

- c. Redesignating paragraph (c)(2)(iii) as paragraph (c)(2)(i) and revising redesignated paragraph (c)(2)(i);
- d. Redesignating paragraph (c)(2)(iv) as paragraph (c)(2)(ii);
- e. Revising paragraph (f)(2); and
- f. Adding new paragraph (g).

The revisions and addition read as follows:

§ 4.5 Exclusion from the definition of the term “commodity pool operator.”

* * * * *

(c) * * *

(2) * * *

(i) 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, who 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; and

* * * * *

(f) * * *

(2) Manually signed by a representative duly authorized to bind a person specified in paragraph (a) of this section; and

* * * * *

(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.

3. Section 4.7 is amended by revising paragraphs (a)(2)(vi), (a)(3)(viii) and (d)(1)(vii), to read as follows:

§ 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.

(a) * * *

(2) * * *

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

* * * * *

(3) * * *

(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;

* * * * *

(d) * * *

(1) * * *

(vii) Be manually signed by a representative duly authorized to bind the commodity pool operator or commodity trading advisor;

* * * * *

■ 4. Section 4.12 is amended by revising paragraph (b)(3)(vi) to read as follows:

§ 4.12 Exemption from provisions of part 4.

* * * * *

(b) * * *

(3) * * *

(vi) Be manually signed by a representative duly authorized to bind the pool operator; and

* * * * *

■ 5. Section 4.13 is amended by:

■ a. Adding introductory text;

■ b. Removing the “or” at the end of paragraph (a)(1)(iv);

■ c. Revising paragraph (a)(2);

■ d. Adding new paragraphs (a)(3), (a)(4) and (a)(5);

■ e. Revising paragraph (b);

■ f. Redesignating paragraph (c) and paragraph (d) as paragraphs (d) and (e) and revising newly redesignated paragraphs (d) and (e);

■ g. Adding new paragraph (c);

■ h. Adding new paragraph (f).

The additions and revisions read as follows:

§ 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; and 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.

(a) * * *

(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 such interests are offered and sold without marketing to the public in the United States;

(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 and premiums 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 such 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, and for each such option position by multiplying the