

■ g. Adding new paragraph (i) and

■ h. Adding new paragraph (j).

The revisions and additions 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.

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(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 a copy of the Report with the National Futures Association, 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 not operate a commodity pool, the pool operator must so notify the National Futures Association within 30 calendar days after the end of such calendar year. The Annual Report must be signed pursuant to paragraph (h) of this section and must contain the following:

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(6) For the purpose of the Annual Report distribution requirement, including any annual report distributed pursuant to § 4.7(b)(3) or 4.12(b)(2)(iii), 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; *Provided*, That the Annual Report of such investing pool contain financial statements that include such information as the Commission may specify concerning the operations of the pool in which the commodity pool has invested.

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(h)(1) Each Account Statement and Annual Report, including an Account Statement or Annual Report provided pursuant to § 4.7(b) or 4.12(b), must contain an oath or affirmation that, to the best of the knowledge and belief of the individual making the oath or affirmation, the information contained in the document is accurate and complete; *Provided, however*, That it shall be unlawful for the individual to make such oath or affirmation if the individual knows or should know that any of the information in the document is not accurate and complete.

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(3) Subject to the provisions of paragraph (j) of this section, the oath or affirmation must be manually signed by a representative duly authorized to bind the pool operator.

(i) The Account Statement or Annual Report may be distributed to a pool participant by means of electronic media if the participant so consents; *Provided*, That prior to the transmission of any Account Statement or Annual Report by means of electronic media, a commodity pool operator must disclose to the participant that it intends to distribute electronically the Account Statement or Annual Report or both documents, as the case may be, absent objection from the participant, which objection, if any, the participant must make no later than 10 business days following its receipt of the disclosure.

(j) An Account Statement or Annual Report may contain a facsimile signature, *Provided*, That:

(A) The CPO maintains in accordance with § 4.23 the Account Statement or Annual Report containing the manual signature from which the facsimile signature was made; and

(B) The Annual Report the CPO files with a registered futures association is manually signed.

(ii) For each pool for which the CPO distributes an Account Statement or Annual Report by means of electronic media, the CPO must make and keep in accordance with § 4.23 a manually signed copy of the Statement.

■ 9. Section 4.31 is amended by revising paragraph (a) to read as follows:

§ 4.31 Required delivery of Disclosure Document to prospective clients.

(a) Each commodity trading advisor registered or required to be registered under the Act must deliver or cause to be delivered to a prospective client a Disclosure Document containing the information set forth in §§ 4.34 and 4.35 for the trading program pursuant to which the trading advisor seeks to direct the client's commodity interest account or to direct the client's commodity interest trading by means of a systematic program that recommends specific transactions by no later than the time the trading advisor delivers to the prospective client an advisory agreement to direct or guide the client's account; *Provided*, That any information distributed in advance of the delivery of the Disclosure Document to a prospective client is consistent with or amended by the information contained in the Disclosure Document and with the obligations of the commodity trading advisor 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 the advisory agreement being accepted by the trading advisor.

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■ 10. Section 4.35 is amended by revising paragraph (a)(1)(viii) to read as follows:

§ 4.35 Performance disclosures.

(a) General principles.—(1) * * *

(viii) In the case of the offered trading program:

(A)(1) The number of accounts traded pursuant to the offered trading program that were opened and closed during the period specified in § 4.35(a)(5) with a positive net lifetime rate of return as of the date the account was closed; and

(2) A measure of the variability of returns for accounts that were both opened and closed during the period specified in § 4.35(a)(5) and closed with positive net lifetime rates of return; and

(B)(1) The number of accounts traded pursuant to the offered trading program that were opened and closed during the period specified in § 4.35(a)(5) with negative net lifetime rates of return as of the date the account was closed; and

(2) A measure of the variability of returns for accounts that were both opened and closed during the period