

§ 4.8

17 CFR Ch. I (4-1-01 Edition)

§ 4.8 Exemption from certain requirements of rule 4.26 with respect to pools offered or sold in certain offerings exempt from registration under the Securities Act.

(a) Notwithstanding paragraph (d) of § 4.26 and subject to the conditions specified herein, the registered commodity pool operator of a pool offered or sold solely to “accredited investors” as defined in 17 CFR 230.501 in an offering exempt from the registration requirements of the Securities Act of 1933 pursuant to Rule 505 or 506 of Regulation D, 17 CFR 230.505 or 230.506, may solicit, accept and receive funds, securities and other property from prospective participants in that pool upon filing with the Commission and providing to such participants the Disclosure Document for the pool.

(b) Notwithstanding paragraph (d) of § 4.26 and subject to the conditions specified herein, the registered commodity pool operator of a pool offered or sold in an offering exempt from the registration requirements of the Securities Act of 1933 pursuant to Rule 505 or 506 of Regulation D, 17 CFR 230.505 or 230.506, that is operated in compliance with, and has filed the notice required by, § 4.12(b) may solicit, accept and receive funds, securities and other property from prospective participants in that pool upon filing with the Commission and providing to such participants the Disclosure Document for the pool.

(c) The relief provided under § 4.8 is not available if an enforcement proceeding brought by the Commission under the Act or the regulations is pending against the commodity pool operator or any of its principals or if the commodity pool operator or any of its principals is subject to any statutory disqualification under §§ 8a(2) or 8a(3) of the Act.

[57 FR 34865, Aug. 7, 1992; 57 FR 41173, Sept. 9, 1992, as amended at 60 FR 38182, July 25, 1995]

§ 4.9 [Reserved]

§ 4.10 Definitions.

For purposes of this part:

(a) *Commodity interest* means:

(1) Any contract for the purchase or sale of a commodity for future delivery; and

(2) Any contract, agreement or transaction subject to Commission regulation under section 4c or 19 of the Act.

(b) *Net asset value* means total assets minus total liabilities, determined in accord with generally accepted accounting principles, with each position in a commodity interest accounted for at fair market value.

(c) *Participant* means any person that has any direct financial interest in a pool (e.g., a limited partner).

(d)(1) *Pool* means any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests.

(2) *Multi-advisor pool* means a pool in which:

(i) No commodity trading advisor is allocated or intended to be allocated more than twenty-five percent of the pool’s funds available for commodity interest trading; and

(ii) No investee pool is allocated or intended to be allocated more than twenty-five percent of the pool’s net asset value.

(3) *Principal-protected pool* means a pool (commonly referred to as a “guaranteed pool”) that is designed to limit the loss of the initial investment of its participants.

(4) *Investee pool* means any pool in which another pool or account participates or invests, e.g., as a limited partner thereof.

(5) *Major investee pool* means, with respect to a pool, any investee pool that is allocated or intended to be allocated at least ten percent of the net asset value of the pool.

(e)(1) *Principal*, when referring to a person that is a principal of a particular entity, means:

(i) Any person including, but not limited to, a sole proprietor, general partner, officer or director, or person occupying a similar status or performing similar functions, having the power, directly or indirectly, through agreement or otherwise, to exercise a controlling influence over the activities of the entity;

(ii) Any holder or any beneficial owner of ten percent or more of the