

#### §4.14

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and if a sole proprietorship, by the sole proprietor; and

(iv) By the earlier of seven business days after the date the statement is first delivered to a prospective participant and the date upon which the pool commences trading in commodity interests:

(A) File two copies of the statement with the Commission at the address specified in §4.2; and

(B) File one copy of the statement with the National Futures Association at its headquarters office (Attn: Director of Compliance, Compliance Department).

(2) Each person who is exempt from registration as a commodity pool operator under paragraph (a)(1) or (a)(2) of this section and who is not registered as such pursuant to that exemption must:

(i)(A) Promptly furnish to each participant in each pool that it operates a copy of the monthly statement for the pool that such person received from a futures commission merchant pursuant to §1.33, and

(B) Clearly show on such statement, or on an accompanying supplemental statement, the net profit or loss on all commodity interests closed since the date of the previous statement; and

(ii)(A) Maintain all books and records prepared in connection with its activities as a commodity pool operator for a period of five years from the date of preparation, and

(B) Keep such books and records readily accessible during the first two years of the five-year period. All such books and records shall be open to inspection by any representative of the Commission or the United States Department of Justice.

(c) Each person who applies for registration as a commodity pool operator must include with its initial application the financial statements and other information required by §4.22(c) (1) through (5) for each pool it operates when such application is made. That information must be presented and computed in accordance with generally accepted accounting principles consistently applied. If the person is granted registration as a commodity pool operator, it must comply with this part 4 with respect to each pool it operates.

The provisions of this paragraph (c) shall apply even though such person was exempt from registration as a commodity pool operator pursuant to the provisions of paragraph (a) of this section at the time it applied for registration.

(d) If a person exempt from registration under the Act as a commodity pool operator under paragraph (a)(1) or (a)(2) of this section registers as a commodity pool operator, that person must comply with this part 4 as if such person were not exempt from registration as a commodity pool operator.

(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 57011, Dec. 22, 1982; 50 FR 15883, Apr. 23, 1985]

#### §4.14 Exemption from registration as a commodity trading advisor.

(a) A person is not required to register under the Act as a commodity trading advisor if:

(1) It is a dealer, processor, broker, or seller in cash market transactions of any commodity (or product thereof) and the person's commodity trading advice is solely incidental to the conduct of its cash market business;

(2) It is a non-profit, voluntary membership, trade association or farm organization and the person's commodity trading advice is solely incidental to the conduct of its business as such association or organization;

(3) It is registered under the Act as an associated person and the person's commodity trading advice is issued solely in connection with its employment as an associated person;

(4) It is registered under the Act as a commodity pool operator and the person's commodity trading advice is directed solely to, and for the sole use of, the pool or pools for which it is so registered;

(5) It is exempt from registration as a commodity pool operator and the person's commodity trading advice is directed solely to, and for the sole use of, the pool or pools for which it is so exempt;

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(6) It is registered under the Act as an introducing broker and the person's trading advice is solely in connection with its business as an introducing broker;

(7) It is registered under the Act as a leverage transaction merchant and the person's trading advice is solely in connection with its business as a leverage transaction merchant;

(8) It is registered as an investment adviser under the Investment Advisers Act of 1940 or is excluded from the definition of the term "investment adviser" pursuant to the provisions of sections 202(a)(2) and 202(a)(11) of that Act; *Provided, however*, That:

(i) The person's commodity interest trading advice:

(A) Is directed solely to, and for the sole use of, entities which are excluded from the definition of the term "pool" under § 4.5 or are qualifying entities under § 4.5 for which a notice of eligibility has been filed;

(B) Is solely incidental to its business of providing securities advice to each such entity; and

(C) Employs only such strategies as are consistent with eligibility status under § 4.5.

(ii) The person is not otherwise holding itself out as a commodity trading advisor; and

(iii) Prior to the date upon which such person intends to engage in business as a commodity trading advisor, the person files a notice of exemption with the Commission.

(A) The notice must provide the name, main business address and main business telephone number of the person filing the notice.

(B) The notice must represent that the person qualifies for exemption under this § 4.14(a)(8) and that it will comply with the criteria of this section.

(C) The notice shall be effective upon filing; *Provided, however*, That an exemption claimed hereunder shall cease to be effective upon any change which would render the representations made pursuant to paragraph (a)(8)(iii)(B) of this section inaccurate or the continuation of such representations false or misleading.

(iv) In the event a person who has filed a notice of exemption under this

paragraph (a)(8) subsequently becomes registered as a commodity trading advisory, the person must file a supplemental notice of that fact.

(v) Any notice required to be filed hereunder must be:

(A) In writing;

(B) Signed by a duly authorized representative; and

(C) Filed, along with a copy, with the Commission at the address specified in § 4.2.

(D) A copy also must be filed with the National Futures Association at its headquarters office (ATTN: Director of Compliance, Compliance Department); or

(9) It does not engage in any of the following activities:

(i) Directing client accounts; or

(ii) Providing commodity trading advice based on, or tailored to, the commodity interest or cash market positions or other circumstances or characteristics of particular clients.

(b) For purposes of this section, "cash market transactions" shall not include transactions involving contracts for the purchase or sale of a commodity for future delivery or transactions subject to Commission regulation under section 4c or 19 of the Act.

(c) If a person exempt from registration under the Act as a commodity trading advisor under paragraph (a) of this section registers as a commodity trading advisor, that person must comply with this part 4 as if such person were not exempt from registration as a commodity trading advisor.

(Secs. 8a(5) and 19 of the Commodity Exchange Act, as amended, 7 U.S.C. 12a(5) and 23 (1982); 5 U.S.C. 552 and 552b)

[46 FR 26013, May 8, 1981; 46 FR 26761, May 15, 1981; 48 FR 35298, Aug. 3, 1983; 49 FR 5526, Feb. 13, 1984; 52 FR 41985, Nov 2, 1987; 52 FR 43827, Nov 16, 1987; 65 FR 12943, Mar. 10, 2000]

### § 4.15 Continued applicability of anti-fraud section.

The provisions of section 40 of the Act shall apply to any person even though such person is exempt from registration under this part 4, and it shall continue to be unlawful for any such person to violate section 40 of the Act.

[50 FR 15884, Apr. 23, 1985]