

Subpart B—Commodity Pool Operators

§ 4.20 Prohibited activities.

(a)(1) Except as provided in paragraph (a)(2) of this section, a commodity pool operator must operate its pool as an entity cognizable as a legal entity separate from that of the pool operator.

(2) The Commission may exempt a corporation from the requirements of paragraph (a)(1) of this section if:

(i) The corporation represents in writing to the Commission that each participant in its pool will be issued stock or other evidences of ownership in the corporation for all funds, securities or other property that the participant contributes for the purchase of an ownership interest in the pool;

(ii) The corporation demonstrates to the satisfaction of the Commission that it has established procedures adequate to assure compliance with paragraphs (b) and (c) of this section; and

(iii) The Commission finds that the exemption is not contrary to the public interest and to the purposes of the provision from which the exemption is sought.

(b) All funds, securities or other property received by a commodity pool operator from an existing or prospective pool participant for the purchase of an interest or as an assessment (whether voluntary or involuntary) on an interest in a pool that it operates or that it intends to operate must be received in the pool's name.

(c) No commodity pool operator may commingle the property of any pool that it operates or that it intends to operate with the property of any other person.

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

[46 FR 26013, May 8, 1981, as amended at 46 FR 34311, July 1, 1981; 46 FR 63035, Dec. 30, 1981]

§ 4.21 Required delivery of pool Disclosure Document.

(a)(1) Subject to the provisions of paragraph (a)(2) of this section, each commodity pool operator registered or required to be registered under the Act must deliver or cause to be delivered to

a prospective participant in a pool that it operates or intends to operate a Disclosure Document for the pool prepared in accordance with §§ 4.24 and 4.25 by no later than the time it delivers to the prospective participant a subscription agreement for the pool; *Provided*, That any information distributed in advance of the delivery of the Disclosure Document to a prospective participant is consistent with or amended by the information contained in the Disclosure Document and with the obligations of the commodity pool operator under the Act, the Commission's regulations issued thereunder, and the laws of any other applicable federal or state authority; *Provided, further*, That in the event such previously distributed information is amended by the Disclosure Document in any material respect, the prospective participant must be in receipt of the Disclosure Document at least 48 hours prior to its subscription being accepted by the pool operator.

(2) For the purpose of the Disclosure Document delivery requirement, including any offering memorandum delivered pursuant to § 4.7(b)(1) or 4.12(b)(2)(i), the term "prospective pool participant" does not include a commodity pool operated by a pool operator that is the same as, or that controls, is controlled by, or is under common control with, the pool operator of the offered pool.

(b) The commodity pool operator may not accept or receive funds, securities or other property from a prospective participant unless the pool operator first receives from the prospective participant an acknowledgment signed and dated by the prospective participant stating that the prospective participant received a Disclosure Document for the pool. Where a Disclosure Document is delivered to a prospective pool participant by electronic means, in lieu of a manually signed and dated acknowledgment, the pool operator 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