

### § 4.30

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

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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

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in another form approved by the Commission.

[60 FR 38189, July 25, 1995, as amended at 62 FR 39115, July 22, 1997]

### § 4.33 Recordkeeping.

Each commodity trading advisor registered or required to be registered under the Act must make and keep the following books and records in an accurate, current and orderly manner at its main business office and in accordance with § 1.31. If the commodity trading advisor's main business office is located outside the United States, its territories or possessions, then upon the request of a Commission representative the trading advisor must provide such books and records as requested at the place designated by the representative in the United States, its territories or possessions within 72 hours after receipt of the request.

(a) Concerning the clients and subscribers of the commodity trading advisor:

(1) The name and address of each client and each subscriber.

(2) The acknowledgement specified in § 4.31(b).

(3) All powers of attorney and other documents, or copies thereof, authorizing the commodity trading advisor to direct the commodity interest account of a client or subscriber.

(4) All other written agreements, or copies thereof, entered into by the commodity trading advisor with any client or subscriber.

(5) A list or other record of all commodity interest accounts of clients directed by the commodity trading advisor and of all transactions effected therefor.

(6) Copies of each confirmation of a commodity interest transaction, each purchase and sale statement and each monthly statement received from a futures commission merchant.

(7) The original or a copy of each report, letter, circular, memorandum, publication, writing, advertisement or other literature or advice (including the texts of standardized oral presentations and of radio, television, seminar or similar mass media presentations) distributed or caused to be distributed by the commodity trading advisor to any existing or prospective cli-

ent or subscriber, showing the first date of distribution if not otherwise shown on the document.

(b) Concerning the commodity trading advisor:

(1) An itemized daily record of each commodity interest transaction of the commodity trading advisor, showing the transaction date, quantity, commodity interest, and, as applicable, price or premium, delivery month or expiration date, whether a put or a call, strike price, underlying contract for future delivery or underlying physical, the futures commission merchant carrying the account and the introducing broker, if any, whether the commodity interest was purchased, sold, exercised, or expired, and the gain or loss realized.

(2) Each confirmation of a commodity interest transaction, each purchase and sale statement and each monthly statement furnished by a futures commission merchant to (i) the commodity trading advisor relating to a personal account of the trading advisor, and (ii) each principal of the trading advisor relating to a personal account of such principal.

(3) Books and records of all other transactions in all other business dealings in trading commodity interests and of all cash market transactions in which the commodity trading advisor and each principal thereof engages. Those books and records must include, as applicable, books and records of the type specified in paragraphs (a)(1) through (a)(7) of this section and in paragraphs (a)(1) through (a)(8) of § 4.23.

(Approved by the Office of Management and Budget under control number 3038-0005)

(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))

[46 FR 26013, May 8, 1981, as amended at 46 FR 63035, Dec. 30, 1981; 47 FR 57012, Dec. 22, 1982; 48 FR 35299, Aug. 3, 1983. Redesignated and amended at 60 FR 38189, July 25, 1995]

### § 4.34 General disclosures required.

Except as otherwise provided herein, a Disclosure Document must include the following information.

(a) *Cautionary Statement.* The following Cautionary Statement must be