

render the notice accurate and complete. This supplemental notice must be filed within 15 business days after the trading advisor becomes aware of the occurrence of such event.

(iv) Each person who has filed a notice of registration exemption under this § 4.14(a)(8) must:

(A)(1) Make and keep all books and records prepared in connection with its activities as a trading advisor, including all books and records demonstrating eligibility for and compliance with the applicable criteria for exemption under this section, for a period of five years from the date of preparation; and

(2) 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

(B) 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;

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(10) If, as provided for in section 4m(1) of the Act, during the course of the preceding 12 months, it has not furnished commodity trading advice to more than 15 persons and it does not hold itself out generally to the public as a commodity trading advisor.

(i) For the purpose of paragraph (a)(10) of this section, the following are deemed a single person:

(A) A natural person, and:

(1) Any minor child of the natural person;

(2) Any relative, spouse, or relative of the spouse of the natural person who has the same principal residence;

(3) All accounts of which the natural person and/or the persons referred to in paragraph (a)(10)(i)(A) of this section are the only primary beneficiaries; and

(4) All trusts of which the natural person and/or the persons referred to in paragraph (a)(10)(i)(A) of this section are the only primary beneficiaries;

(B)(1) A corporation, general partnership, limited partnership, limited liability company, trust (other than a trust referred to in paragraph (a)(10)(i)(A)(4) of this section), or other legal organization (any of which are referred to hereinafter as a "legal organization") that receives commodity interest trading advice based on its investment objectives rather than the individual investment objectives of its shareholders, partners, limited partners, members, or beneficiaries (any of which

are referred to hereinafter as an "owner"); and

(2) Two or more legal organizations referred to in paragraph (a)(10)(i)(B)(1) of this section that have identical owners.

(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 hereunder.

(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 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 information distributed in advance of the delivery of the Disclosure Document to a prospective participant 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; *Provided, further*, That in the event such previously distributed information is amended by the Disclosure Document in any material respect, the prospective participant must be in receipt of the Disclosure Document at least 48 hours prior to its subscription being accepted by the pool operator.

(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 amended by:

■ a. Revising paragraph (a) introductory text;

■ b. Adding new paragraph (a)(4),

■ c. Revising paragraph (c) introductory text,

■ d. Adding a new paragraph (c)(6),

■ e. Revising paragraph (h)(1),

■ f. Revising paragraph (h)(3),