

#### § 4.15

#### 17 CFR Ch. I (4-1-04 Edition)

owner is a client will not affect the applicability of paragraph (a)(10) of this section with regard to any other owner;

(B)(i) A general partner of a limited partnership, or other person acting as a commodity trading advisor to the partnership, may count the limited partnership as one person; and

(2) A manager or managing member of a limited liability company, or any other person acting as a commodity trading advisor to the company, may count the limited liability company as one person.

(C) A commodity trading advisor that has its principal office and place of business outside of the United States, its territories or possessions must count only clients that are residents of the United States, its territories and possessions; a commodity trading advisor that has its principal office and place of business in the United States or in any territory or possession thereof must count all clients.

(iii)  *Holding Out.* Any commodity trading advisor relying on paragraph (a)(10) of this section shall not be deemed to be holding itself out generally to the public as a commodity trading advisor, within the meaning of section 4m(1) of the Act, solely because it participates in a non-public offering of interests in a collective investment vehicle under the Securities Act of 1933.

(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)(1) Subject to the provisions of paragraph (c)(2) of this section, if a person who is eligible for exemption from registration as a commodity trading advisor under this section nonetheless registers as a commodity trading advisor, the person must comply with the provisions of this part with respect to those clients for which it could have claimed an exemption from registration hereunder.

(2) If a person provides commodity interest trading advice to a client described in paragraph (a) of this section

and to a client for which it must be, and is, registered as a commodity trading advisor, the person is exempt from the requirements applicable to a registered commodity trading advisor with respect to the clients so described;  *Provided,* That the person furnishes in writing to each prospective client described in paragraph (a) of this section a statement that it will provide commodity interest trading advice to the client as if it was exempt from registration as a commodity trading advisor;  *Provided Further,* That the person provides to each existing client described in paragraph (a) of this section a right to terminate its advisory agreement, and informs such client of that right no later than the time the person commences to provide commodity interest trading advice to the client as if the person was exempt from registration.

(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; 67 FR 77411, Dec. 18, 2002; 68 FR 47233, Aug. 8, 2003; 68 FR 52837, Sept. 8, 2003; 68 FR 59114, Oct. 14, 2003]

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

The provisions of section 4o 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 4o of the Act.

[50 FR 15884, Apr. 23, 1985]

#### § 4.16 Prohibited representations.

It shall be unlawful for any commodity pool operator, commodity trading advisor, principal thereof or person who solicits therefor to represent or imply in any manner whatsoever that such commodity pool operator or commodity trading advisor has been sponsored, recommended or approved, or that its abilities or qualifications have in any respect been passed upon, by the Commission, the Federal government or any agency thereof.