(3) *Major commodity trading advisor performance.* (i) The commodity pool operator must disclose the performance of any accounts (including pools) directed by a major commodity trading advisor in accordance with paragraphs (a)(1)(ii) (C) through (G) of this §4.25.

(ii) If a major commodity trading advisor has not previously traded accounts, the pool operator must prominently display the following statement:

(name of the major commodity trading advisor), A COMMODITY TRADING ADVISOR THAT HAS DISCRETIONARY TRADING AUTHORITY OVER (percentage of the pool's funds available for commodity interest trading allocated to that trading advisor) PERCENT OF THE POOL'S FUTURES AND COMMODITY OPTION TRADING HAS NOT PREVIOUSLY DIRECTED ANY ACCOUNTS.

(4) *Major investee pool performance.* (i) The commodity pool operator must disclose the performance of any major investee pool.

(ii) If a major investee pool has not commenced trading, the pool operator must prominently display the following statement:

(name of the major investee pool), AN INVESTEE POOL THAT IS ALLOCATED (percentage of the pool assets allocated to that investee pool) PERCENT OF THE POOL'S ASSETS HAS NOT COMMENCED TRADING.

(5) With respect to commodity trading advisors and investee pools for which performance is not required to be disclosed pursuant to §4.25(c) (3) and (4), the pool operator must provide a summary description of the performance history of each of such advisors and pools including the following information, provided that where the pool operator uses a two-part document pursuant to the rules promulgated by a registered futures association pursuant to Section 17(j) of the Act, such summary description may be provided in the second part of the two-part document:

(i) Monthly return parameters (highs and lows);

(ii) Historical volatility and degree of leverage; and

(iii) Any material differences between the performance of such advisors and pools as compared to that of the offered pool's major trading advisors and major investee pools.

[60 FR 38186, July 25, 1995, as amended at 63 FR 58303, Oct. 30, 1998]

§4.26 Use, amendment and filing of Disclosure Document.

(a)(1) Subject to paragraph (c) of this section, all information contained in the Disclosure Document and, where used, profile document, must be current as of the date of the Document; Provided, however, that performance information may be current as of a date not more than three months prior to the date of the Document.

(2) No commodity pool operator may use a Disclosure Document or profile document dated more than nine months prior to the date of its use.

(b)(1) If the commodity pool operator knows or should know that the Disclosure Document or profile document is materially inaccurate or incomplete in any respect, it must correct that defect and must distribute the correction to:

(i) All existing pool participants within 21 calendar days of the date upon which the pool operator first knows or has reason to know of the defect; and

(ii) Each previously solicited prospective pool participant prior to accepting or receiving funds, securities or other property from any such prospective participant.

(2) The pool operator may furnish the correction by any of the following means:

(i) An amended Disclosure Document or profile document;

(ii) With respect to a hard copy of the Disclosure Document, a sticker affixed to the Disclosure Document; or

(iii) Other similar means.

(3) The pool operator may not use the Disclosure Document or profile document until such correction has been made.

(c)(1) If the commodity pool operator knows or should know that the Disclosure Document is materially inaccurate or incomplete in any respect, it must correct that defect and must distribute the correction to:

(i) All existing pool participants within 21 calendar days of the date upon which the pool operator first

knows or has reason to know of the defect; and

(ii) Each previously solicited prospective pool participant prior to accepting or receiving funds, securities or other property from any such prospective participant. The pool operator may furnish the correction by way of an amended Disclosure Document, a sticker on the Document, or other similar means.

(2) The pool operator may not use the Disclosure Document until such correction has been made.

(d) Except as provided by § 4.8:

(1) The commodity pool operator must file with the Commission one copy of the Disclosure Document and, where used, profile document for each pool that it operates or that it intends to operate not less than 21 calendar days prior to the date the pool operator first intends to deliver such Document or documents to a prospective participant in the pool; and

(2) The commodity pool operator must file with the Commission one copy of the subsequent amendments to the Disclosure Document and, where used, profile document for each pool that it operates or that it intends to operate within 21 calendar days of the date upon which the pool operator first knows or has reason to know of the defect requiring the amendment.

[60 FR 38188, July 25, 1995, as amended at 62 FR 18268, Apr. 15, 1997; 65 FR 58649, Oct. 2, 2000]

Subpart C—Commodity Trading Advisors

§ 4.30 Prohibited activities.

No commodity trading advisor may solicit, accept or receive from an existing or prospective client funds, securities or other property in the trading advisor's name (or extend credit in lieu thereof) to purchase, margin, guarantee or secure any commodity interest of the client; *Provided, however,* That this section shall not apply to a future commission merchant that is registered as such under the Act or to a leverage transaction merchant that is registered as a commodity trading advisor under the Act.

(Secs. 2(a)(1), 4c(a)–(d), 4d, 4f, 4g, 4k, 4m, 4n, 8a, 15 and 17, Commodity Exchange Act (7 U.S.C. 2, 4, 6c(a)–(d), 6f, 6g, 6k, 6m, 6n, 12a, 19 and 21; 5 U.S.C. 552 and 552b))

[47 FR 57011, Dec. 22, 1982]

§ 4.31 Required delivery of Disclosure Document to prospective clients.

(a) No commodity trading advisor registered or required to be registered under the Act may solicit a prospective client, or enter into an agreement with a prospective client to direct the client's commodity interest account or to guide the client's commodity interest trading by means of a systematic program that recommends specific transactions, unless the commodity trading advisor, at or before the time it engages in the solicitation or enters into the agreement (whichever is earlier), delivers or causes to be delivered to the prospective client a Disclosure Document for the trading program pursuant to which the trading advisor seeks to direct the client's account or to guide the client's trading, containing the information set forth in §§ 4.34 and 4.35.

(b) The commodity trading advisor may not enter into an agreement with a prospective client to direct the client's commodity interest account or to guide the client's commodity interest trading unless the trading advisor first receives from the prospective client an acknowledgment signed and dated by the prospective client stating that the client received a Disclosure Document for the trading program pursuant to which the trading advisor will direct his account or will guide his trading. Where a Disclosure Document is delivered to a prospective client by electronic means, in lieu of a manually signed and dated acknowledgment the trading advisor may establish receipt by electronic means that use a unique identifier to confirm the identity of the recipient of such Disclosure Document, *Provided, however,* That the requirement of § 4.33(a)(2) to retain the acknowledgment specified in this paragraph (b) applies equally to such substitute evidence of receipt, which must be retained either in hard copy form or