

industry experience might include the practice of law in the fields of futures or securities, or employment as a trader or risk manager at a brokerage or end-user firm. Likewise, the Commission believes that registrants should employ as ethics training providers only those persons they reasonably believe in good faith are not subject to any investigations or to bars to registration or to service on a self-regulatory organization governing board or disciplinary panel.

(f)(1) With regard to the frequency and duration of ethics training, it is permissible for a firm to require training on whatever periodic basis and duration the registrant (and relevant self-regulatory organizations) deems appropriate. It may even be appropriate not to require any such specific requirements as, for example, where ethics training could be termed ongoing. For instance, a small entity, sole proprietorship, or even a small section in an otherwise large firm, might satisfy its obligation to remain current with regard to ethics obligations by distribution of periodicals, legal cases, or advisories. Use of the latest information technology, such as Internet websites, can be useful in this regard. In such a context, there would be no structured classes, but the goal should be a continuous awareness of changing industry standards. A corporate culture to maintain high ethical standards should be established on a continuing basis.

(2) On the other hand, larger firms which transact business with a larger segment of the public may wish to implement a training program that requires periodic classwork. In such a situation, the Commission believes it appropriate for registrants to maintain such records as evidence of attendance and of the materials used for training. In the case of a floor broker or floor trader, the applicable contract market or registered derivatives transaction execution facility should maintain such evidence on behalf of its member. This evidence of ethics training could be offered to demonstrate fitness and overall compliance during audits by self-regulatory organizations, and during reviews of contract market or registered derivatives transaction execution facility operations.

(g) The methodology of such training may also be flexible. Recent innovations in information technology have made possible new, fast, and cost-efficient ways for registrants to maintain their awareness of events and changes in the commodity interest markets. In this regard, the Commission recognizes that the needs of a firm will vary according to its size, personnel, and activities. No format of classes will be required. Rather, such training could be in the form of formal class lectures, video presentation, Internet transmission, or by simple distribution of written materials. These options should provide sufficiently flexible means for adherence to Congressional intent in this area.

(h) Finally, it should be noted that self-regulatory organizations and industry associations will have a significant role in this area. Such organizations may have separate ethics and proficiency standards, including ethics training and testing programs, for their own members.

[66 FR 53521, Oct. 23, 2001]

## **PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS**

### **Subpart A—General Provisions, Definitions and Exemptions**

Sec.

- 4.1 Requirements as to form.
- 4.2 Requirements as to filing.
- 4.3-4.4 [Reserved]
- 4.5 Exclusion for certain otherwise regulated persons from the definition of the term "commodity pool operator."
- 4.6 Exclusion for certain otherwise regulated persons from the definition of the term "commodity trading advisor."
- 4.7 Exemption from certain part 4 requirements for commodity pool operators with respect to offerings to qualified eligible persons and for commodity trading advisors with respect to advising qualified eligible persons.
- 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.
- 4.9 [Reserved]
- 4.10 Definitions.
- 4.11 Exemption from section 4n(3)(B).
- 4.12 Exemption from provisions of part 4.
- 4.13 Exemption from registration as a commodity pool operator.
- 4.14 Exemption from registration as a commodity trading advisor.
- 4.15 Continued applicability of antifraud section.
- 4.16 Prohibited representations.

### **Subpart B—Commodity Pool Operators**

- 4.20 Prohibited activities.
- 4.21 Required delivery of pool Disclosure Document.
- 4.22 Reporting to pool participants.
- 4.23 Recordkeeping.
- 4.24 General disclosures required.
- 4.25 Performance disclosures.
- 4.26 Use, amendment and filing of Disclosure Document.

### **Subpart C—Commodity Trading Advisors**

- 4.30 Prohibited activities.
- 4.31 Required delivery of Disclosure Document to prospective clients.

## Commodity Futures Trading Commission

## § 4.2

- 4.32 Trading on a Registered Derivatives Transaction Execution Facility for Non-Institutional Customers.
- 4.33 Recordkeeping.
- 4.34 General disclosures required.
- 4.35 Performance disclosures.
- 4.36 Use, amendment and filing of Disclosure Document.

### Subpart D—Advertising

- 4.40 [Reserved]
- 4.41 Advertising by commodity pool operators, commodity trading advisors, and the principals thereof.

APPENDIX A TO PART 4—GUIDANCE ON THE APPLICATION OF RULE 4.13(a)(3) IN THE FUND-OF-FUNDS CONTEXT

APPENDIX B TO PART 4—ADJUSTMENTS FOR ADDITIONS AND WITHDRAWALS IN THE COMPUTATION OF RATE OF RETURN

AUTHORITY: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

SOURCE: 46 FR 26013, May 8, 1981, unless otherwise noted.

### Subpart A—General Provisions, Definitions and Exemptions

#### § 4.1 Requirements as to form.

(a) Each document distributed pursuant to this part 4 must be:

- (1) Clear and legible;
- (2) Paginated; and
- (3) Fastened in a secure manner.

(b) Information that is required to be “prominently” disclosed under this part 4 must be displayed in capital letters and in boldface type.

(c) Where a document is distributed through an electronic medium:

- (1) The requirements of paragraphs (a) of this section shall mean that required information must be presented in a format that is readily communicated to the recipient. For purposes of this paragraph (c), information is readily communicated to the recipient if it is accessible to the ordinary user by means of commonly available hardware and software and if the electronically delivered document is organized in substantially the same manner as would be required for a paper document with respect to the order of presentation and the relative prominence of

information. Where a table of contents is required, the electronic document must either include page numbers in the text or employ a substantially equivalent cross-reference or indexing method or tool;

(2) The requirements of paragraph (b) of this section shall mean that such information must be presented in capital letters and boldface type or, as warranted in the context, another manner reasonably calculated to draw the recipient’s attention to the information and accord it greater prominence than the surrounding text; and

(3) A complete paper version of the document that complies with the applicable provisions of this part 4 must be provided to the recipient upon request.

(d) If graphic, image or audio material is included in a document delivered to a prospective or existing client or pool participant, and such material cannot be reproduced in an electronic filing, a fair and accurate narrative description, tabular representation or transcript of the omitted material must be included in the filed version of the document. Inclusion of such material in a Disclosure Document shall be subject to the requirements of § 4.24(v) in the case of pool Disclosure Documents, and § 4.34(n) in the case of commodity trading advisor Disclosure Documents.

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

[46 FR 26013, May 8, 1981, as amended at 46 FR 63035, Dec. 30, 1981; 62 FR 39115, July 22, 1997]

#### § 4.2 Requirements as to filing.

(a) All material filed with the Commission under this part 4 must be filed with the Commission at its Washington, DC office (Att: Division of Clearing and Intermediary Oversight, CFTC, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581); Provided, however, that Disclosure Documents, profile documents, and amendments thereto may be filed at the following electronic mail address: [ddoc-efile@cftc.gov](mailto:ddoc-efile@cftc.gov).