

specified in § 4.35(a)(5) and closed with negative net lifetime rates of return.

(C) The measure of variability required by §§ 4.35(a)(1)(viii)(A)(2) and (B)(2) may be provided as a range of both positive and negative net lifetime returns, or by any other form of disclosure that meets the objective of disclosure of the variability of returns experienced by clients in the trading program whose accounts were opened and closed during the period specified in § 4.35(a)(5). The net lifetime rate of return shall be calculated as the compounded product of the monthly rates of return for each month the account is open.

\* \* \* \* \*

■ 11. Appendices A and B are added to part 4 to read as follows:

**Appendix A to Part 4—Guidance on the Application of Rule 4.13(a)(3) in the Fund-of-Funds Context**

The following provides guidance on the application of the trading limits of Rule 4.13(a)(3)(ii) to commodity pool operators (CPOs) who operate “fund-of-funds.” For the purpose of this Appendix A, it is presumed that the CPO can comply with all of the other requirements of Rule 4.13(a)(3). It also is presumed that where the investor fund CPO is relying on its own computations, the investor fund is participating in each investee fund that trades commodity interests as a passive investor, with limited liability (e.g., as a limited partner of a limited partnership or a non-managing member of a limited liability company). Fund-of-funds CPOs who seek to claim exemption from registration under Rule 4.13(a)(1), (a)(2) or (a)(4) may do so without regard to the trading engaged in by an investee fund, because none of the registration exemptions set forth in those rules concerns limits on or levels of commodity interest trading. Persons whose fact situations do not fit any of the scenarios below should contact Commission staff to discuss the applicability of the registration exemption in Rule 4.13(a)(3) to their particular situations.

1. *Situation:* An investor fund CPO allocates the fund’s assets to one or more investee funds, none of which meets the trading limits of Rule 4.13(a)(3) and each of which is operated by a registered CPO. It does not allocate any of the investor fund’s assets directly to commodity interest trading.

*Application:* The investor fund CPO may claim relief under Rule 4.13(a)(3) provided the investor fund itself meets the trading limits of Rule 4.13(a)(3).

2. *Situation:* An investor fund CPO allocates the fund’s assets to one or more investee funds, each having a CPO who is either: (1) itself claiming exemption from CPO registration under Rule 4.13(a)(3); or (2) a registered CPO that is complying with the trading restrictions of Rule 4.13(a)(3). It does not allocate any of the investor fund’s assets directly to commodity interest trading.

*Application:* The investor fund CPO fund may rely upon the representations of the investee fund CPOs that they are complying with the trading limits of Rule 4.13(a)(3).

3. *Situation:* An investor fund CPO allocates the fund’s assets to investee funds, each of which operates under a percentage restriction on the amount of margin or option premiums that may be used to establish its commodity interest positions (whether pursuant to Rule 4.12(b), Rule 4.13(a)(3)(i)(A) or otherwise), by, e.g., contractual agreement. It does not allocate any of the investor fund’s assets directly to commodity interest trading.

*Application:* The CPO of the investor fund may multiply the percentage restriction applicable to each investee fund by the percentage of the investor fund’s allocation of assets to that investee fund to determine whether the CPO is operating the investor fund in compliance with Rule 4.13(a)(3)(i)(A).

4. *Situation:* An investor fund CPO allocates the fund’s assets to one or more investee funds, and it has actual knowledge of the trading limits and commodity interest positions of the investee funds, e.g., where the CPO or one or more affiliates of the CPO operate the investee funds. (For this purpose, an “affiliate” is a person who controls, who is controlled by, or who is under common control with, the CPO.) It does not allocate any of the investor fund’s assets directly to commodity interest trading.

*Application:* The investor fund CPO may aggregate commodity interest positions across investee funds to determine compliance with the trading restrictions of Rule 4.13(a)(3). For this purpose, the aggregate assets of the investee funds would be compared to the aggregate of their commodity interest positions (as to margin or as to net notional value). The investor fund CPO should use the results of this computation to determine its compliance with the trading limits of Rule 4.13(a)(3).

5. *Situation:* An investor fund CPO allocates no more than 50 percent of the

fund’s assets to investee funds that trade commodity interests (without regard to the level of commodity interest trading engaged in by those investee pools). It does not allocate any of the investor fund’s assets directly to commodity interest trading.

*Application:* The investor fund CPO may claim relief under Rule 4.13(a)(3).

6. *Situation:* An investor fund CPO allocates the fund’s assets to both investee funds and direct trading of commodity interests.

*Application:* The investor fund CPO must treat the amount of investor fund assets committed to such direct trading as a separate pool for purposes of determining compliance with Rule 4.13(a)(3)(i), such that the commodity interest trading of that pool must meet the criteria of Rule 4.13(a)(3)(i) independently of the portion of investor fund assets allocated to investee funds.

**Appendix B to Part 4—Adjustments for Additions and Withdrawals in the Computation of Rate of Return**

This appendix provides guidance concerning alternate methods by which commodity pool operators and commodity trading advisors may calculate the rate of return information required by Rules 4.25(a)(7)(i)(F) and 4.35(a)(6)(i)(F). The methods described herein are illustrative of calculation methods the Commission has reviewed and determined may be appropriate to address potential material distortions in the computation of rate of return due to additions and withdrawals that occur during a performance reporting period. A commodity pool operator or commodity trading advisor may present to the Commission proposals regarding any alternative method of addressing the effect of additions and withdrawals on the rate of return computation, including documentation supporting the rationale for use of that alternate method.

*1. Compounded Rate of Return Method*

Rate of return for a period may be calculated by computing the net performance divided by the beginning net asset value for each trading day in the period and compounding each daily rate of return to determine the rate of return for the period. If daily compounding is not practicable, the rate of return may be compounded on the basis of each sub-period within which an addition or withdrawal occurs during a month. For example:

	Account value	Change in value
Start of month .....	\$10,000	+10% (\$1,000 profit).
End of 1st acct. period .....	11,000	\$4,000 addition.
Start of 2nd acct. period .....	15,000	– 20% (\$3,000 loss).
End of 2nd acct. period .....	12,000	\$2,000 withdrawal.
Start of 3rd acct. period .....	10,000	+25% (\$2,500 profit).
End of month .....	12,500	

Compounded ROR = [(1 + .1)(1 – .2)(1 + .25)] & – 1 = 10%.