

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 paragraph (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.

(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.

■ 6. Section 4.14 is 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).

The additions and revisions read as follows:

§ 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) * * *

(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 4.13(a)(4), or, if registered as a commodity pool operator, who may treat each pool it operates that meets the criteria of § 4.13(a)(3) or 4.13(a)(4) as if it were not so registered;

(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 a notice of exemption from commodity trading advisor registration with the National Futures Association (ATTN: Director of Compliance). 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.*, § 4.14(a)(8)(i) or (a)(8)(ii), or both (a)(8)(i) and (a)(8)(ii)) 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 manually signed 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 writing 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) Each person who has filed a notice of registration exemption 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