

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; and

(2) The person may net contracts with the same underlying commodity across designated contract markets, registered derivatives transaction execution facilities and foreign boards of trade; 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(a)(2)(viii)(A) of this chapter; 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; or

(4) For each pool for which the person claims exemption from registration under this paragraph (a)(4):

(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) 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)(4) of this section), that:

(A) Each natural person participant (including such person's self-directed employee benefit plan, if any), is a "qualified eligible person," as that term is defined in § 4.7(a)(2); and

(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)-(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 person furnishing in writing 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 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 person 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), or (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 manually signed by a representative duly authorized to bind the person.

(2) The person 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 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 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 person filing a notice of exemption from registration.

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

(4) 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, 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 person 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 person 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 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