that is outside the United States, its territories or possessions, then upon the request of a Commission representative, the pool operator must provide such books and records as requested at the place in the United States, its territories or possessions designated by the representative within 72 hours after the pool operator receives the request.

(a) *Concerning the commodity pool:* (1) An itemized daily record of each commodity interest transaction of the pool, showing the transaction date, quantity, commodity interest, and, as applicable, price or premium, delivery month or expiration date, whether a put or a call, strike price, underlying contract for future delivery or underlying commodity, swap type and counterparty, the futures commission merchant and/or retail foreign exchange dealer carrying the account and the introducing broker, if any, whether the commodity interest was purchased, sold (including, in the case of a retail forex transaction, offset), exercised, expired (including, in the case of a retail forex transaction, whether it was rolled forward), and the gain or loss realized.

(2) A journal of original entry or other equivalent record showing all receipts and disbursements of money, securities and other property.

(3) The acknowledgement specified by §4.21(b) for each participant in the pool.

(4) A subsidiary ledger or other equivalent record for each participant in the pool showing the participant's name and address and all funds, securities and other property that the pool received from or distributed to the participant. This requirement may be satisfied through a transfer agent's maintenance of records or through a list of relevant intermediaries where shares are held in an omnibus account or through intermediaries.

(5) Adjusting entries and any other records of original entry or their equivalent forming the basis of entries in any ledger.

(6) A general ledger or other equivalent record containing details of all asset, liability, capital, income and expense accounts.

(7) Copies of each confirmation or acknowledgment of a commodity interest transaction of the pool, and each purchase and sale statement and each monthly statement for the pool received from a futures commission merchant, retail foreign exchange dealer or swap dealer.

(8) Cancelled checks, bank statements, journals, ledgers, invoices, computer generated records, and all other records, data and memoranda prepared or received in connection with the operation of the pool.

(9) The original or a copy of each report, letter, circular, memorandum, publication, writing, advertisement or other literature or advice (including the texts of standardized oral presentations and of radio, television, seminar or similar mass media presentations) distributed or caused to be distributed by the commodity pool operator to any existing or prospective pool participant or received by the pool operator from any commodity trading advisor of the pool, showing the first date of distribution or receipt if not otherwise shown on the document.

(10) A Statement of Financial Condition as of the close of (i) each regular monthly period if the pool had net assets of $500,000 or more at the beginning of the pool's fiscal year, or (ii) each regular quarterly period for all other pools. The Statement must be completed within 30 days after the end of that period.

(11) A Statement of Income (Loss) for the period between (i) the later of: (A) the date of the most recent Statement of Financial Condition furnished to the Commission pursuant to § 4.22(c), (B) April 1, 1979 or (C) the formation of the pool, and (ii) the date of the Statement of Financial Condition required by paragraph (a)(10) of this section. The Statement must be completed within 30 days after the end of that period.

(12) A manually signed copy of each Account Statement and Annual Report provided pursuant to § 4.22, 4.7(b) or 4.12(b), and records of the key financial balances submitted to the National Futures Association for each commodity pool Annual Report, which records must clearly demonstrate how the key financial balances were compiled from the Annual Report.

(b) *Concerning the commodity pool operator:* (1) An itemized daily record of each commodity interest transaction of the commodity pool operator and each principal thereof, showing the transaction date, quantity, commodity interest, and, as applicable, price or premium, delivery month or expiration date, whether a put or a call, strike price, underlying contract for future delivery or underlying commodity, swap type and counterparty, the futures commission merchant or retail foreign exchange dealer carrying the account and the introducing broker, if any, whether the commodity interest was purchased, sold, exercised, or expired, and the gain or loss realized; *Provided, however,* that if the pool operator is a counterparty to a swap, it must comply with the swap data recordkeeping and reporting requirements of part 45 of this chapter, as applicable.

(2) Each confirmation of a commodity interest transaction, each purchase and sale statement and each monthly statement furnished by a futures commission merchant or retail foreign exchange dealer to:

(i) The commodity pool operator relating to a personal account of the pool operator; and

(ii) Each principal of the pool operator relating to a personal account of such principal.

(3) Books and records of all other transactions in all other activities in which the pool operator engages. Those books and records must include cancelled checks, bank statements, journals, ledgers, invoices, computer generated records and all other records, data and memoranda which have been prepared in the course of engaging in those activities.

(c) If the pool operator does not maintain its books and records at its main business office, the pool operator shall:

(1) At the time it registers with the Commission or delegates its recordkeeping obligations, whichever is later, file a statement that:

(i) Identifies the name, main business address, and main business telephone number of the person(s) who will be keeping required books and records in lieu of the pool operator;

(ii) Sets forth the name and telephone number of a contact for each person who will be keeping required books and records in lieu of the pool operator;

(iii) Specifies, by reference to the respective paragraph of this section, the books and records that such person will be keeping; and

(iv) Contains representations from the pool operator that:

(A) It will promptly amend the statement if the contact information or location of any of the books and records required to be kept by this section

changes, by identifying in such amendment the new location and any other information that has changed;

(B) It remains responsible for ensuring that all books and records required by this section are kept in accordance with §1.31;

(C) Within 48 hours after a request by a representative of the Commission, it will obtain the original books and records from the location at which they are maintained, and provide them for inspection at the pool operator's main business office; *Provided, however,* that if the original books and records are permitted to be, and are maintained, at a location outside the United States, its territories or possessions, the pool operator will obtain and provide such original books and records for inspection at the pool operator's main business office within 72 hours of such a request; and

(D) It will disclose in the pool's Disclosure Document the location of its books and records that are required under this section.

(2) The pool operator shall also file electronically with the National Futures Association a statement from each person who will be keeping required books and records in lieu of the pool operator wherein such person:

(i) Acknowledges that the pool operator intends that the person keep and maintain required pool books and records;

(ii) Agrees to keep and maintain such records required in accordance with §1.31 of this chapter; and

(iii) Agrees to keep such required books and records open to inspection by any representative of the Commission or the United States Department of Justice in accordance with §1.31 of this chapter and to make such required books and records available to pool participants in accordance with this section.

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

(Secs. 2(a)(1), 4c(a)–(d), 4d, 4f, 4g, 4k, 4m, 4n, 8a, 15 and 17, Commodity Exchange Act (7 U.S.C. 2, 4, 6c(a)–(d), 6f, 6g, 6k, 6m, 6n, 12a, 19 and 21; 5 U.S.C. 552 and 552b))

[46 FR 26013, May 8, 1981, as amended at 46 FR 63035, Dec. 30, 1981; 47 FR 57011, Dec. 22, 1982; 48 FR 35299, Aug. 3, 1983; 60 FR 38183, July 25, 1995; 71 FR 8943, Feb. 22, 2006; 75 FR 55428, Sept. 10, 2010; 77 FR 54358, Sept. 5, 2012; 77 FR 66332, Nov. 2, 2012; 78 FR 52334, Aug. 22, 2013]

§4.24 General disclosures required.

Except as otherwise provided herein, a Disclosure Document must include the following information.

(a) *Cautionary Statement.* The following Cautionary Statement must be prominently displayed on the cover page of the Disclosure Document.

THE COMMODITY FUTURES TRADING COMMISSION HAS NOT PASSED UPON THE MERITS OF PARTICIPATING IN THIS POOL NOR HAS THE COMMISSION PASSED ON THE ADEQUACY OR ACCURACY OF THIS DISCLOSURE DOCUMENT.

(b) *Risk Disclosure Statement.* (1) The following Risk Disclosure Statement must be prominently displayed immediately following any disclosures required to appear on the cover page of the Disclosure Document as provided by the Commission, by any applicable federal or state securities laws and regulations or by any applicable laws of non-United States jurisdictions.

RISK DISCLOSURE STATEMENT

YOU SHOULD CAREFULLY CONSIDER WHETHER YOUR FINANCIAL CONDITION PERMITS YOU TO PARTICIPATE IN A COMMODITY POOL. IN SO DOING, YOU SHOULD BE AWARE THAT COMMODITY INTEREST TRADING CAN QUICKLY LEAD TO LARGE LOSSES AS WELL AS GAINS. SUCH TRADING LOSSES CAN SHARPLY REDUCE THE NET ASSET VALUE OF THE POOL AND CONSEQUENTLY THE VALUE OF YOUR INTEREST IN THE POOL. IN ADDITION, RESTRICTIONS ON REDEMPTIONS MAY AFFECT YOUR ABILITY TO WITHDRAW YOUR PARTICIPATION IN THE POOL. IN ADDITION, RESTRICTIONS ON REDEMPTIONS MAY AFFECT YOUR ABILITY TO WITHDRAW YOUR PARTICIPATION IN THE POOL.

FURTHER, COMMODITY POOLS MAY BE SUBJECT TO SUBSTANTIAL CHARGES FOR MANAGEMENT, AND ADVISORY AND BROKERAGE FEES. IT MAY BE NECESSARY FOR THOSE POOLS THAT ARE SUBJECT TO THESE CHARGES TO MAKE SUBSTANTIAL TRADING PROFITS TO AVOID DEPLETION OR EXHAUSTION OF THEIR ASSETS. THIS DISCLOSURE DOCUMENT CONTAINS A COMPLETE DESCRIPTION OF EACH EXPENSE TO BE CHARGED THIS POOL AT PAGE (insert page number) AND A STATEMENT OF THE PERCENTAGE RETURN NECESSARY TO BREAK EVEN, THAT IS, TO RECOVER THE AMOUNT OF YOUR INITIAL INVESTMENT, AT PAGE (insert page number).

THIS BRIEF STATEMENT CANNOT DISCLOSE ALL THE RISKS AND OTHER FACTORS NECESSARY TO EVALUATE YOUR PARTICIPATION IN THIS COMMODITY POOL. THEREFORE, BEFORE YOU DECIDE TO PARTICIPATE IN THIS COMMODITY POOL, YOU SHOULD CAREFULLY STUDY THIS DISCLOSURE DOCUMENT, INCLUDING A DESCRIPTION OF THE PRINCIPAL RISK FACTORS OF THIS INVESTMENT, AT PAGE (insert page number).

(2) If the pool may trade foreign futures or options contracts, the Risk Disclosure Statement must further state:

YOU SHOULD ALSO BE AWARE THAT THIS COMMODITY POOL MAY TRADE FOREIGN FUTURES OR OPTIONS CONTRACTS. TRANSACTIONS ON MARKETS LOCATED OUTSIDE THE UNITED STATES, INCLUDING MARKETS FORMALLY LINKED TO A UNITED STATES MARKET, MAY BE SUBJECT TO REGULATIONS WHICH OFFER DIFFERENT OR DIMINISHED PROTECTION TO THE POOL AND ITS PARTICIPANTS. FURTHER, UNITED STATES REGULATORY AUTHORITIES MAY BE UNABLE TO COMPEL THE ENFORCEMENT OF THE RULES OF REGULATORY AUTHORITIES OR MARKETS IN NON-UNITED STATES JURISDICTIONS WHERE TRANSACTIONS FOR THE POOL MAY BE EFFECTED.

(3) If the potential liability of a participant in the pool is greater than the amount of the participant's contribution for the purchase of an interest in the pool and the profits earned thereon, whether distributed or not, the commodity pool operator must make the following additional statement in the Risk Disclosure Statement, to be prominently disclosed as the last paragraph thereof:

ALSO, BEFORE YOU DECIDE TO PARTICIPATE IN THIS POOL, YOU SHOULD NOTE THAT YOUR POTENTIAL LIABILITY AS A PARTICIPANT IN THIS POOL FOR TRADING LOSSES AND OTHER EXPENSES OF THE POOL IS NOT LIMITED TO THE AMOUNT OF YOUR CONTRIBUTION FOR THE PURCHASE OF AN INTEREST IN THE POOL AND ANY PROFITS EARNED THEREON. A COMPLETE DESCRIPTION OF THE LIABILITY OF A PARTICIPANT IN THIS POOL IS EXPLAINED MORE FULLY IN THIS DISCLOSURE DOCUMENT.

(4) If the pool may engage in retail Forex transactions, the Risk Disclosure Statement must further state:

YOU SHOULD ALSO BE AWARE THAT THIS COMMODITY POOL MAY ENGAGE IN OFF-EXCHANGE FOREIGN CURRENCY TRADING. SUCH TRADING IS NOT CONDUCTED IN THE INTERBANK MARKET. THE FUNDS THAT THE POOL USES FOR OFF-EXCHANGE FOREIGN CURRENCY TRADING WILL NOT RECEIVE THE SAME PROTECTIONS AS FUNDS USED TO MARGIN OR GUARANTEE EXCHANGE-TRADED FUTURES AND OPTION CONTRACTS. IF THE POOL DEPOSITS SUCH FUNDS WITH A COUNTERPARTY AND THAT COUNTERPARTY BECOMES INSOLVENT, THE POOL'S CLAIM FOR AMOUNTS DEPOSITED OR PROFITS EARNED ON TRANSACTIONS WITH THE COUNTERPARTY MAY NOT BE TREATED AS A COMMODITY CUSTOMER CLAIM FOR PURPOSES OF SUBCHAPTER IV OF CHAPTER 7 OF THE BANKRUPTCY CODE AND THE REGULATIONS THEREUNDER. THE POOL MAY BE A GENERAL CREDITOR AND ITS CLAIM MAY BE PAID, ALONG WITH THE CLAIMS OF OTHER GENERAL CREDITORS, FROM ANY MONIES STILL AVAILABLE AFTER PRIORITY CLAIMS ARE PAID. EVEN POOL FUNDS THAT THE COUNTERPARTY KEEPS SEPARATE FROM ITS OWN FUNDS MAY NOT BE SAFE FROM THE CLAIMS OF PRIORITY AND OTHER GENERAL CREDITORS.

(5) If the pool may engage in swaps, the Risk Disclosure Statement must further state:

SWAPS TRANSACTIONS, LIKE OTHER FINANCIAL TRANSACTIONS, INVOLVE A VARIETY OF SIGNIFICANT RISKS. THE SPECIFIC RISKS PRESENTED BY A PARTICULAR SWAP TRANSACTION NECESSARILY DEPEND UPON THE TERMS OF THE TRANSACTION AND YOUR CIRCUMSTANCES. IN GENERAL, HOWEVER, ALL SWAPS TRANSACTIONS INVOLVE SOME COMBINATION OF MARKET RISK, CREDIT RISK, COUNTERPARTY CREDIT RISK, FUNDING RISK, LIQUIDITY RISK, AND OPERATIONAL RISK.

HIGHLY CUSTOMIZED SWAPS TRANSACTIONS IN PARTICULAR MAY INCREASE LIQUIDITY RISK, WHICH MAY RESULT IN A SUSPENSION OF REDEMPTIONS. HIGHLY LEVERAGED TRANSACTIONS MAY EXPERIENCE SUBSTANTIAL GAINS OR LOSSES IN VALUE AS A RESULT OF RELATIVELY SMALL CHANGES IN THE VALUE OR LEVEL OF AN UNDERLYING OR RELATED MARKET FACTOR.

IN EVALUATING THE RISKS AND CONTRACTUAL OBLIGATIONS ASSOCIATED WITH A PARTICULAR SWAP TRANSACTION, IT IS IMPORTANT TO CONSIDER THAT A SWAP TRANSACTION MAY BE MODIFIED OR TERMINATED ONLY BY MUTUAL CONSENT OF THE ORIGINAL PARTIES AND SUBJECT TO AGREEMENT ON INDIVIDUALLY NEGOTIATED TERMS. THEREFORE, IT MAY NOT BE POSSIBLE FOR THE COMMODITY POOL OPERATOR TO MODIFY, TERMINATE, OR OFFSET THE POOL'S OBLIGATIONS OR THE POOL'S EXPOSURE TO THE RISKS ASSOCIATED WITH A TRANSACTION PRIOR TO ITS SCHEDULED TERMINATION DATE.

(c) *Table of contents.* A table of contents showing, by subject matter, the location of the disclosures made in the Disclosure Document must appear immediately following the Risk Disclosure Statement.

(d) *Information required in the forepart of the Disclosure Document.* (1) The name, address of the main business office, main business telephone number and form of organization of the pool. If the mailing address of the main business office is a post office box number or is not within the United States, its territories or possessions, the pool operator must state where the pool's books and records will be kept and made available for inspection;

(2) The name, address of the main business office, main business telephone number and form of organization of the commodity pool operator. If the mailing address of the main business office is a post office box number or is not within the United States, its territories or possessions, the pool operator must state where its books and records will be kept and made available for inspection;

(3) As applicable, a statement that the pool is:

(i) Privately offered pursuant to section 4(2) of the Securities Act of 1933, as amended (15 U.S.C. 77d(2)), or pursuant to Regulation D thereunder (17 CFR 230.501 *et seq.*);

(ii) A multi-advisor pool as defined in §4.10(d)(2);

(iii) A principal-protected pool as defined in §4.10(d)(3); or

(iv) Continuously offered. If the pool is not continuously offered, the closing date of the offering must be disclosed.

(4) The date when the commodity pool operator first intends to use the Disclosure Document; and

(5) The break-even point per unit of initial investment, as specified in §4.10(j).

(e) *Persons to be identified.* The names of the following persons:

(1) Each principal of the pool operator;

(2) The pool's trading manager, if any, and each principal thereof;

(3) Each major investee pool, the operator of such investee pool, and each principal of the operator thereof;

(4) Each major commodity trading advisor and each principal thereof;

(5) Which of the foregoing persons will make trading decisions for the pool; and

(6) If known, the futures commission merchant and/or retail foreign exchange dealer through which the pool will execute its trades, and, if applicable, the introducing broker through which the pool will introduce its trades to the futures commission merchant and/or retail foreign exchange dealer.

(f) *Business background.* (1) The business background, for the five years preceding the date of the Disclosure Document, of:

(i) The commodity pool operator;

(ii) The pool's trading manager, if any;

(iii) Each major commodity trading advisor;

(iv) The operator of each major investee pool; and

(v) Each principal of the persons referred to in this paragraph (f)(1) who participates in making trading or operational decisions for the pool or who supervises persons so engaged.

(2) The pool operator must include in the description of the business background of each person identified in §4.24(f)(1) the name and main business of that person's employers, business associations or business ventures and the

nature of the duties performed by such person for such employers or in connection with such business associations or business ventures. The location in the Disclosure Document of any required past performance disclosure for such person must be indicated.

(g) *Principal risk factors.* A discussion of the principal risk factors of participation in the offered pool. This discussion must include, without limitation, risks relating to volatility, leverage, liquidity, counterparty creditworthiness, as applicable to the types of trading programs to be followed, trading structures to be employed and investment activity (including retail forex and swap transactions) expected to be engaged in by the offered pool.

(h) *Investment program and use of proceeds.* The pool operator must disclose the following:

(1) The types of commodity interests and other interests which the pool will trade, including:

(i) The approximate percentage of the pool's assets that will be used to trade commodity interests, securities and other types of interests, categorized by type of commodity or market sector, type of swap, type of security (debt, equity, preferred equity), whether traded or listed on a regulated exchange market, maturity ranges and investment rating, as applicable;

(ii) The extent to which such interests are subject to state or federal regulation, regulation by a non-United States jurisdiction or rules of a self-regulatory organization;

(iii)(A) The custodian or other entity (e.g., bank or broker-dealer) which will hold such interests; and

(B) If such interests will be held or if pool assets will be invested in a non-United States jurisdiction, the jurisdiction in which such interests or assets will be held or invested.

(2) A description of the trading and investment programs and policies that will be followed by the offered pool, including the method chosen by the pool operator concerning how futures commission merchants and/or retail foreign exchange dealers carrying the pool's accounts shall treat offsetting positions pursuant to §1.46 of this chapter, if the method is other than to close out all offsetting positions or to close out offsetting positions on other than a first-in, first-out basis, and any material restrictions or limitations on trading required by the pool's organizational documents or otherwise. This description must include, if applicable, an explanation of the systems used to select commodity trading advisors, investee pools and types of investment activity to which pool assets will be committed;

(3)(i) A summary description of the pool's major commodity trading advisors, including their respective percentage allocations of pool assets, a description of the nature and operation of the trading programs such advisors will follow, including the types of interests traded pursuant to such programs, and each advisor's historical experience trading such program including material information as to volatility, leverage and rates of return and the length of time during which the advisor has traded such program;

(ii) A summary description of the pool's major investee pools or funds, including their respective percentage allocations of pool assets and a description of the nature and operation of such investee pools and funds, including for each investee pool or fund the types of interests traded, material information as to volatility, leverage and rates of return for such investee pool or fund and the period of its operation; and

(4)(i) The manner in which the pool will fulfill its margin requirements and the approximate percentage of the pool's assets that will be held in segregation pursuant to the Act and the Commission's regulations thereunder;

(ii) If the pool will fulfill its margin requirements with other than cash deposits, the nature of such deposits; and

(iii) If assets deposited by the pool as margin or as security deposit generate income, to whom that income will be paid.

(i) *Fees and expenses.* (1) The Disclosure Document must include a complete description of each fee, commission and other expense which the commodity pool operator knows or should know has been incurred by the pool for its preceding fiscal year and is expected to be incurred by the pool in its current fiscal year, including fees or

other expenses incurred in connection with the pool's participation in investee pools and funds.

(2) This description must include, without limitation:

(i) Management fees;

(ii) Brokerage fees and commissions, including interest income paid to futures commission merchants, and any fees incurred to maintain an open position in retail forex transactions;

(iii) Fees and commissions paid in connection with trading advice provided to the pool;

(iv) Fees and expenses incurred within investments in investee pools, investee funds and other collective investment vehicles, which fees and expenses must be disclosed separately for each investment tier;

(v) Incentive fees;

(vi) Any allocation to the commodity pool operator, or any agreement or understanding which provides the commodity pool operator with the right to receive a distribution, where such allocation or distribution is greater than a pro rata share of the pool's profits based on the percentage of capital contributions made by the commodity pool operator;

(vii) Commissions or other benefits, including trailing commissions paid or that may be paid or accrue, directly or indirectly, to any person in connection with the solicitation of participations in the pool;

(viii) Professional and general administrative fees and expenses, including legal and accounting fees and office supplies expenses;

(ix) Organizational and offering expenses;

(x) Clearance fees and fees paid to national exchanges and self-regulatory organizations;

(xi) For principal-protected pools, any direct or indirect costs to the pool associated with providing the protection feature, as referred to in paragraph (o)(3) of this section; and

(xii) Any costs or fees included in the spread between bid and asked prices for retail forex or, if known, swap transactions; and

(xiii) Any other direct or indirect cost.

(3) Where any fee, commission or other expense is determined by reference to a base amount including, but not limited to, ''net assets,'' ''allocation of assets,'' ''gross profits,'' ''net profits,'' or ''net gains,'' the pool operator must explain how such base amount will be calculated, in a manner consistent with calculation of the break-even point.

(4) Where any fee, commission or other expense is based on an increase in the value of the pool, the pool operator must specify how the increase is calculated, the period of time during which the increase is calculated, the fee, commission or other expense to be charged at the end of that period and the value of the pool at which payment of the fee, commission or other expense commences.

(5) Where any fee, commission or other expense of the pool has been paid or is to be paid by a person other than the pool, the pool operator must disclose the nature and amount thereof and the person who paid or who is expected to pay it.

(6) The pool operator must provide, in a tabular format, an analysis setting forth how the break-even point for the pool was calculated. The analysis must include all fees, commissions and other expenses of the pool, as set forth in §4.24(i)(2).

(j) *Conflicts of interest.* (1) A full description of any actual or potential conflicts of interest regarding any aspect of the pool on the part of:

(i) The commodity pool operator;

(ii) The pool's trading manager, if any;

(iii) Any major commodity trading advisor;

(iv) The commodity pool operator of any major investee pool;

(v) Any principal of the persons described in paragraphs (j)(1) (i), (ii), (iii) and (iv) of this section; and

(vi) Any other person providing services to the pool, soliciting participants for the pool, acting as a counterparty to the pool's retail forex or swap transactions, or acting as a swap dealer with respect to the pool.

(2) Any other material conflict involving the pool.

(3) Included in the description of such conflicts must be any arrangement whereby a person may benefit, directly or indirectly, from the maintenance of

the pool's account with the futures commission merchant and/or retail foreign exchange dealer and/or from the maintenance of the pool's swap positions with a swap dealer, or from the introduction of the pool's account to a futures commission merchant and/or retail foreign exchange dealer and/or swap dealer by an introducing broker (such as payment for order flow or soft dollar arrangements) or from an investment of pool assets in investee pools or funds or other investments.

(k) *Related party transactions.* A full description, including a discussion of the costs thereof to the pool, of any material transactions or arrangements for which there is no publicly disseminated price between the pool and any person affiliated with a person providing services to the pool.

(l) *Litigation.* (1) Subject to the provisions of § 4.24(l)(2), any material administrative, civil or criminal action, whether pending or concluded, within five years preceding the date of the Document, against any of the following persons; *Provided, however,* that a concluded action that resulted in an adjudication on the merits in favor of such person need not be disclosed:

(i) The commodity pool operator, the pool's trading manager, if any, the pool's major commodity trading advisors, and the operators of the pool's major investee pools;

(ii) Any principal of the foregoing; and

(iii) The pool's futures commission merchants and/or retail foreign exchange dealers and/or swap dealers and its introducing brokers, if any.

(2) With respect to a futures commission merchant and/or retail foreign exchange dealer and/or swap dealer or an introducing broker, an action will be considered material if:

(i) The action would be required to be disclosed in the notes to the futures commission merchant's, retail foreign exchange dealer's, swap dealer's or introducing broker's financial statements prepared pursuant to generally accepted accounting principles;

(ii) The action was brought by the Commission; *Provided, however,* that a concluded action that did not result in civil monetary penalties exceeding $50,000 need not be disclosed unless it involved allegations of fraud or other willful misconduct; or

(iii) The action was brought by any other federal or state regulatory agency, a non-United States regulatory agency or a self-regulatory organization and involved allegations of fraud or other willful misconduct.

(m) *Trading for own account.* If the commodity pool operator, the pool's trading manager, any of the pool's commodity trading advisors or any principal thereof trades or intends to trade commodity interests for its own account, the pool operator must disclose whether participants will be permitted to inspect the records of such person's trades and any written policies related to such trading.

(n) *Performance disclosures.* Past performance must be disclosed as set forth in § 4.25.

(o) *Principal-protected pools.* If the pool is a principal-protected pool as defined in § 4.10(d)(3), the commodity pool operator must:

(1) Describe the nature of the principal protection feature intended to be provided, the manner by which such protection will be achieved, including sources of funding, and what conditions must be satisfied for participants to receive the benefits of such protection;

(2) Specify when the protection feature becomes operative; and

(3) Disclose, in the break-even analysis required by § 4.24(i)(6), the costs of purchasing and carrying the assets to fund the principal protection feature or other limitation on risk, expressed as a percentage of the price of a unit of participation.

(p) *Transferability and redemption.* (1) A complete description of any restrictions upon the transferability of a participant's interest in the pool; and

(2) A complete description of the frequency, timing and manner in which a participant may redeem interests in the pool. Such description must specify:

(i) How the redemption value of a participant's interest will be calculated;

(ii) The conditions under which a participant may redeem its interest, including the cost associated therewith, the terms of any notification required

and the time between the request for redemption and payment;

(iii) Any restrictions on the redemption of a participant's interest, including any restrictions associated with the pool's investments; and

(iv) Any liquidity risks relative to the pool's redemption capabilities.

(q) *Liability of pool participants.* The extent to which a participant may be held liable for obligations of the pool in excess of the funds contributed by the participant for the purchase of an interest in the pool.

(r) *Distribution of profits and taxation.* (1) The pool's policies with respect to the payment of distributions from profits or capital and the frequency of such payments;

(2) The federal income tax effects of such payments for a participant, including a discussion of the federal income tax laws applicable to the form of organization of the pool and to such payments therefrom; and

(3) If a pool is specifically structured to accomplish certain federal income tax objectives, the commodity pool operator must explain those objectives, the manner in which they will be achieved and any risks relative thereto.

(s) *Inception of trading and other information.* (1) The minimum aggregate subscriptions that will be necessary for the pool to commence trading commodity interests;

(2) The minimum and maximum aggregate subscriptions that may be contributed to the pool;

(3) The maximum period of time the pool will hold funds prior to the commencement of trading commodity interests;

(4) The disposition of funds received if the pool does not receive the necessary amount to commence trading, including the period of time within which the disposition will be made; and

(5) Where the pool operator will deposit funds received prior to the commencement of trading by the pool, and a statement specifying to whom any income from such deposits will be paid.

(t) *Ownership in pool.* The extent of any ownership or beneficial interest in the pool held by the following:

(1) The commodity pool operator;

(2) The pool's trading manager, if any;

(3) The pool's major commodity trading advisors;

(4) The operators of the pool's major investee pools; and

(5) Any principal of the foregoing.

(u) *Reporting to pool participants.* A statement that the commodity pool operator is required to provide all participants with monthly or quarterly (whichever applies) statements of account and with an annual report containing financial statements certified by an independent public accountant.

(v) *Supplemental information.* If any information, other than that required by Commission rules, the antifraud provisions of the Act, other federal or state laws or regulations, rules of a self-regulatory agency or laws of a non-United States jurisdiction, is provided, such information:

(1) May not be misleading in content or presentation or inconsistent with required disclosures;

(2) Is subject to the antifraud provisions of the Act and Commission rules and to rules regarding the use of promotional material promulgated by a registered futures association pursuant to section 17(j) of the Act; and

(3) Must be placed as follows, unless otherwise specified by Commission rules, provided that where a two-part document is used pursuant to rules promulgated by a registered futures association pursuant to Section 17(j) of the Act, all supplemental information must be provided in the second part of the two-part document:

(i) Supplemental performance information (not including proprietary trading results as defined in §4.25(a)(8), or hypothetical, extracted, pro forma or simulated trading results) must be placed after all specifically required performance information; *Provided, however,* that required volatility disclosure may be included with the related required performance disclosure;

(ii) Supplemental non-performance information relating to a required disclosure may be included with the related required disclosure; and

(iii) Other supplemental information may be included after all required disclosures; *Provided, however,* that any proprietary trading results as defined

in § 4.25(a)(8), and any hypothetical, extracted, pro forma or simulated trading results included in the Disclosure Document must appear as the last disclosure therein following all required and non-required disclosures.

(w) *Material information.* Nothing set forth in §§ 4.21, 4.24, 4.25 or § 4.26 shall relieve a commodity pool operator from any obligation under the Act or the regulations thereunder, including the obligation to disclose all material information to existing or prospective pool participants even if the information is not specifically required by such sections.

[60 FR 38183, July 25, 1995, as amended at 63 FR 58303, Oct. 30, 1998; 66 FR 53522, Oct. 23, 2001; 75 FR 55429, Sept. 10, 2010; 76 FR 44264, July 25, 2011; 77 FR 11285, Feb. 24, 2012; 77 FR 17330, Mar. 26, 2012; 77 FR 54358, Sept. 5, 2012]

§ 4.25 Performance disclosures.

(a) *General principles*—(1) *Capsule performance information*—(i) *For pools.* Unless otherwise specified, disclosure of the past performance of a pool must include the following information. Amounts shown must be net of any fees, expenses or allocations to the commodity pool operator.

(A) The name of the pool;

(B) A statement as to whether the pool is:

(*1*) Privately offered pursuant to section 4(2) of the Securities Act of 1933, as amended (15 U.S.C. 77d(2)), or pursuant to Regulation D thereunder (17 CFR 230.501 *et seq.*);

(*2*) A multi-advisor pool as defined in § 4.10(d)(2); and

(*3*) A principal-protected pool as defined in § 4.10(d)(3);

(C) The date of inception of trading;

(D) The aggregate gross capital subscriptions to the pool;

(E) The pool's current net asset value;

(F) The largest monthly draw-down during the most recent five calendar years and year-to-date, expressed as a percentage of the pool's net asset value and indicating the month and year of the draw-down (the capsule must include a definition of ''draw-down'' that is consistent with § 4.10(k));

(G) The worst peak-to-valley draw-down during the most recent five calendar years and year-to-date, expressed as a percentage of the pool's net asset value and indicating the months and year of the draw-down; and

(H) Subject to § 4.25(a)(2) for the offered pool, the annual and year-to-date rate of return for the pool for the most recent five calendar years and year-to-date, computed on a compounded monthly basis;

(ii) *For accounts.* Disclosure of the past performance of an account required under this § 4.25 must include the following capsule performance information:

(A) The name of the commodity trading advisor or other person trading the account and the name of the trading program;

(B) The date on which the commodity trading advisor or other person trading the account began trading client accounts and the date when client funds began being traded pursuant to the trading program;

(C) The number of accounts directed by the commodity trading advisor or other person trading the account pursuant to the trading program specified, as of the date of the Disclosure Document;

(D)(*1*) The total assets under the management of the commodity trading advisor or other person trading the account, as of the date of the Disclosure Document; and

(*2*) The total assets traded pursuant to the trading program specified, as of the date of the Disclosure Document;

(E) The largest monthly draw-down for the trading program specified during the most recent five calendar years and year-to-date expressed as a percentage of client funds, and indicating the month and year of the draw-down;

(F) The worst peak-to-valley draw-down for the trading program specified during the most recent five calendar years and year-to-date, expressed as a percentage of net asset value and indicating the months and year of the draw-down; and

(G) The annual and year-to-date rate-of-return for the program specified, computed on a compounded monthly basis.

(H) Partially-funded accounts directed by a commodity trading advisor may be presented in accordance with § 4.35(a)(7).

(2) *Additional requirements with respect to the offered pool.* (i) The performance of the offered pool must be identified as such and separately presented first;

(ii) The rate of return of the offered pool must be presented on a monthly basis for the period specified in §4.25(a)(5), either in a numerical table or in a bar graph;

(iii) A bar graph used to present monthly rates of return for the offered pool:

(A) Must show percentage rate of return on the vertical axis and one-month increments on the horizontal axis;

(B) Must be scaled in such a way as to clearly show month-to-month differences in rates of return; and

(C) Must separately display numerical percentage annual rates of return for the period covered by the bar graph; and

(iv) The pool operator must make available upon request to prospective and existing participants all supporting data necessary to calculate monthly rates of return for the offered pool as specified in §4.25(a)(7), for the period specified in §4.25(a)(5).

(3) *Additional requirements with respect to pools other than the offered pool.* With respect to pools other than the offered pool for which past performance is required to be presented under this section:

(i) Performance data for pools of the same class as the offered pool must be presented following the performance of the offered pool, on a pool-by-pool basis.

(ii) Pools of a different class than the offered pool must be presented less prominently and, unless such presentation would be misleading, may be presented in composite form; *Provided, however*, that:

(A) The Disclosure Document must disclose how the composite was developed;

(B) Pools of different classes or pools with materially different rates of return may not be presented in the same composite.

(iii) For the purpose of §4.25(a)(3)(ii), the following, without limitation, shall be considered pools of different classes: Pools privately offered pursuant to section 4(2) of the Securities Act of 1933, as amended (15 U.S.C. 77d(2)), or pursuant to Regulation D thereunder (17 CFR 230.501 *et seq.*), and public offerings; and principal-protected and non-principal-protected pools. Multi-advisor pools as defined in §4.10(d)(2) will be presumed to have materially different rates of return from those of non-multi-advisor pools absent evidence sufficient to demonstrate otherwise.

(iv) Material differences among the pools for which past performance is disclosed, including, without limitation, differences in leverage and use of different trading programs, must be described.

(4) *Additional requirements with respect to accounts.* (i) Unless such presentation would be misleading, past performance of accounts required to be presented under this section may be presented in composite form on a program-by-program basis using the format set forth in §4.25(a)(1)(ii).

(ii) Accounts that differ materially with respect to rates of return may not be presented in the same composite.

(iii) The commodity pool operator must disclose all material differences among accounts included in a composite.

(5) *Time period for required performance.* All required performance information must be presented for the most recent five calendar years and year-to-date or for the life of the pool, account or trading program, if less than five years.

(6) *Trading programs.* If the offered pool will use any of the trading programs for which past performance is required to be presented, the Disclosure Document must so indicate.

(7) *Calculation of, and recordkeeping concerning, performance information.* (i) All performance information presented in a Disclosure Document, including performance information contained in any capsule and performance information not specifically required by Commission rules, must be current as of a date not more than three months preceding the date of the Document, and must be supported by the following amounts, calculated on an accrual basis of accounting in accordance with

generally accepted accounting principles, as specified below or by a method otherwise approved by the Commission.

(A) The beginning net asset value for the period, which shall be the same as the previous period's ending net asset value;

(B) All additions, whether voluntary or involuntary, during the period;

(C) All withdrawals and redemptions, whether voluntary or involuntary, during the period;

(D) The net performance for the period, which shall represent the change in the net asset value net of additions, withdrawals, and redemptions;

(E) The ending net asset value for the period, which shall represent the beginning net asset value plus or minus additions, withdrawals, redemptions and net performance;

(F) The rate of return for the period, which shall be calculated by dividing the net performance by the beginning net asset value or by a method otherwise approved by the Commission; and

(G) The number of units outstanding at the end of the period, if applicable.

(ii) All supporting documents necessary to substantiate the computation of such amounts must be maintained in accordance with § 1.31.

(8) *Proprietary trading results.* (i) Proprietary trading results may not be included in a Disclosure Document unless such performance is prominently labeled as proprietary and is set forth separately after all disclosures in accordance with § 4.24(v), together with a discussion of any differences between such performance and the performance of the offered pool, including, but not limited to, differences in costs, leverage and trading methodology.

(ii) For the purposes of § 4.24(v) and this § 4.25(a), proprietary trading results means the performance of any pool or account in which fifty percent or more of the beneficial interest is owned or controlled by:

(A) The commodity pool operator, trading manager (if any), commodity trading advisor or any principal thereof

(B) An affiliate or family member of the commodity pool operator, trading manager (if any) or commodity trading advisor; or

(C) Any person providing services to the pool.

(9) *Required legend.* Any past performance presentation, whether or not required by Commission rules, must be preceded by the following statement, prominently displayed:

PAST PERFORMANCE IS NOT NECESSARILY INDICATIVE OF FUTURE RESULTS.

(b) *Performance disclosure when the offered pool has at least a three-year operating history.* The commodity pool operator must disclose the performance of the offered pool, in accordance with paragraphs (a)(1)(i) (A) through (H) and (a)(2) of this § 4.25, where:

(1) The offered pool has traded commodity interests for three years or more; and

(2) For at least such three-year period, seventy-five percent or more of the contributions to the pool were made by persons unaffiliated with the commodity pool operator, the trading manager (if any), the pool's commodity trading advisors, or the principals of any of the foregoing.

(c) *Performance disclosure when the offered pool has less than a three-year operating history*—(1) *Offered pool performance.* (i) The commodity pool operator must disclose the performance of the offered pool, in accordance with paragraphs (a)(1)(i)(A) through (H) and (a)(2) of this § 4.25; or

(ii) If the offered pool has no operating history, the pool operator must prominently display the following statement:

THIS POOL HAS NOT COMMENCED TRADING AND DOES NOT HAVE ANY PERFORMANCE HISTORY.

(2) *Other performance of commodity pool operator.* (i)(A) Except as provided in § 4.25(a)(8), the commodity pool operator must disclose, for the period specified by § 4.25(a)(5), the performance of each other pool operated by the pool operator (and by the trading manager if the offered pool has a trading manager) in accordance with paragraphs (a)(1)(i) (C) through (H) and (a)(3) of this § 4.25, and the performance of each other account traded by the pool operator (and by the trading manager if the offered pool has a trading manager) in accordance with paragraphs (a)(1)(ii)

(C) through (G) of this §4.25. If the trading manager has been delegated complete authority for the offered pool's trading, and the trading manager's performance is not materially different from that of the pool operator, the performance of the other pools operated by and accounts traded by the pool operator is not required to be disclosed.

(B) In addition, if the pool operator, or if applicable, the trading manager, has not operated for at least three years any commodity pool in which seventy-five percent or more of the contributions to the pool were made by persons unaffiliated with the commodity pool operator, the trading manager, the pool's commodity trading advisors or their respective principals, the pool operator must also disclose the performance of each other pool operated by and account traded by the trading principals of the pool operator (and of the trading manager, as applicable) unless such performance does not differ in any material respect from the performance of the offered pool and the pool operator (and trading manager, if any) disclosed in the Disclosure Document.

(ii) If neither the pool operator or trading manager (if any), nor any of its trading principals has operated any other pools or traded any other accounts, the pool operator must prominently display the following statement: NEITHER THIS POOL OPERATOR (TRADING MANAGER, IF APPLICABLE) NOR ANY OF ITS TRADING PRINCIPALS HAS PREVIOUSLY OPERATED ANY OTHER POOLS OR TRADED ANY OTHER ACCOUNTS. If the commodity pool operator or trading manager, if applicable, is a sole proprietorship, reference to its trading principals may be deleted from the prescribed statement.

(3) *Major commodity trading advisor performance.* (i) The commodity pool operator must disclose the performance of any accounts (including pools) directed by a major commodity trading advisor in accordance with paragraphs (a)(1)(ii) (C) through (G) of this §4.25.

(ii) If a major commodity trading advisor has not previously traded accounts, the pool operator must prominently display the following statement:

(name of the major commodity trading advisor), A COMMODITY TRADING ADVISOR THAT HAS DISCRETIONARY TRADING AUTHORITY OVER (percentage of the pool's funds available for commodity interest trading allocated to that trading advisor) PERCENT OF THE POOL'S COMMODITY INTEREST TRADING HAS NOT PREVIOUSLY DIRECTED ANY ACCOUNTS.

(4) *Major investee pool performance.* (i) The commodity pool operator must disclose the performance of any major investee pool.

(ii) If a major investee pool has not commenced trading, the pool operator must prominently display the following statement:

(name of the major investee pool), AN INVESTEE POOL THAT IS ALLOCATED (percentage of the pool assets allocated to that investee pool) PERCENT OF THE POOL'S ASSETS HAS NOT COMMENCED TRADING.

(5) With respect to commodity trading advisors and investee pools for which performance is not required to be disclosed pursuant to §4.25(c) (3) and (4), the pool operator must provide a summary description of the performance history of each of such advisors and pools including the following information, provided that where the pool operator uses a two-part document pursuant to the rules promulgated by a registered futures association pursuant to Section 17(j) of the Act, such summary description may be provided in the second part of the two-part document:

(i) Monthly return parameters (highs and lows);

(ii) Historical volatility and degree of leverage; and

(iii) Any material differences between the performance of such advisors and pools as compared to that of the offered pool's major trading advisors and major investee pools.

[60 FR 38186, July 25, 1995, as amended at 63 FR 58303, Oct. 30, 1998; 68 FR 42967, July 21, 2003; 75 FR 55429, Sept. 10, 2010]

§ 4.26 Use, amendment and filing of Disclosure Document.

(a)(1) Subject to paragraph (c) of this section, all information contained in the Disclosure Document and, where used, profile document, must be current as of the date of the Document; Provided, however, that performance information may be current as of a date not more than three months prior to the date of the Document.

(2) No commodity pool operator may use a Disclosure Document or profile document dated more than twelve months prior to the date of its use.

(b) The commodity pool operator must attach to the Disclosure Document the most current Account Statement and Annual Report for the pool required to be distributed in accordance with § 4.22; provided, however, that in lieu of the most current Account Statement the commodity pool operator may provide performance information for the pool current as of a date not more than sixty days prior to the date on which the Disclosure Document is distributed and covering the period since the most recent performance information contained in the Disclosure Document.

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

(i) All existing pool participants within 21 calendar days of the date upon which the pool operator first knows or has reason to know of the defect; and

(ii) Each previously solicited prospective pool participant prior to accepting or receiving funds, securities or other property from any such prospective participant.

(2) The pool operator may furnish the correction by any of the following means:

(i) An amended Disclosure Document or profile document;

(ii) With respect to a hard copy of the Disclosure Document, a sticker affixed to the Disclosure Document; or

(iii) Other similar means.

(3) The pool operator may not use the Disclosure Document or profile document until such correction has been made.

(d) Except as provided by § 4.8:

(1) The commodity pool operator must electronically file with the National Futures Association, pursuant to the electronic filing procedures of the National Futures Association, the Disclosure Document and, where used, profile document for each pool that it operates or that it intends to operate not less than 21 calendar days prior to the date the pool operator first intends to deliver such Document or documents to a prospective participant in the pool; and

(2) The commodity pool operator must electronically file with the National Futures Association, pursuant to the electronic filing procedures of the National Futures Association, the subsequent amendments to the Disclosure Document and, where used, profile document for each pool that it operates or that it intends to operate within 21 calendar days of the date upon which the pool operator first knows or has reason to know of the defect requiring the amendment.

[60 FR 38188, July 25, 1995, as amended at 62 FR 18268, Apr. 15, 1997; 65 FR 58649, Oct. 2, 2000; 67 FR 42710, June 25, 2002; 67 FR 77411, Dec. 18, 2002; 68 FR 12584, Mar. 17, 2003; 74 FR 9569, Mar. 5, 2009; 78 FR 52335, Aug. 22, 2013]

§ 4.27 Additional reporting by commodity pool operators and commodity trading advisors.

(a) *General definitions.* For the purposes of this section:

(1) *Commodity pool operator* or *CPO* has the same meaning as commodity pool operator defined in section 1a(11) of the Commodity Exchange Act;

(2) *Commodity trading advisor* or *CTA* has the same meaning as defined in section 1a(12);

(3) *Direct* has the same meaning as defined in section 4.10(f);

(4) *Net asset value* or *NAV* has the same meaning as net asset value as defined in section 4.10(b);

(5) *Pool* has the same meaning as defined in section 1(a)(10) of the Commodity Exchange Act;

(6) *Reporting period* means the reporting period as defined in the forms promulgated hereunder;

(b) *Persons required to report.* (1) Except as provided in paragraph (b)(2) of this section, a reporting person is:

(i) Any commodity pool operator that is registered or required to be registered under the Commodity Exchange Act and the Commission's regulations thereunder; or

(ii) Any commodity trading advisor that is registered or required to be registered under the Commodity Exchange Act and the Commission's regulations thereunder.

(2) The following categories of persons shall not be considered reporting persons, as that term is defined in paragraph (b)(1) of this section:

(i) A commodity pool operator that is registered, but operates only pools for which it maintains an exclusion from the definition of the term ''commodity pool operator'' in §4.5 and/or an exemption from registration as a commodity pool operator in §4.13;

(ii) A commodity trading advisor that is registered, but does not direct, as that term is defined in §4.10(f), the trading of any commodity interest accounts;

(iii) A commodity trading advisor that is registered, but directs only the accounts of commodity pools for which it is registered as a commodity pool operator and, though registered, complies with §4.14(a)(4); and

(iv) A commodity trading advisor that is registered, but directs only the accounts of commodity pools for which it is exempt from registration as a commodity pool operator, and though registered, complies with §4.14(a)(5).

(c) *Reporting.* (1) Each reporting person shall file with the National Futures Association, a report with respect to the directed assets of each pool under the advisement of a commodity pool operator consistent with appendix A to this part, or a commodity trading advisor consistent with appendix C to this part.

(2) A reporting person required to file NFA Form PQR with the National Futures Association for the reporting period may make such filing in lieu of the report required under paragraph (c)(1) of this section; *provided that,* the Commission has determined that NFA Form PQR is substantively consistent with appendix A to this part.

(3) Nothing in this provision restricts the National Futures Association's ability to require reporting beyond that required by the Commission; *provided that,* such additional requirements are consistent with the Commodity Exchange Act and 17 CFR chapter I.

(4) All financial information shall be reported in accordance with generally accepted accounting principles consistently applied. A reporting person operating a pool that meets the conditions specified in §4.22(d)(2)(i) to present and compute the commodity pool's financial statements contained in the Annual Report other than in accordance with United States generally accepted accounting principles and has filed notice pursuant to §4.22(d)(2)(iii) may also use the alternative accounting principles, standards, or practices identified in that notice in reporting information required to be reported pursuant to paragraph (c)(1) of this section.

(d) *Investment advisers to private funds.* Commodity pool operators and commodity trading advisors that are dually registered as investment advisers with the Securities and Exchange Commission, and that are required to file Form PF under the rules promulgated under the Investment Advisers Act of 1940, shall file Form PF with the Securities and Exchange Commission, in addition to filings made pursuant to paragraph (c)(1) of this section. Dually registered commodity pool operators and commodity trading advisors that file Form PF with the Securities and Exchange Commission will be deemed to have filed Form PF with the Commission, for purposes of any enforcement action regarding any false or misleading statement of material fact in Form PF.

(e) *Filing requirements.* Each report required to be filed with the National Futures Association under this section shall:

(1)(i) Contain an oath and affirmation that, to the best of the knowledge and belief of the individual making the oath and affirmation, the information contained in the document is accurate and complete; *Provided, however,* That it shall be unlawful for the individual to make such oath or affirmation if the individual knows or should know that

any of the information in the document is not accurate and complete and

(ii) Each oath or affirmation must be made by a representative duly authorized to bind the CPO or CTA.

(2) Be submitted consistent with the National Futures Association's electronic filing procedures.

(f) *Termination of reporting requirement.* All reporting persons shall continue to file such reports as are required under this section until the effective date of a Form 7W filed in accordance with the Commission's regulations.

(g) *Public records.* Reports filed pursuant to this section shall not be considered Public Records as defined in § 145.0 of this chapter.

[77 FR 17330, Mar. 26, 2012, as amended at 81 FR 85155, Nov. 25, 2016; 84 FR 67354, Dec. 10, 2019; 85 FR 71789, Nov. 10, 2020]

Subpart C—Commodity Trading Advisors

§ 4.30 Prohibited activities.

(a) Except as provided in paragraph (b) of this section, no commodity trading advisor may solicit, accept or receive from an existing or prospective client funds, securities or other property in the trading advisor's name (or extend credit in lieu thereof) to purchase, margin, guarantee or secure any commodity interest of the client.

(b) The prohibition in paragraph (a) of this section shall not apply to:

(1) A futures commission merchant that is registered as such under the Act;

(2) A leverage transaction merchant that is registered as a commodity trading advisor under the Act;

(3) A retail foreign exchange dealer that is registered as such under the Act; or

(4) A swap dealer that is registered as such under the Act, with respect to funds, securities or other property accepted to purchase, margin, guarantee or secure any swap that is not cleared through a derivatives clearing organization.

[77 FR 54359, Sept. 5, 2012]

§ 4.31 Required delivery of Disclosure Document to prospective clients.

(a) Each commodity trading advisor registered or required to be registered under the Act must deliver or cause to be delivered to a prospective client a Disclosure Document containing the information set forth in §§ 4.34 and 4.35 for the trading program pursuant to which the trading advisor seeks to direct the client's commodity interest account or to guide the client's commodity interest trading by means of a systematic program that recommends specific transactions by no later than the time the trading advisor delivers to the prospective client an advisory agreement to direct or guide the client's account; *Provided*, That any information distributed in advance of the delivery of the Disclosure Document to a prospective client is consistent with or amended by the information contained in the Disclosure Document and with the obligations of the commodity trading advisor under the Act, the Commission's regulations issued thereunder, and the laws of any other applicable federal or state authority; *Provided further*, That in the event such previously distributed information is amended by the Disclosure Document in any material respect, the prospective participant must be in receipt of the Disclosure Document at least 48 hours prior to the advisory agreement being accepted by the trading advisor.

(b) The commodity trading advisor may not enter into an agreement with a prospective client to direct the client's commodity interest account or to guide the client's commodity interest trading unless the trading advisor first receives from the prospective client an acknowledgment signed and dated by the prospective client stating that the client received a Disclosure Document for the trading program pursuant to which the trading advisor will direct his account or will guide his trading. Where a Disclosure Document is delivered to a prospective client by electronic means, in lieu of a manually signed and dated acknowledgment the trading advisor may establish receipt by electronic means that use a unique identifier to confirm the identity of

the recipient of such Disclosure Document, *Provided, however,* That the requirement of §4.33(a)(2) to retain the acknowledgment specified in this paragraph (b) applies equally to such substitute evidence of receipt, which must be retained either in hard copy form or in another form approved by the Commission.

[60 FR 38189, July 25, 1995, as amended at 62 FR 39115, July 22, 1997; 68 FR 47235, Aug. 8, 2003; 68 FR 59114, Oct. 14, 2003]

§4.32 [Reserved]

§4.33 Recordkeeping.

Each commodity trading advisor registered or required to be registered under the Act must make and keep the following books and records in an accurate, current and orderly manner at its main business office and in accordance with §1.31. If the commodity trading advisor's main business office is located outside the United States, its territories or possessions, then upon the request of a Commission representative the trading advisor must provide such books and records as requested at the place designated by the representative in the United States, its territories or possessions within 72 hours after receipt of the request.

(a) Concerning the clients and subscribers of the commodity trading advisor:

(1) The name and address of each client and each subscriber.

(2) The acknowledgement specified in §4.31(b).

(3) All powers of attorney and other documents, or copies thereof, authorizing the commodity trading advisor to direct the commodity interest account of a client or subscriber.

(4) All other written agreements, or copies thereof, entered into by the commodity trading advisor with any client or subscriber.

(5) A list or other record of all commodity interest accounts of clients directed by the commodity trading advisor and of all transactions effected therefor.

(6) Copies of each confirmation or acknowledgment of a commodity interest transaction, and each purchase and sale statement and each monthly statement received from a futures commission merchant, a retail foreign exchange dealer or a swap dealer.

(7) The original or a copy of each report, letter, circular, memorandum, publication, writing, advertisement or other literature or advice (including the texts of standardized oral presentations and of radio, television, seminar or similar mass media presentations) distributed or caused to be distributed by the commodity trading advisor to any existing or prospective client or subscriber, showing the first date of distribution if not otherwise shown on the document.

(b) Concerning the commodity trading advisor:

(1) An itemized daily record of each commodity interest transaction of the commodity trading advisor, showing the transaction date, quantity, commodity interest, and, as applicable, price or premium, delivery month or expiration date, whether a put or a call, strike price, underlying contract for future delivery or underlying commodity, swap type and counterparty, the futures commission merchant and/or retail foreign exchange dealer carrying the account and the introducing broker, if any, whether the commodity interest was purchased, sold (including, in the case of a retail forex transaction, offset), exercised, expired (including, in the case of a retail forex transaction, whether it was rolled forward), and the gain or loss realized; *Provided, however,* that if the trading advisor is a counterparty to a swap, it must comply with the swap data recordkeeping and reporting requirements of part 45 of this chapter, as applicable.

(2) Each confirmation of a commodity interest transaction, each purchase and sale statement and each monthly statement furnished by a futures commission merchant or retail foreign exchange dealer to:

(i) The commodity trading advisor relating to a personal account of the trading advisor; and

(ii) Each principal of the trading advisor relating to a personal account of such principal.

(3) Books and records of all other transactions in all other business dealings in trading commodity interests and of all cash market transactions in which the commodity trading advisor

and each principal thereof engages. Those books and records must include, as applicable, books and records of the type specified in paragraphs (a)(1) through (a)(7) of this section and in paragraphs (a)(1) through (a)(8) of § 4.23.

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

(Secs. 2(a)(1), 4c(a)–(d), 4d, 4f, 4g, 4k, 4m, 4n, 8a, 15 and 17, Commodity Exchange Act (7 U.S.C. 2, 4, 6c(a)–(d), 6f, 6g, 6k, 6m, 6n, 12a, 19 and 21; 5 U.S.C. 552 and 552b))

[46 FR 26013, May 8, 1981, as amended at 46 FR 63035, Dec. 30, 1981; 47 FR 57012, Dec. 22, 1982; 48 FR 35299, Aug. 3, 1983. Redesignated and amended at 60 FR 38189, July 25, 1995; 75 FR 55430, Sept. 10, 2010; 77 FR 54359, Sept. 5, 2012; 77 FR 66332, Nov. 2, 2012]

§ 4.34 General disclosures required.

Except as otherwise provided herein, a Disclosure Document must include the following information.

(a) *Cautionary Statement*. The following Cautionary Statement must be prominently displayed on the cover page of the Disclosure Document:

THE COMMODITY FUTURES TRADING COMMISSION HAS NOT PASSED UPON THE MERITS OF PARTICIPATING IN THIS TRADING PROGRAM NOR HAS THE COMMISSION PASSED ON THE ADEQUACY OR ACCURACY OF THIS DISCLOSURE DOCUMENT.

(b) *Risk Disclosure Statement*. (1) The following Risk Disclosure Statement must be prominently displayed immediately following any disclosures required to appear on the cover page of the Disclosure Document as provided by the Commission, by any applicable federal or state securities laws and regulations or by any applicable laws of non-United States jurisdictions:

RISK DISCLOSURE STATEMENT

THE RISK OF LOSS IN TRADING COMMODITY INTERESTS CAN BE SUBSTANTIAL. YOU SHOULD THEREFORE CAREFULLY CONSIDER WHETHER SUCH TRADING IS SUITABLE FOR YOU IN LIGHT OF YOUR FINANCIAL CONDITION. IN CONSIDERING WHETHER TO TRADE OR TO AUTHORIZE SOMEONE ELSE TO TRADE FOR YOU, YOU SHOULD BE AWARE OF THE FOLLOWING:

IF YOU PURCHASE A COMMODITY OPTION YOU MAY SUSTAIN A TOTAL LOSS OF THE PREMIUM AND OF ALL TRANSACTION COSTS.

IF YOU PURCHASE OR SELL A COMMODITY FUTURES CONTRACT OR SELL A COMMODITY OPTION OR ENGAGE IN OFF-EXCHANGE FOREIGN CURRENCY TRADING YOU MAY SUSTAIN A TOTAL LOSS OF THE INITIAL MARGIN FUNDS OR SECURITY DEPOSIT AND ANY ADDITIONAL FUNDS THAT YOU DEPOSIT WITH YOUR BROKER TO ESTABLISH OR MAINTAIN YOUR POSITION. IF THE MARKET MOVES AGAINST YOUR POSITION, YOU MAY BE CALLED UPON BY YOUR BROKER TO DEPOSIT A SUBSTANTIAL AMOUNT OF ADDITIONAL MARGIN FUNDS, ON SHORT NOTICE, IN ORDER TO MAINTAIN YOUR POSITION. IF YOU DO NOT PROVIDE THE REQUESTED FUNDS WITHIN THE PRESCRIBED TIME, YOUR POSITION MAY BE LIQUIDATED AT A LOSS, AND YOU WILL BE LIABLE FOR ANY RESULTING DEFICIT IN YOUR ACCOUNT.

UNDER CERTAIN MARKET CONDITIONS, YOU MAY FIND IT DIFFICULT OR IMPOSSIBLE TO LIQUIDATE A POSITION. THIS CAN OCCUR, FOR EXAMPLE, WHEN THE MARKET MAKES A ''LIMIT MOVE.''

THE PLACEMENT OF CONTINGENT ORDERS BY YOU OR YOUR TRADING ADVISOR, SUCH AS A ''STOP-LOSS'' OR ''STOP-LIMIT'' ORDER, WILL NOT NECESSARILY LIMIT YOUR LOSSES TO THE INTENDED AMOUNTS, SINCE MARKET CONDITIONS MAY MAKE IT IMPOSSIBLE TO EXECUTE SUCH ORDERS.

A ''SPREAD'' POSITION MAY NOT BE LESS RISKY THAN A SIMPLE ''LONG'' OR ''SHORT'' POSITION.

THE HIGH DEGREE OF LEVERAGE THAT IS OFTEN OBTAINABLE IN COMMODITY INTEREST TRADING CAN WORK AGAINST YOU AS WELL AS FOR YOU. THE USE OF LEVERAGE CAN LEAD TO LARGE LOSSES AS WELL AS GAINS.

IN SOME CASES, MANAGED COMMODITY ACCOUNTS ARE SUBJECT TO SUBSTANTIAL CHARGES FOR MANAGEMENT AND ADVISORY FEES. IT MAY BE NECESSARY FOR THOSE ACCOUNTS THAT ARE SUBJECT TO THESE CHARGES TO MAKE SUBSTANTIAL TRADING PROFITS TO AVOID DEPLETION OR EXHAUSTION OF THEIR ASSETS. THIS DISCLOSURE DOCUMENT CONTAINS, AT PAGE (insert page number), A COMPLETE DESCRIPTION OF EACH FEE TO BE CHARGED TO YOUR ACCOUNT BY THE COMMODITY TRADING ADVISOR.

THIS BRIEF STATEMENT CANNOT DISCLOSE ALL THE RISKS AND OTHER SIGNIFICANT ASPECTS OF THE COMMODITY INTEREST MARKETS. YOU SHOULD THEREFORE CAREFULLY STUDY THIS DISCLOSURE DOCUMENT AND COMMODITY INTEREST TRADING BEFORE YOU TRADE, INCLUDING THE DESCRIPTION OF THE PRINCIPAL RISK FACTORS

OF THIS INVESTMENT, AT PAGE (insert page number).

(2)(i) If the commodity trading advisor may trade foreign futures or options contracts pursuant to the offered trading program, the Risk Disclosure Statement must further state the following:

YOU SHOULD ALSO BE AWARE THAT THIS COMMODITY TRADING ADVISOR MAY ENGAGE IN TRADING FOREIGN FUTURES OR OPTIONS CONTRACTS. TRANSACTIONS ON MARKETS LOCATED OUTSIDE THE UNITED STATES, INCLUDING MARKETS FORMALLY LINKED TO A UNITED STATES MARKET MAY BE SUBJECT TO REGULATIONS WHICH OFFER DIFFERENT OR DIMINISHED PROTECTION. FURTHER, UNITED STATES REGULATORY AUTHORITIES MAY BE UNABLE TO COMPEL THE ENFORCEMENT OF THE RULES OF REGULATORY AUTHORITIES OR MARKETS IN NON-UNITED STATES JURISDICTIONS WHERE YOUR TRANSACTIONS MAY BE EFFECTED. BEFORE YOU TRADE YOU SHOULD INQUIRE ABOUT ANY RULES RELEVANT TO YOUR PARTICULAR CONTEMPLATED TRANSACTIONS AND ASK THE FIRM WITH WHICH YOU INTEND TO TRADE FOR DETAILS ABOUT THE TYPES OF REDRESS AVAILABLE IN BOTH YOUR LOCAL AND OTHER RELEVANT JURISDICTIONS.

(ii) If the commodity trading advisor may engage in retail forex transactions pursuant to the offered trading program, the Risk Disclosure Statement must further state the following:

YOU SHOULD ALSO BE AWARE THAT THIS COMMODITY TRADING ADVISOR MAY ENGAGE IN OFF-EXCHANGE FOREIGN CURRENCY TRADING. SUCH TRADING IS NOT CONDUCTED IN THE INTERBANK MARKET. THE FUNDS DEPOSITED WITH A COUNTERPARTY FOR SUCH TRANSACTIONS WILL NOT RECEIVE THE SAME PROTECTIONS AS FUNDS USED TO MARGIN OR GUARANTEE EXCHANGE-TRADED FUTURES AND OPTION CONTRACTS. IF THE COUNTERPARTY BECOMES INSOLVENT AND YOU HAVE A CLAIM FOR AMOUNTS DEPOSITED OR PROFITS EARNED ON TRANSACTIONS WITH THE COUNTERPARTY, YOUR CLAIM MAY NOT BE TREATED AS A COMMODITY CUSTOMER CLAIM FOR PURPOSES OF SUBCHAPTER IV OF CHAPTER 7 OF THE BANKRUPTCY CODE AND REGULATIONS THEREUNDER. YOU MAY BE A GENERAL CREDITOR AND YOUR CLAIM MAY BE PAID, ALONG WITH THE CLAIMS OF OTHER GENERAL CREDITORS, FROM ANY MONIES STILL AVAILABLE AFTER PRIORITY CLAIMS ARE PAID. EVEN FUNDS THAT THE COUNTERPARTY KEEPS SEPARATE FROM ITS OWN FUNDS MAY NOT BE SAFE FROM THE CLAIMS OF PRIORITY AND OTHER GENERAL CREDITORS.

FURTHER, YOU SHOULD CAREFULLY REVIEW THE INFORMATION CONTAINED IN THE RISK DISCLOSURE STATEMENT OF THE FUTURES COMMISSION MERCHANT OR RETAIL FOREIGN EXCHANGE DEALER THAT YOU SELECT TO CARRY YOUR ACCOUNT.

(3) If the commodity trading advisor is not also a registered futures commission merchant or a registered retail foreign exchange dealer, the trading advisor must make the additional following statement in the Risk Disclosure Statement, to be included as the last paragraph thereof:

THIS COMMODITY TRADING ADVISOR IS PROHIBITED BY LAW FROM ACCEPTING FUNDS IN THE TRADING ADVISOR'S NAME FROM A CLIENT FOR TRADING COMMODITY INTERESTS. YOU MUST PLACE ALL FUNDS FOR TRADING IN THIS TRADING PROGRAM DIRECTLY WITH A FUTURES COMMISSION MERCHANT OR RETAIL FOREIGN EXCHANGE DEALER, AS APPLICABLE.

(4) If the commodity trading advisor may engage in swaps, the Risk Disclosure Statement must further state:

SWAPS TRANSACTIONS, LIKE OTHER FINANCIAL TRANSACTIONS, INVOLVE A VARIETY OF SIGNIFICANT RISKS. THE SPECIFIC RISKS PRESENTED BY A PARTICULAR SWAP TRANSACTION NECESSARILY DEPEND UPON THE TERMS OF THE TRANSACTION AND YOUR CIRCUMSTANCES. IN GENERAL, HOWEVER, ALL SWAPS TRANSACTIONS INVOLVE SOME COMBINATION OF MARKET RISK, CREDIT RISK, FUNDING RISK, AND OPERATIONAL RISK.

HIGHLY CUSTOMIZED SWAPS TRANSACTIONS IN PARTICULAR MAY INCREASE LIQUIDITY RISK, WHICH MAY RESULT IN YOUR ABILITY TO WITHDRAW YOUR FUNDS BEING LIMITED. HIGHLY LEVERAGED TRANSACTIONS MAY EXPERIENCE SUBSTANTIAL GAINS OR LOSSES IN VALUE AS A RESULT OF RELATIVELY SMALL CHANGES IN THE VALUE OR LEVEL OF AN UNDERLYING OR RELATED MARKET FACTOR.

IN EVALUATING THE RISKS AND CONTRACTUAL OBLIGATIONS ASSOCIATED WITH A PARTICULAR SWAP TRANSACTION, IT IS IMPORTANT TO CONSIDER THAT A SWAP TRANSACTION MAY BE MODIFIED OR TERMINATED ONLY BY

MUTUAL CONSENT OF THE ORIGINAL PARTIES AND SUBJECT TO AGREEMENT ON INDIVIDUALLY NEGOTIATED TERMS. THEREFORE, IT MAY NOT BE POSSIBLE TO MODIFY, TERMINATE, OR OFFSET YOUR OBLIGATIONS OR YOUR EXPOSURE TO THE RISKS ASSOCIATED WITH A TRANSACTION PRIOR TO ITS SCHEDULED TERMINATION DATE.

(c) *Table of contents.* A table of contents showing, by subject matter, the location of the disclosures made in the Disclosure Document, must appear immediately following the Risk Disclosure Statement.

(d) *Information required in the forepart of the Disclosure Document.* (1) The name, address of the main business office, main business telephone number and form of organization of the commodity trading advisor. If the mailing address of the main business office is a post office box number or is not within the United States, its territories or possessions, the trading advisor must state where its books and records will be kept and made available for inspection; and

(2) The date when the commodity trading advisor first intends to use the Disclosure Document.

(e) *Persons to be identified.* The names of the following persons:

(1) Each principal of the trading advisor;

(2) The futures commission merchant and/or retail foreign exchange dealer with which the commodity trading advisor will require the client to maintain its account or, if the client is free to choose the futures commission merchant or retail foreign exchange dealer with which it will maintain its account, the trading advisor must make a statement to that effect; and

(3) The introducing broker through which the commodity trading advisor will require the client to introduce its account or, if the client is free to choose the introducing broker through which it will introduce its account, the trading advisor must make a statement to that effect.

(f) *Business background.* (1) The business background, for the five years preceding the date of the Disclosure Document, of:

(i) The commodity trading advisor; and

(ii) Each principal of the trading advisor who participates in making trading or operational decisions for the trading advisor or supervises persons so engaged.

(2) The trading advisor must include in the description of the business background of each person identified in § 4.34(f)(1) the name and main business of that person's employers, business associations or business ventures and the nature of the duties performed by such person for such employers or in connection with such business associations or business ventures. The location in the Disclosure Document of any required past performance disclosure for such person must be indicated.

(g) *Principal risk factors.* A discussion of the principal risk factors of this trading program. This discussion must include, without limitation, risks due to volatility, leverage, liquidity, and counterparty creditworthiness, as applicable to the trading program and the types of transactions and investment activity expected to be engaged in pursuant to such program (including retail forex and swap transactions, if any).

(h) *Trading program.* A description of the trading program, which must include the method chosen by the commodity trading advisor concerning how futures commission merchants and/or retail foreign exchange dealers carrying accounts it manages shall treat offsetting positions pursuant to § 1.46 of this chapter, if the method is other than to close out all offsetting positions or to close out offsetting positions on other than a first-in, first-out basis, and the types of commodity interests and other interests the commodity trading advisor intends to trade, with a description of any restrictions or limitations on such trading established by the trading advisor or otherwise.

(i) *Fees.* A complete description of each fee which the commodity trading advisor will charge the client.

(1) Wherever possible, the trading advisor must specify the dollar amount of each such fee.

(2) Where any fee is determined by reference to a base amount including, but not limited to, ''net assets,'' ''gross profits,'' ''net profits,'' ''net gains,''

''pips'' or ''bid-asked spread,'' the trading advisor must explain how such base amount will be calculated. Where any fee is based on the difference between bid and asked prices on retail forex or swap transactions, the trading advisor must explain how such fee will be calculated;

(3) Where any fee is based on an increase in the value of the client's commodity interest account, the trading advisor must specify how that increase is calculated, the period of time during which the increase is calculated, the fee to be charged at the end of that period and the value of the account at which payment of the fee commences.

(j) *Conflicts of interest.* (1) A full description of any actual or potential conflicts of interest regarding any aspect of the trading program on the part of:

(i) The commodity trading advisor;

(ii) Any futures commission merchant and/or retail foreign exchange dealer with which the client will be required to maintain its commodity interest account;

(iii) Any introducing broker through which the client will be required to introduce its account to a futures commission merchant and/or retail foreign exchange dealer; and

(iv) Any principal of the foregoing.

(2) Any other material conflict involving any aspect of the offered trading program.

(3) Included in the description of any such conflict must be any arrangement whereby the trading advisor or any principal thereof may benefit, directly or indirectly, from the maintenance of the client's commodity interest account with a futures commission merchant and/or retail foreign exchange dealer, and/or from the maintenance of the client's swap positions with a swap dealer or from the introduction of such account through an introducing broker (such as payment for order flow or soft dollar arrangements).

(k) *Litigation.* (1) Subject to the provisions of §4.34(k)(2), any material administrative, civil or criminal action, whether pending or concluded, within five years preceding the date of the Document, against any of the following persons; *Provided, however,* that a concluded action that resulted in an adjudication on the merits in favor of such person need not be disclosed:

(i) The commodity trading advisor and any principal thereof:

(ii) Any futures commission merchant or retail foreign exchange dealer with which the client will be required to maintain its commodity interest account; and

(iii) Any introducing broker through which the client will be required to introduce its account to the futures commission merchant and/or retail foreign exchange dealer and/or swap dealer.

(2) With respect to a futures commission merchant, retail foreign exchange dealer, swap dealer or introducing broker, an action will be considered material if:

(i) The action would be required to be disclosed in the notes to the futures commission merchant's, retail foreign exchange dealer's, swap dealer's or introducing broker's financial statements prepared pursuant to generally accepted accounting principles;

(ii) The action was brought by the Commission; *Provided, however,* that a concluded action that did not result in civil monetary penalties exceeding $50,000 need not be disclosed unless it involved allegations of fraud or other willful misconduct; or

(iii) The action was brought by any other federal or state regulatory agency, a non-United States regulatory agency or a self-regulatory organization and involved allegations of fraud or other willful misconduct.

(l) *Trading for own account.* If the commodity trading advisor or any principal thereof trades or intends to trade commodity interests for its own account, the trading advisor must disclose whether clients will be permitted to inspect the records of such person's trading and any written policies related to such trading.

(m) *Performance disclosures.* Past performance must be disclosed as set forth in §4.35.

(n) *Supplemental information.* If any information, other than that required by Commission rules, the antifraud provisions of the Act, other federal or state laws and regulations, any rules of a self-regulatory agency or laws of a non-United States jurisdiction, is provided, such information:

(1) May not be misleading in content or presentation or inconsistent with the required disclosures;

(2) Is subject to the antifraud provisions of the Act and Commission rules, and to rules regarding the use of promotional material promulgated by a registered futures association pursuant to section 17(j) of the Act; and

(3) Must be placed as follows, unless otherwise specified by Commission rules:

(i) Supplemental performance information (not including proprietary trading results as defined in § 4.35(a)(7), or hypothetical, extracted, pro forma or simulated trading results) must be placed after all required performance information;

(ii) Supplemental non-performance information relating to a required disclosure may be included with the related required disclosure; and

(iii) Other supplemental information may be included after all required disclosures; *Provided, however,* That any proprietary trading results as defined in § 4.35(a)(7), and any hypothetical, extracted, pro forma or simulated trading results included in the Disclosure Document must appear as the last disclosure therein following all required and non-required disclosures.

(o) *Material information.* Nothing set forth in § 4.31, § 4.34, § 4.35 or § 4.36 shall relieve a commodity trading advisor from any obligation under the Act or the regulations thereunder, including the obligation to disclose all material information to existing or prospective clients even if the information is not specifically required by such sections.

[60 FR 38189, July 25, 1995, as amended at 66 FR 53522, Oct. 23, 2001; 75 FR 55430, Sept. 10, 2010; 77 FR 11285, Feb. 24, 2012; 77 FR 17330, Mar. 26, 2012; 77 FR 54359, Sept. 5, 2012]

§ 4.35 Performance disclosures.

(a) *General principles*—(1) *Capsule performance information.* Unless otherwise specified, disclosure of the past performance of an account or trading program required under this § 4.35 must include the following information:

(i) The name of the commodity trading advisor or other person trading the account and the name of the trading program;

(ii) The date on which the commodity trading advisor or other person trading the account began trading client accounts and the date when client funds began being traded pursuant to the trading program;

(iii) The number of accounts directed by the trading advisor or other person trading the account pursuant to the trading program specified, as of the date of the Disclosure Document;

(iv)(A) The total assets under the management of the trading advisor or other person trading the account, as of the date of the Disclosure Document; and

(B) The total assets traded pursuant to the trading program specified, as of the date of the Disclosure Document;

(v) The largest monthly draw-down for the account or trading program specified during the most recent five calendar year and year-to-date expressed as a percentage of client funds and indicating the month and year of the draw-down (the capsule must include a definition of ''draw-down'' that is consistent with § 4.10(k));

(vi) The worst peak-to-valley draw-down for the trading program specified during the most recent five calendar year and year-to-date, expressed as a percentage of net asset value and indicating the months and year of the draw-down;

(vii) Subject to § 4.35(a)(2) for the offered trading program, the annual and year-to-date rate-of-return for the program specified for the five most recent calendar years and year-to-date, computed on a compounded monthly basis; *Provided, however,* That performance of the offered trading program must include monthly rates of return for such period; and

(viii) In the case of the offered trading program:

(A)(*1*) The number of accounts traded pursuant to the offered trading program that were opened and closed during the period specified in § 4.35(a)(5) with a positive net lifetime rate of return as of the date the account was closed; and

(*2*) A measure of the variability of returns for accounts that were both opened and closed during the period specified in § 4.35(a)(5) and closed with

positive net lifetime rates of return; and

(B)(*1*) The number of accounts traded pursuant to the offered trading program that were opened and closed during the period specified in §4.35(a)(5) with negative net lifetime rates of return as of the date the account was closed; and

(*2*) A measure of the variability of returns for accounts that were both opened and closed during the period specified in §4.35(a)(5) and closed with negative net lifetime rates of return.

(C) The measure of variability required by §§4.35(a)(1)(viii)(A)(*2*) and (B)(*2*) may be provided as a range of both positive and negative net lifetime returns, or by any other form of disclosure that meets the objective of disclosure of the variability of returns experienced by clients in the trading program whose accounts were opened and closed during the period specified in §4.35(a)(5). The net lifetime rate of return shall be calculated as the compounded product of the monthly rates of return for each month the account is open.

(2) *Additional requirements with respect to the offered trading program.* (i) The performance of the offered trading program must be identified as such and separately presented first;

(ii) The rate of return of the offered trading program must be presented on a monthly basis for the period specified in §4.35(a)(5), either in a numerical table or in a bar graph;

(iii) A bar graph used to present monthly rates of return for the offered trading program:

(A) Must show percentage rate of return on the vertical axis and one-month increments on the horizontal axis;

(B) Must be scaled in such a way as to clearly show month-to-month differences in rates of return; and

(C) Must separately display numerical percentage annual rates of return for the period covered by the bar graph; and

(iv) The commodity trading advisor must make available to prospective and existing clients upon request a table showing at least quarterly the information required to be calculated pursuant to §4.35(a)(6).

(3) *Composite presentation.* (i) Unless such presentation would be misleading, the performance of accounts traded pursuant to the same trading program may be presented in composite form on a program-by-program basis, using the format set forth in §4.35(a)(1).

(ii) Accounts that differ materially with respect to rates of return may not be presented in the same composite.

(iii) The commodity trading advisor must discuss all material differences among the accounts included in a composite.

(4) *Current information.* All performance information presented in the Disclosure Document must be current as of a date not more than three months preceding the date of the Document.

(5) *Time period for required performance.* All required performance information must be presented for the most recent five calendar years and year-to-date or for the life of the trading program or account, if less than five years.

(6) *Calculation of, and recordkeeping concerning, performance information.* (i) All performance information presented in a Disclosure Document, including performance information contained in any capsule and performance information not specifically required by Commission rules, must be current as of a date not more than three months preceding the date of the Document, and must be supported by the following amounts, calculated on an accrual basis of accounting in accordance with generally accepted accounting principles, as specified below or by a method otherwise approved by the Commission.

(A) The beginning net asset value for the period, which shall represent the previous period's ending net asset value;

(B) All additions, whether voluntary or involuntary, during the period;

(C) All withdrawals and redemptions, whether voluntary or involuntary, during the period;

(D) The net performance for the period, which shall represent the change in the net asset value net of additions, withdrawals, redemptions, fees and expenses;

(E) The ending net asset value for the period, which shall represent the beginning net asset value plus or minus additions, withdrawals and redemptions, and net performance; and

(F) The rate of return for the period, computed on a compounded monthly basis, which shall be calculated by dividing the net performance by the beginning net asset value.

(ii) All supporting documents necessary to substantiate the computation of such amounts must be maintained in accordance with § 1.31.

(7) *Performance of partially-funded accounts.* Notwithstanding the foregoing, a commodity trading advisor will be deemed in compliance with this § 4.35(a) concerning the performance of partially-funded accounts if the commodity trading advisor presents the performance of such accounts in a manner that is balanced and is not in violation of the antifraud provisions of the Commodity Exchange Act or the Commission's regulations thereunder.

(8) *Proprietary trading results.* (i) Proprietary trading results shall not be included in a Disclosure Document unless such performance is prominently labeled as proprietary and is set forth separately after all disclosures in accordance with § 4.34(n), together with a discussion of any differences between such performance and the performance of the offered trading program, including, but not limited to, differences in costs, leverage and trading.

(ii) For the purposes of § 4.34(n) and this § 4.35(a), proprietary trading results means the performance of any account in which fifty percent or more of the beneficial interest is owned or controlled by:

(A) The commodity trading advisor or any of its principals;

(B) An affiliate or family member of the commodity trading advisor; or

(C) Any person providing services to the account.

(9) *Required legend.* Any past performance presentation, whether or not required by Commission rules, must be preceded with the following statement, prominently displayed:

PAST PERFORMANCE IS NOT NECESSARILY INDICATIVE OF FUTURE RESULTS.

(b) *Performance to be disclosed.* Except as provided in § 4.35(a)(7), the commodity trading advisor must disclose the actual performance of all accounts directed by the commodity trading advisor and by each of its trading principals; *Provided, however,* that if the trading advisor or its trading principals previously have not directed any accounts, the trading advisor must prominently disclose this fact with one of the following statements, as applicable:

(1) THIS TRADING ADVISOR PREVIOUSLY HAS NOT DIRECTED ANY ACCOUNTS; or

(2) NONE OF THE TRADING PRINCIPALS OF THIS TRADING ADVISOR HAS PREVIOUSLY DIRECTED ANY ACCOUNTS; or

(3) NEITHER THIS TRADING ADVISOR NOR ANY OF ITS TRADING PRINCIPALS HAVE PREVIOUSLY DIRECTED ANY ACCOUNTS.

If the commodity trading advisor is a sole proprietorship, reference to its trading principals need not be included in the prescribed statement.

[60 FR 38191, July 25, 1995, as amended at 68 FR 42967, July 21, 2003; 68 FR 47235, Aug. 8, 2003]

§ 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 twelve 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 not less than 21 calendar days prior to the date the trading advisor first intends to deliver the Document to a prospective client in the trading program; and

(2) The commodity trading advisor must electronically file with the National Futures Association, pursuant to the electronic filing procedures of the National Futures Association, the subsequent amendments to 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.

[60 FR 38192, July 25, 1995, as amended at 62 FR 18268, Apr. 15, 1997; 65 FR 58650, Oct. 2, 2000; 67 FR 77411, Dec. 18, 2002; 74 FR 9569, Mar. 5, 2009; 78 FR 52335, Aug. 22, 2013]

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 hypothetical performance results that have certain inherent limitations. Unlike the results shown in an actual performance record, these results do not represent actual trading. Also, because these trades have not actually been executed, these results may have under- or over-compensated for the impact, if any, of certain market factors, such as lack of liquidity. Simulated or hypothetical trading programs in general are also subject to the fact that they are designed with the benefit of hindsight. 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 simulated or hypothetical performance is other than oral, the prescribed statement 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, circular, memorandum, publication, writing, 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 presentations and of radio, television, seminar or similar mass media presentations; and

(2) Regardless of whether the commodity pool operator or commodity trading advisor is exempt from registration under the Act.

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

[46 FR 26013, May 8, 1981, as amended at 46 FR 63035, Dec. 30, 1981; 60 FR 38192, July 25, 1995; 72 FR 8109, Feb. 23, 2007]

APPENDIX A TO PART 4—FORM CPO–PQR

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION	CFTC Form CPO-PQR OMB No.: 3038-0005

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS

Instructions for Using Form CPO-PQR

READ THE DEFINITIONS AND FILING INSTRUCTIONS CAREFULLY BEFORE COMPLETING OR REVIEWING THE REPORTING FORM.

This document is not a reporting form. Do not send this document to NFA. It is a template that you may use to assist in filing the electronic reporting form with the NFA at: *https://www.nfa.futures.org*.

You may fill out the template online and save and/or print it when you are finished or you can download the template and/or print it and fill it out later.

DEFINED TERMS

Words that are underlined in this form are defined terms and have the meanings contained in the Defined Terms section.

GENERAL

Read the Instructions and Questions Carefully.

Please read the instructions and the questions in this Form CPO-PQR carefully.

In this Form CPO-PQR, "you" means the CPO.

Call the CFTC with Questions

If there is any question about whether particular information must be provided or about the manner in which particular information must be provided, contact the CFTC for clarification.

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION	CFTC Form CPO-PQR OMB No.: 3038-0005

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS

Instructions for Using Form CPO-PQR

DEFINED TERMS

Affiliated Entity: The term "Affiliated Entity" means any entity is an affiliate of another entity. An entity is an affiliate of another entity if the entity directly or indirectly controls, is controlled by or is under common control with the other entity.

Assets Under Management or AUM: The term "Assets Under Management" or "AUM" means the amount of all assets that are under the control of the CPO.

BP: The term "BP" means basis points.

Broker: The term "Broker" means any entity that provides clearing, prime brokerage or similar services to the Pool.

CDS: The term "CDS" means credit default swap.

CCP: The term "CCP" means a central counterparty or central clearing house, such as, but not limited to: CC&G, CME Clearing, The Depository Trust & Clearing Corporation (including FICC, NSCC and Euro CCP), EMCF, Eurex Clearing, Fedwire, ICE Clear Europe, ICE Clear U.S., ICE Trust, LCH Clearnet Limited, LCH Clearnet SA, Options Clearing Corporation, and SIX x-clear.

Commodity Futures Trading Commission or CFTC: The term "Commodity Futures Trading Commission" or "CFTC" means the United States Commodity Futures Trading Commission.

Commodity Pool or Pool: The term "Commodity Pool" or "Pool" has the same meaning as "commodity pool" as defined in section 1a(10) of the Commodity Exchange Act.

Commodity Pool Operator or CPO: The term "commodity pool operator" or "CPO" has the same meaning as "commodity pool operator" defined in section 1a(11) of the Commodity Exchange Act, except that, for purposes of this Form CPO-PQR, the term does not include a CPO that is registered, but operates only Pools for which it maintains an exclusion from the definition of the term "commodity pool operator" in 17 CFR 4.5 and/or an exemption from CPO registration in 17 CFR 4.13. See 17 CFR 4.27(b)(2)(i).

Commodity Trading Advisor or CTA: The term "commodity trading advisor" or "CTA" has the same meaning as "commodity trading advisor" as defined in section 1a(12) of the Commodity Exchange Act.

Feeder Fund: *See* Master-Feeder Arrangement.

Financial Institution: The term "financial institution" means any of the following: (i) a bank or savings association, in each case as defined in the Federal Deposit Insurance Act; (ii) a bank holding company or financial holding company, in each case as defined in the Bank Holding Company Act of 1956; (iii) a savings and loan holding company, as defined in the Home Owners' Loan Act; (iv) a Federal credit union, State credit union or State-chartered credit union, as those terms are defined in section 101 of the Federal Credit Union Act; (v) a Farm Credit System institution chartered and subject to the provisions of the Farm Credit Act of 1971; or (vi) an entity chartered or otherwise organized outside the United States that engages in banking activities.

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION	CFTC Form CPO-PQR OMB No.: 3038-0005

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS

Instructions for Using Form CPO-PQR

Form CPO-PQR: The term "Form CPO-PQR" means this Form CPO-PQR.

Form PF: The term "Form PF" refers to the Form PF.

GAAP: The term "GAAP" means U.S. Generally Accepted Accounting Principles or one of the alternative accounting principles, standards, or practices specified in 17 CFR 4.22(d)(2)(i). See 17 CFR 4.27(c)(4).

Investment Adviser: The term "Investment Adviser" has the same meaning as "investment adviser" as defined in Section 202(a)(11) of the Investment Advisers Act of 1940.

Legal Entity Identifier or LEI: The term "Legal Entity Identifier" or LEI refers to the identification number required by Commission Regulation 45.6 in all recordkeeping and swap data reporting, and which is issued by an LEI utility pursuant to that regulation. See 17 CFR 45.6.

Master Fund: See Master-Feeder Arrangement.

Master-Feeder Arrangement: The phrase "Master-Feeder Arrangement" means an arrangement in which one or more funds ("Feeder Funds") invest all or substantially all of their assets in a single fund ("Master Fund"). A fund would also be a Feeder Fund investing in a Master Fund for the purposes of this definition, if it issued multiple classes or series of shares or interests, and each class (or series) invests substantially all of its assets in shares (or other interests in) a single underlying Master Fund.

National Futures Association or NFA: The term "National Futures Association" or "NFA" refers to the National Futures Association, a registered futures association under section 17 of the Commodity Exchange Act.

Negative OTE: The term Negative OTE means negative open trade equity, or the amount of unrealized losses on open derivative positions.

Net Asset Value or NAV: The term "Net Asset Value" or "NAV" has the same meaning as "net asset value" as defined in 17 CFR 4.10(b).

Non-U.S. Financial Institution: A "non-U.S. Financial Institution" means any of the following Financial Institutions: (i) a Financial Institution chartered outside the United States; (ii) a subsidiary of a U.S. Financial Institution that is separately incorporated or otherwise organized outside the United States; or (iii) a branch or agency that resides in the United States but has a parent that is a Financial Institution chartered outside the United States.

OTC: The term "OTC" means over-the-counter.

Private Fund: The term "Private Fund" has the same meaning as "private fund" as defined in Form PF.

Positive OTE: The term "Positive OTE" means positive open trade equity, or the amount of unrealized gains on open derivative positions.

TEMPLATE: DO NOT SEND TO NFA

COMMODITY FUTURES TRADING COMMISSION	CFTC Form CPO-PQR OMB No.: 3038-0005

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS

Instructions for Using Form CPO-PQR

Reporting Date: The term "Reporting Date" means the last calendar day of the Reporting Period for which this Form CPO-PQR is required to be completed and filed. For example, the Reporting Date for the first calendar quarter of a year is March 31; the Reporting Date for the second calendar quarter is June 30.

Reporting Period: The term "Reporting Period" means any of the individual calendar quarters (ending March 31, June 30, September 30, and December 31) for all CPOs.

Trading Manager: The term "Trading Manager" means any entity or individual with sole or partial authority to invest Pool assets or to allocate Pool assets to other managers or investee Pools (including cash management firms). CTAs and other CPOs can be Trading Managers; however, a CPO should not identify itself as a Trading Manager.

Secured Borrowing: The term "Secured Borrowing" means obligations for borrowed money in respect of which the borrower has posted collateral or other credit support. For purposes of this definition, repos are secured borrowings.

Securities and Exchange Commission or SEC: The term "Securities and Exchange Commission" or "SEC" means the United States Securities and Exchange Commission.

Side Arrangements and Side Letters: The term "Side Arrangements" or the term "Side Letters" means any arrangement that is extended to less than 100% of the Pool's participants.

U.S. Financial Institution: The term "U.S. Financial Institution" means any of the following Financial Institutions: (i) a Financial Institution chartered in the United States (whether federally-chartered or state-chartered); (ii) a subsidiary of a Non-U.S. Financial Institution that is separately incorporated or otherwise organized in the United States; or (iii) a branch or agency that resides outside the United States but has a parent that is a Financial Institution chartered in the United States.

Unsecured Borrowing: The term "Unsecured Borrowing" means obligations for borrowed money in respect of which the borrower has not posted collateral or other credit support.

TEMPLATE: DO NOT SEND TO NFA

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS
Instructions for Using Form CPO-PQR

REPORTING INSTRUCTIONS

1. All CPOs Are Required to Complete and File the Form CPO-PQR.

All CPOs are required to complete and file a Form CPO-PQR for each Reporting Period during which they satisfy the definition of CPO and operate at least one Pool. Further, if a Pool is operated by Co-CPOs and one of them is an Investment Adviser, the non-Investment Adviser CPO must file relevant section(s) even though a Form PF was filed for that Pool by the Investment Adviser-CPO.

All CPOs must complete and file Form CPO-PQR within 60 days of the close of the most recent Reporting Period. The information provided herein should be as of the Reporting Date, the last business day of the Reporting Period.

Part 1 of Form CPO-PQR surveys basic information about the reporting CPO. Part 2 of Form CPO-PQR asks for more specific information about each of the CPO's Pools, including questions about the Pool's key relationships and about the Pool's investment positions.

2. Relationship to the National Futures Association's NFA Form PQR

To the extent that a CPO has timely filed the National Futures Association's NFA Form PQR, such filing shall be deemed to satisfy this Form CPO-PQR. See 17 CFR 4.27(c)(2).

3. CPOs Are Required to Separately Report Information Concerning Pools in a Master-Feeder Arrangement.

For the parts of Form CPO-PQR that request information about individual Pools, you must report information for each of the Pools in a Master-Feeder Arrangement individually.

4. I advise a Pool that invests in other Pools or funds (e.g., a "fund of funds"). How should I treat these investments for purposes of Form CPO-PQR?

Investments in other Pools generally. For purposes of this Form CPO-PQR, you may disregard any Pool's equity investments in other Pools. However, if you disregard these investments, you must do so consistently. For Question 9, even if you disregard these assets, you may report the performance of the entire Pool and are not required to recalculate performance to exclude these investments. Do not disregard any liabilities, even if incurred in connection with these investments.

Pools that invest substantially all of their assets in other Pools or funds. If you are the CPO for a Pool that: (i) invests substantially all of its assets in the equity of Pools for which you are not the CPO; and (ii) aside from such Pool investments, holds only cash and cash equivalents and instruments acquired for the purpose of hedging currency exposure, you must still complete this Form CPO-PQR for that Pool and include all assets of that Pool.

Notwithstanding the foregoing, you must include disregarded assets in responding to Questions 8 and 11 in this Form CPO-PQR.

TEMPLATE: DO NOT SEND TO NFA

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS
Instructions for Using Form CPO-PQR

5. I advise a Pool that invests in entities that are not Pools, *or* are exempt. How should I treat these investments for purposes of Form CPO-PQR?

With respect to investments in entities that are not Pools or are exempt, these investments should be treated consistent with Instruction 4 above.

6. Form CPO-PQR Must Be Filed Electronically with NFA.

All CPOs must file Form CPO-PQR electronically using NFA's EasyFile System. NFA's EasyFile System can be accessed through NFA's website at www.nfa.futures.org. You will use the same logon and password for filing your Form CPO-PQR as you would for any other EasyFile filings. Questions regarding your NFA ID# or your use of NFA's EasyFile system should be directed to NFA staff. NFA's contact information is available on its website, *https://www.nfa.futures.org*.

7. All Figures Must Be Reported in U.S. Dollars.

All questions asking for amounts or investments must be reported in U.S. dollars. Any amounts converted to U.S. dollars must use the conversion rate in effect on the Reporting Date.

8. Use of U.S. GAAP or Alternative Accounting Principles, Standards, or Practices.

All financial information in this Report must be presented and computed in accordance with GAAP consistently applied. See 17 CFR 4.27(c)(4).

9. Reporting of Legal Entity Identifiers (LEIs)

Form CPO-PQR includes questions asking CPOs for LEIs for the CPO and its operated Pools. CPOs are **NOT** required to obtain LEIs for themselves or their operated Pools, solely for the purpose of completing this Form CPO-PQR, where such CPOs or Pools are not otherwise required to have them for their operations.

10. Oath and Affirmation

This Form CPO-PQR will not be accepted unless it is complete and contains an oath or affirmation that, to the best of the knowledge and belief of the individual making the oath or affirmation, the information contained in the document is accurate and complete; provided however, that is shall be unlawful for the individual to make such oath or affirmation if the individual knows or should know that any of the information in this Form CPO-PQR is not accurate and complete.

TEMPLATE: DO NOT SEND TO NFA

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS
Form CPO-PQR Template

INTRODUCTION

Every CPO is required to complete and file this Form CPO-PQR. This Form CPO-PQR must be completed for every Reporting Period during which the CPO operated at least one Pool. Part 1 of this Form asks for information about the CPO. Part 2 asks for information about each individual Pool that the CPO operated during the Reporting Period. CPOs must complete and file a separate Part 2 for each Pool they operated any time during the Reporting Period.

Unless otherwise specified in a particular question, all information provided in this Form CPO-PQR should be accurate as of the Reporting Date.

PART 1 · INFORMATION ABOUT THE CPO

1. CPO INFORMATION
Provide the following general information concerning the CPO:

a. CPO's Name:

b. CPO's NFA ID#:

c. CPO's LEI #:

d. Person to contact concerning this Form CPO-PQR:

e. CPO's chief compliance officer:

f. Total number of employees of the CPO:

g. Total number of equity holders of the CPO:

h. Total number of Pools operated by the CPO:

i. Telephone number and email for person identified in d. above

2. CPO ASSETS UNDER MANAGEMENT
Provide the following information concerning the amount of Assets Under Management by the CPO:

a. CPO's Total Assets Under Management:

b. CPO's Total Net Assets Under Management:

TEMPLATE: DO NOT SEND TO NFA

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS
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PART 2 · INFORMATION ABOUT THE POOLS OPERATED BY THE CPO

REMINDER: The CPO must complete and file a separate Part 2 for each Pool that the CPO operated during the Reporting Period.

3. POOL INFORMATION

Provide the following general information concerning the Pool:

a. CPO's Name:

b. Pool's Name:

c. Pool's NFA ID#:

d. Pool's LEI #:

4. POOL THIRD PARTY ADMINISTRATORS

Provide the following information concerning the Pool's third party administrator(s):

a. Does the CPO use third party administrators for the Pool?

If "Yes," provide the following information for each third party administrator:

i. Name of the administrator:

ii. NFA ID# of administrator:

iii. Address of the administrator:

iv. Telephone number of the administrator:

v. Starting date of the relationship with the administrator:

vi. Services performed by the administrator:

Preparation of Pool financial statements: Maintenance of the Pool's books and records:

Calculation of Pool's performance: Other:

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5. POOL BROKERS

Provide the following information concerning the Pool's Broker(s):

a. Does the CPO use Brokers for the Pool?

If "Yes," provide the following information for each Broker:

i. Name of the Broker:

ii. NFA ID# of Broker:

iii. Address of Broker

iv. Telephone number of the Broker:

v. Starting date of the relationship with the Broker:

vi. Services performed by the Broker:

Clearing services for the Pool: Custodian services for some or all Pool assets:

Prime brokerage services for the Pool: Other:

6. POOL TRADING MANAGERS

Provide the following information concerning the Pool's Trading Manager(s):

a. Has the CPO authorized Trading Managers to invest or allocate some or all of the Pool's Assets Under Management?

If "Yes," provide the following information for each Trading Manager:

i. Name of the Trading Manager:

ii. NFA ID# of the Trading Manager:

iii. Address of the Trading Manager:

iv. Telephone number of the Trading Manager:

v. Starting date of the relationship with the Trading Manager:

vi. What percentage of the Pool's Assets Under Management does the Trading Manager have authority to invest or allocate?

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7. POOL CUSTODIANS

Provide the following information concerning the Pool's custodian(s):

a. Does the CPO use custodians to hold some or all of the Pool's Assets Under Management?

If "Yes," provide the following information for each custodian:

i. Name of the custodian:

ii. NFA ID# of the custodian:

iii. Address of the custodian:

iv. Telephone number of the custodian:

v. Starting date of the relationship with the custodian:

vi. What percentage of the Pool's Assets Under Management is held by the custodian?

8. POOL'S STATEMENT OF CHANGES CONCERNING ASSETS UNDER MANAGEMENT

Provide the following information concerning the Pool's activity during the Reporting Period. For the purposes of this question:

a. The Assets Under Management and Net Asset Value at the beginning of the Reporting Period are considered to be the same as the Assets Under Management and Net Asset Value at the end of the previous Reporting Period, in accordance with 17 CFR 4.25(a)(7)(A).

b. The additions to the Pool include all additions whether voluntary or involuntary in accordance with 17 CFR 4.25(a)(7)(B).

c. The withdrawals and redemptions from the Pool include all withdrawals or redemptions whether voluntary or not, in accordance with 17 CFR 4.25(a)(7)(C).

d. The Pool's Assets Under Management and Net Asset Value on the Reporting Date must be calculated by adding or subtracting from the Assets Under Management and Net Asset Value at the beginning of the Reporting Period, respectively, any additions, withdrawals, redemptions and net performance, as provided in 17 CFR 4.25(a)(7)(E).

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i. Pool's Assets Under Management at the beginning of the Reporting Period:

ii. Pool's Net Asset Value at the beginning of the Reporting Period:

iii. Pool's net income during the Reporting Period:

iv. Additions to the Pool during the Reporting Period:

v. Withdrawals and Redemptions from the Pool during the Reporting Period:

vi. Pool's Assets Under Management on the Reporting Date:

vii. Pool's Net Asset Value on the Reporting Date:

viii. Pool's base currency:

9. POOL'S MONTHLY RATES OF RETURN

Provide the Pool's monthly rate of return for each month that the Pool has operated. The Pool's monthly rate of return should be calculated in accordance with 17 CFR 4.25(a)(7)(F). Provide the Pool's annual rate of return for the appropriate year in the row marked "Annual."

	2021	2020	2019	2018	2017	2016	2015
Jan.							
Feb.							
March							
April							
May							
June							
July							
August							
Sept.							
Oct.							
Nov.							
Dec.							
ANNUAL							

10. POOL SUBSCRIPTIONS AND REDEMPTIONS

Provide the following information concerning subscriptions to and redemptions from the Pool during the Reporting Period.

a. Has the Pool imposed a halt or any other material limitation on redemptions during the Reporting Period?

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If "Yes," provide the following information:

i. On what date was the halt or material limitation imposed?

ii. If the halt or material limitation has been lifted, on what date was it lifted?

iii. What disclosure was provided to participants to notify them that the halt or material limitation was being imposed? What disclosure was provided to participants to notify them that the halt or material limitation was being lifted?

iv. On what date(s) was this disclosure provided?

11. POOL SCHEDULE OF INVESTMENTS

Provide the Pool's investments in each of the subcategories listed under the following seven headings: (1) Cash; (2) Equities; (3) Alternative Investments; (4) Fixed Income; (5) Derivatives; (6) Options; and (7) Funds. First, determine how the Pool's investments should be allocated among each of these seven categories. Once you have determined how the Pool's investments should be allocated, enter the dollar value of the Pool's total investment in each applicable category on the top, boldfaced line. For example, under the "Cash" heading, the Pool's total investment should be listed on the line reading "Total Cash." After the top, boldfaced line is completed, proceed to the subcategories. For each subcategory, determine whether the Pool has investments that equal or exceed 5% of the Pool's Net Asset Value. If so, provide the dollar value of each such investment in the appropriate subcategory. If the dollar value of any investment in a subcategory equals or exceeds 5% of the Pool's Net Asset Value, you must itemize the investments in that subcategory.

CASH

Total Cash

At Carrying Broker

At Bank

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EQUITIES	Long	Short
Total Listed Equities		
Stocks		
a. Energy and Utilities		
b. Technology		
c. Media		
d. Telecommunication		
e. Healthcare		
f. Consumer Services		
g. Business Services		
h. Issued by Financial Institutions		
i. Consumer Goods		
j. Industrial Materials		
Exchange Traded Funds		
American Deposit Receipts		
Other		
Total Unlisted Equities		
Unlisted Equities Issued by Financial Institutions		

ALTERNATIVE INVESTMENTS	Long	Short
Total Alternative Investments		
Real Estate		
a. Commercial		
b. Residential		
Private Equity		
Venture Capital		
Forex		

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Spot

a. Total Metals

i. Gold

b. Total Energy

i. Crude oil

ii. Natural gas

iii. Power

c. Other

Loans to Affiliates

Promissory Notes

Physicals

a. Total Metals

i. Gold

b. Agriculture

c. Total Energy

i. Crude oil

ii. Natural gas

iii. Power

Other

FIXED INCOME	Long	Short
Total Fixed Income		
Notes, Bonds and Bills		
a. Corporate		
i. Investment grade		
ii. Non-investment grade		
b. Municipal		

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c. Government
   i. U.S. Treasury securities
   ii. Agency securities
   iii. Foreign (G10 countries)
   iv. Foreign (all other)
d. Gov't Sponsored
e. Convertible
   i. Investment grade
   ii. Non-investment grade

Certificates of Deposit
a. U.S.
b. Foreign

Asset Backed Securities
a. Mortgage Backed Securities
   i. Commercial Securitizations
      A. Senior or higher
      B. Mezzanine
      C. Junior/Equity
   ii. Commercial Resecuritizations
      A. Senior or higher
      B. Mezzanine
      C. Junior/Equity
   iii. Residential Securitizations
      A. Senior or higher
      B. Mezzanine
      C. Junior/Equity
   iv. Residential Resecuritizations
      A. Senior or higher
      B. Mezzanine
      C. Junior/Equity

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v. Agency Securitizations
   A. Senior or higher
   B. Mezzanine
   C. Junior/Equity

vi. Agency Resecuritizations
   A. Senior or higher
   B. Mezzanine
   C. Junior/Equity

b. CDO Securitizations
   i. Senior or higher
   ii. Mezzanine
   iii. Junior/Equity

c. CDO Resecuritizations
   i. Senior or higher
   ii. Mezzanine
   iii. Junior/Equity

d. CLOs Securitizations
   i. Senior or higher
   ii. Mezzanine
   iii. Junior/Equity

e. CLO Resecuritizations
   i. Senior or higher
   ii. Mezzanine
   iii. Junior/Equity

f. Credit Card Securitizations
   i. Senior or higher
   ii. Mezzanine
   iii. Junior/Equity

g. Credit Card Resecuritizations
   i. Senior or higher
   ii. Mezzanine
   iii. Junior/Equity

h. Auto-Loan Securitizations
   i. Senior or higher
   ii. Mezzanine
   iii. Junior/Equity

TEMPLATE: DO NOT SEND TO NFA

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS
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i. Auto-Loan Resecuritizations
   i. Senior or higher
   ii. Mezzanine
   iii. Junior/Equity

j. Other
   i. Senior or higher
   ii. Mezzanine
   iii. Junior/Equity

Repos

Reverse Repos

DERIVATIVES	Positive OTE	Negative OTE
Total Derivatives		
Futures		
a. Indices		
i. Equity		
ii. Commodity		
b. Metals		
i. Gold		
c. Agriculture		
d. Energy		
i. Crude oil		
ii. Natural gas		
iii. Power		
e. Interest Rate		
f. Currency		
g. Related to Financial Institutions		
h. Other		
Forwards		

TEMPLATE: DO NOT SEND TO NFA

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS
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Swaps

a. Interest Rate Swap

b. Equity/Index Swap

c. Dividend Swap

d. Currency Swap

e. Variance Swap

f. Credit Default Swap

i. Single name CDS

A. Related to Financial Institutions

ii. Index CDS

iii. Exotic CDS

g. OTC Swap

i. Related to Financial Institutions

h. Total Return Swap

i. Other

TEMPLATE: DO NOT SEND TO NFA

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS
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OPTIONS	Long Option Value	Short Option Value
Total Options		
Futures		
a. Indices		
i. Equity		
ii. Commodity		
b. Metals		
i. Gold		
c. Agriculture		
d. Energy		
i. Crude oil		
ii. Natural Gas		
iii. Power		
e. Interest Rate		
f. Currency		
g. Related to Financial Institutions		
h. Other		
Stocks		
a. Related to Financial Institutions		
Customized/OTC		
Physicals		
a. Metals		
i. Gold		
b. Agriculture		
c. Currency		
d. Energy		
i. Crude oil		
ii. Natural gas		
iii. Power		
e. Other		

TEMPLATE: DO NOT SEND TO NFA

CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS
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FUNDS	Long
Total Funds	
Mutual Fund a. U.S. b. Foreign	
NFA Listed Fund	
Hedge Fund	
Equity Fund	
Money Market Fund	
Private Equity Fund	
REIT	
Other Private funds	
Funds and accounts other than private funds (i.e., the remainder of your assets under management)	

ITEMIZATION

a. If the dollar value of any investment in any subcategory under the heading "Equities," "Alternative Investments" or "Fixed Income" equals or exceeds 5% of the Pool's Net Asset Value, itemize the investment(s) in the table below.

Subheading	Description of Investment	Long/ Short	Cost	Fair Value	Year-to-Date Gain (Loss)

b. If the dollar value of any investment in any subcategory under the heading "Derivatives" or "Options" equals or exceeds 5% of the Pool's Net Asset Value, itemize the investment(s) in the table below.

Subheading	Description of Investment	Long/ Short	OTE	Counterparty	Year-to-Date Gain (Loss)

c. If the dollar value of any investment in any subcategory under the heading "Funds" equals or exceeds 5% of the Pool's Net Asset Value, itemize the investment(s) in the table below.

Subheading	Fund Name	Fund Type	Fair Value	Year-to-Date Gain (Loss)

– This Completes Form CPO-PQR –

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CFTC FORM CPO-PQR REPORT FOR COMMODITY POOL OPERATORS
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OATH

BY FILING THIS REPORT, THE UNDERSIGNED AGREES THAT THE ANSWERS AND INFORMATION PROVIDED HEREIN are complete and accurate, and are not misleading in any material respect to the best of the undersigned's knowledge and belief. Furthermore, by filing this Form CPO-PQR, the undersigned agrees that he or she knows that it is unlawful to sign this Form CPO-PQR if he or she knows or should know that any of the answers and information provided herein is not accurate and complete.

Name of the individual signing this Form CPO-PQR on behalf of the CPO:

Capacity in which the above is signing on behalf of the CPO:

[85 FR 71789, Nov. 10, 2020]

APPENDIX B TO PART 4—ADJUSTMENTS FOR ADDITIONS AND WITHDRAWALS IN THE COMPUTATION OF RATE OF RETURN

This appendix provides guidance concerning alternate methods by which commodity pool operators and commodity trading advisors may calculate the rate of return information required by Rules 4.25(a)(7)(i)(F) and 4.35(a)(6)(i)(F). The methods described herein are illustrative of calculation methods the Commission has reviewed and determined may be appropriate to address potential material distortions in the computation of rate of return due to additions and withdrawals that occur during a performance reporting period. A commodity pool operator or commodity trading advisor may present to the Commission proposals regarding any alternative method of addressing the effect of additions and withdrawals on the rate of return computation, including documentation supporting the rationale for use of that alternate method.

1. Compounded Rate of Return Method

Rate of return for a period may be calculated by computing the net performance divided by the beginning net asset value for each trading day in the period and compounding each daily rate of return to determine the rate of return for the period. If daily compounding is not practicable, the rate of return may be compounded on the basis of each sub-period within which an addition or withdrawal occurs during a month. For example:

	Account value	Change in value
Start of month	$10,000	+10% ($1,000 profit).
End of 1st acct. period	11,000	$4,000 addition.
Start of 2nd acct. period	15,000	−20% ($3,000 loss).
End of 2nd acct. period	12,000	$2,000 withdrawal.
Start of 3rd acct. period	10,000	+25% ($2,500 profit).
End of month	12,500	

Compounded ROR = [(1 + .1)(1 − .2)(1 + .25)] − 1 = 10%.

2. Time-weighted method

Time-weighting allows for adjustment to the denominator of the rate of return calculation for additions and withdrawals, weighted for the amount of time such funds were available during the period. Several methods exist for time-weighting, all of which will have the same arithmetic result. These methods include: dividing the net performance by the average weighted account sizes for the month; dividing the net performance by the arithmetic mean of the account sizes for each trading day during the period; and taking the number of days funds were available for trading divided by the total number of days in the period.

[68 FR 47236, Aug. 8, 2003; 68 FR 53430, Sept. 10, 2003]

APPENDIX C TO PART 4—FORM CTA–PR

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COMMODITY FUTURES TRADING COMMISSION

CFTC Form CTA-PR
OMB No.: 3038-XXXX

ANNUAL PROGRAM REPORT FOR COMMODITY TRADING ADVISORS

Instructions for Using the Form CTA-PR Template

READ THESE INSTRUCTIONS CAREFULLY BEFORE COMPLETING OR REVIEWING THE REPORTING FORM.

This document is not a reporting form. Do not send this document to NFA. It is a template that you may use to assist in filing the electronic reporting form with the NFA at: http://www.nfa.futures.org.

You may fill out the template online and save and/or print it when you are finished or you can download the template and/or print it and fill it out later.

DEFINED TERMS

Words that are underlined in this form are defined terms and have the meanings contained in the Definitions of Terms section.

GENERAL

Read the Instructions and Questions Carefully

Please read the instructions and the questions in this Form CTA-PR carefully. A question that is answered incorrectly because it was misread or misinterpreted can severely impact your ability to operate as a CTA.

In this Form CTA-PR, "you" means the CTA.

Call CFTC with Questions

If there is any question about whether particular information must be provided or about the manner in which particular information must be provided, contact the CFTC for clarification.

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COMMODITY FUTURES TRADING COMMISSION

ANNUAL PROGRAM REPORT FOR COMMODITY TRADING ADVISORS

Instructions for Using the Form CTA-PR Template

REPORTING INSTRUCTIONS

1. All CTAs Are Required to Complete and File the Form CTA-PR Annually.

2. The Form CTA-PR Must Be Filed Electronically with NFA

All CTAs must file their Forms CTA-PR electronically using NFA's EasyFile System. NFA's EasyFile System can be accessed through NFA's website at www.nfa.futures.org. You will use the same logon and password for filing your Form CTA-PR as you would for any other EasyFile filings. Questions regarding your NFA ID# or your use of NFA's EasyFile system should be directed to the NFA. The NFA's contact information is available on its website.

3. All Figures Reported in U.S. Dollars

All questions asking for amounts or investments must be reported in U.S. dollars. Any amounts converted to U.S. dollars must use the conversion rate in effect on the Reporting Date.

4. Use of U.S. GAAP

All financial information in this Report must be presented and computed in accordance with Generally Accepted Accounting Principles consistently applied.

5. Oath and Affirmation

This Form CTA-PR will not be accepted unless it is complete and contains an oath or affirmation that, to the best of the knowledge and belief of the individual making the oath or affirmation, the information contained in the document is accurate and complete; provided however, that is shall be unlawful for the individual to make such oath or affirmation if the individual knows or should know that any of the information in this Form CTA-PR is not accurate and complete.

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COMMODITY FUTURES TRADING COMMISSION

ANNUAL PROGRAM REPORT FOR COMMODITY TRADING ADVISORS

Definitions of Terms for the Form CTA-PR Template

DEFINITIONS OF TERMS

Commodity Futures Trading Commission or CFTC: The term "Commodity Futures Trading Commission" or "CFTC" refers to the United States Commodity Futures Trading Commission.

Commodity Pool or Pool: The term "Commodity Pool" or "Pool" has the same meaning as "commodity pool" as defined in section 1a(10) of the Commodity Exchange Act.

Commodity Trading Advisor: The term "commodity trading advisor" or "CTA" has the same meaning as "commodity trading adviser" as defined in section 1a(12) of the Commodity Exchange Act.

Direct: The term "Direct" as used in the context of trading commodity interest accounts, has the same meaning as "direct" as defined in CFTC Rule 4.10(f).

Form CTA-PR: The term "Form CTA-PR" refers to this Form CTA-PR.

GAAP: The term "Generally Accepted Accounting Principles" refers to U.S. GAAP.

National Futures Association or NFA: The term "National Futures Association" or "NFA" refers to the National Futures Association, a registered futures association under Section 17 of the Commodity Exchange Act.

Reporting Date: The term "Reporting Date" means the last calendar day of the calendar year for which this Form CTA-PR is required to be completed and filed.

Trading Program: The term "Trading Program has the same meaning as "trading program" as defined in CFTC Rule 4.10(g).

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COMMODITY FUTURES TRADING COMMISSION

ANNUAL PROGRAM REPORT FOR COMMODITY TRADING ADVISORS

Form CTA-PR Template

INFORMATION ABOUT THE CTA

1. CTA INFORMATION
Provide the following general information concerning the CTA:

a. CTA's Name:

b. CTA's NFA ID#:

c. Person to contact concerning this Form CTA-PR:

d. Total number of Trading Programs offered by the CTA:

e. Total number of Trading Programs offered by the CTA under which the CTA Directs Pool assets:

2. POOL ASSETS DIRECTED BY THE CTA
Provide the following information concerning the amount of assets Directed by the CTA:

a. Total assets Directed by CTA:

b. Total Pool assets Directed by CTA:

c. Name(s) of Pools advised by the CTA:

d: Name of the reporting CPO for each Pool identified in 2.c. above:

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COMMODITY FUTURES TRADING COMMISSION

ANNUAL PROGRAM REPORT FOR COMMODITY TRADING ADVISORS

Form CTA-PR Template · Oath

OATH

BY FILING THIS Form CTA-PR, THE UNDERSIGNED AGREES THAT THE ANSWERS AND INFORMATION PROVIDED HEREIN are complete and accurate, and are not misleading in any material respect to the best of the undersigned's knowledge and belief. Furthermore, by filing this Form CTA-PR, the undersigned agrees that he or she knows that it is unlawful to sign this Form CTA-PR if he or she knows or should know that any of the answers and information provided herein is not accurate and complete.

Name of the individual signing this Form CTA-PR on behalf of the CTA:

Capacity in which the above is signing on behalf of the CTA:

[77 FR 11337, Feb. 24, 2012]