

(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.

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(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 under this section.

(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.

7. Section 4.21 is proposed to be amended by revising paragraph (a) to read as follows:

**§ 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 material distributed in advance of the delivery of the Disclosure Document 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.

(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.

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8. Section 4.22 is proposed to be amended by:

- a. revising paragraph (a) introductory text;
- b. adding new paragraph (a)(4),
- c. redesignating paragraph (b) as paragraph (b)(1),
- d. adding a new paragraph (b)(2),
- e. revising paragraph (c) introductory text,
- f. adding a new paragraph (c)(6),
- g. revising paragraph (h)(1),
- h. revising paragraph (h)(3), and
- i. adding new paragraph (h)(4), to read as follows:

**§ 4.22 Reporting to pool participants.**

(a) Except as provided in paragraph (a)(4) 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 Income (Loss) and a Statement of Changes in Net Asset Value, 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.

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(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.

(b)(1) \* \* \*

(2)(i) The Account Statement may be distributed to a pool participant by means of electronic media if the participant so consents; *Provided*, That a commodity pool operator must, prior to the transmission of any Account Statement by means of electronic media, disclose: The right of the participant to receive the Account Statement in paper form or by means of electronic delivery; the electronic media through which the Account Statement will be delivered; the duration, whether indefinite or not, of the period during which consent will be effective; any charges for electronic delivery; and that consent to electronic delivery may be revoked by the participant at any time.

(ii) The pool operator must obtain a signed consent acknowledging disclosure of the information set forth in paragraph (b)(2)(i) of this section prior to the transmission of any Account Statement by electronic media to any participant who does not qualify as an institutional customer under § 1.3(g) of this chapter.

(c) Except as provided in paragraph (c)(6) 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 file two copies of the Report with the Commission, within 90 calendar days after the end on the pool's fiscal year or the permanent cessation of trading, whichever is earlier, but in no event longer than 90 days after funds are returned to pool participants; *Provided*, however, That if during any calendar year the commodity pool operator did