

(B) Each non-natural person participant is a "qualified eligible person," as that term is defined in § 4.7, or an "accredited investor," as that term is defined in § 230.501(a)(1) through (3), (a)(7) and (a)(8) of this title; *Provided*, That nothing in paragraph (a)(4) of this section will prohibit the person from claiming an exemption under this section if it additionally operates one or more pools that meet the criteria of paragraph (a)(3) of this section.

(5)(i) Eligibility for exemption under this section is subject to the commodity pool operator furnishing in writing to each prospective participant in the pool:

(A) A statement that the pool operator 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 pool operator 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) A commodity pool operator who desires to claim the relief from registration provided by this section must file a notice of exemption from commodity pool operator registration with the National Futures Association (Attn: Director of Compliance). The notice must:

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

(ii) Contain the section number pursuant to which the operator is filing the notice (*i.e.*, § 4.13(a)(1), (a)(2), (a)(3), (a)(4), or both (a)(3) and (a)(4)) and represent that the pool will be operated in accordance with the criteria of that paragraph or paragraphs; and

(iii) Be signed by a duly authorized representative of the pool operator.

(2) The commodity pool operator must file the notice by no later than the time it delivers a subscription agreement for the pool to a prospective participant in the pool; *Provided*, That where the operator is registered with the Commission as a commodity pool operator, it must notify its pool's participants in writing 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

operator filing a notice of exemption from registration.

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

(4) A commodity pool operator 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, file a supplemental notice with the National Futures Association to that effect which, if applicable, includes such amendments as may be necessary to render the notice accurate and complete. This supplemental notice must be filed within 15 business days after the pool operator becomes aware of the occurrence of such event.

(c)(1) Each commodity pool operator who has filed a notice of 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) In the event the pool operator distributes an annual report to participants in the pool for which it has filed the notice, the annual report must be presented and computed in accordance with generally accepted accounting principles consistently applied and, if certified by an independent public accountant, so certified in accordance with § 1.16 of this chapter as applicable.

(3) Each commodity pool operator 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) or (a)(4) 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) or (a)(4) of this section; *Provided*, That the person:

(i) Furnishes in writing to each prospective participant in a pool described in paragraphs (a)(2), (a)(3) or (a)(4) 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; and

(ii) Complies with paragraph (c) of this section.

6. Section 4.14 is proposed to be amended by:

- a. adding introductory text;
- b. revising paragraph (a)(8);
- c. removing the period and adding a semi-colon followed by the word "or" at the end of paragraph (a)(9)(ii);
- d. adding new paragraph (a)(10); and
- e. revising paragraph (c), to read as follows:

**§ 4.14 Exemption from registration as a commodity trading advisor.**

This section is organized as follows: Paragraph (a) specifies the criteria that