

#### § 4.26

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

pools operated by and accounts traded by the pool operator is not required to be disclosed.

(B) In addition, if the pool operator, or if applicable, the trading manager, has not operated for at least three years any commodity pool in which seventy-five percent or more of the contributions to the pool were made by persons unaffiliated with the commodity pool operator, the trading manager, the pool's commodity trading advisors or their respective principals, the pool operator must also disclose the performance of each other pool operated by and account traded by the trading principals of the pool operator (and of the trading manager, as applicable) unless such performance does not differ in any material respect from the performance of the offered pool and the pool operator (and trading manager, if any) disclosed in the Disclosure Document.

(ii) If neither the pool operator or trading manager (if any), nor any of its trading principals has operated any other pools or traded any other accounts, the pool operator must prominently display the following statement: NEITHER THIS POOL OPERATOR (TRADING MANAGER, IF APPLICABLE) NOR ANY OF ITS TRADING PRINCIPALS HAS PREVIOUSLY OPERATED ANY OTHER POOLS OR TRADED ANY OTHER ACCOUNTS. If the commodity pool operator or trading manager, if applicable, is a sole proprietorship, reference to its trading principals may be deleted from the prescribed statement.

(3) *Major commodity trading advisor performance.* (i) The commodity pool operator must disclose the performance of any accounts (including pools) directed by a major commodity trading advisor in accordance with paragraphs (a)(1)(ii) (C) through (G) of this § 4.25.

(ii) If a major commodity trading advisor has not previously traded accounts, the pool operator must prominently display the following statement:

(name of the major commodity trading advisor), A COMMODITY TRADING ADVISOR THAT HAS DISCRETIONARY TRADING AUTHORITY OVER (percentage of the pool's funds available for commodity interest trading allocated to that trading advisor) PER-

CENT OF THE POOL'S FUTURES AND COMMODITY OPTION TRADING HAS NOT PREVIOUSLY DIRECTED ANY ACCOUNTS.

(4) *Major investee pool performance.* (i) The commodity pool operator must disclose the performance of any major investee pool.

(ii) If a major investee pool has not commenced trading, the pool operator must prominently display the following statement:

(name of the major investee pool), AN INVESTEE POOL THAT IS ALLOCATED (percentage of the pool assets allocated to that investee pool) PERCENT OF THE POOL'S ASSETS HAS NOT COMMENCED TRADING.

(5) With respect to commodity trading advisors and investee pools for which performance is not required to be disclosed pursuant to § 4.25(c) (3) and (4), the pool operator must provide a summary description of the performance history of each of such advisors and pools including the following information, provided that where the pool operator uses a two-part document pursuant to the rules promulgated by a registered futures association pursuant to Section 17(j) of the Act, such summary description may be provided in the second part of the two-part document:

(i) Monthly return parameters (highs and lows);

(ii) Historical volatility and degree of leverage; and

(iii) Any material differences between the performance of such advisors and pools as compared to that of the offered pool's major trading advisors and major investee pools.

[60 FR 38186, July 25, 1995, as amended at 63 FR 58303, Oct. 30, 1998; 68 FR 42967, July 21, 2003]

#### § 4.26 Use, amendment and filing of Disclosure Document.

(a)(1) Subject to paragraph (c) of this section, all information contained in the Disclosure Document and, where used, profile document, must be current as of the date of the Document; Provided, however, that performance information may be current as of a date not more than three months prior to the date of the Document.

(2) No commodity pool operator may use a Disclosure Document or profile

## Commodity Futures Trading Commission

## § 4.31

document dated more than nine months prior to the date of its use.

(b) The commodity pool operator must attach to the Disclosure Document the most current Account Statement and Annual Report for the pool required to be distributed in accordance with § 4.22; provided, however, that in lieu of the most current Account Statement the commodity pool operator may provide performance information for the pool current as of a date not more than sixty days prior to the date on which the Disclosure Document is distributed and covering the period since the most recent performance information contained in the Disclosure Document.

(c)(1) If the commodity pool operator knows or should know that the Disclosure Document or profile document is materially inaccurate or incomplete in any respect, it must correct that defect and must distribute the correction to:

(i) All existing pool participants within 21 calendar days of the date upon which the pool operator first knows or has reason to know of the defect; and

(ii) Each previously solicited prospective pool participant prior to accepting or receiving funds, securities or other property from any such prospective participant.

(2) The pool operator may furnish the correction by any of the following means:

(i) An amended Disclosure Document or profile document;

(ii) With respect to a hard copy of the Disclosure Document, a sticker affixed to the Disclosure Document; or

(iii) Other similar means.

(3) The pool operator may not use the Disclosure Document or profile document until such correction has been made.

(d) Except as provided by § 4.8:

(1) The commodity pool operator must file with the National Futures Association one copy of the Disclosure Document and, where used, profile document for each pool that it operates or that it intends to operate not less than 21 calendar days prior to the date the pool operator first intends to deliver such Document or documents to a prospective participant in the pool; and

(2) The commodity pool operator must file with the National Futures Association one copy of the subsequent amendments to the Disclosure Document and, where used, profile document for each pool that it operates or that it intends to operate within 21 calendar days of the date upon which the pool operator first knows or has reason to know of the defect requiring the amendment.

[60 FR 38188, July 25, 1995, as amended at 62 FR 18268, Apr. 15, 1997; 65 FR 58649, Oct. 2, 2000; 67 FR 42710, June 25, 2002; 67 FR 77411, Dec. 18, 2002; 68 FR 12584, Mar. 17, 2003]

### Subpart C—Commodity Trading Advisors

#### § 4.30 Prohibited activities.

No commodity trading advisor may solicit, accept or receive from an existing or prospective client funds, securities or other property in the trading advisor's name (or extend credit in lieu thereof) to purchase, margin, guarantee or secure any commodity interest of the client; *Provided, however,* That this section shall not apply to a future commission merchant that is registered as such under the Act or to a leverage transaction merchant that is registered as a commodity trading advisor under the Act.

(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))

[47 FR 57011, Dec. 22, 1982]

#### § 4.31 Required delivery of Disclosure Document to prospective clients.

(a) Each commodity trading advisor registered or required to be registered under the Act must deliver or cause to be delivered to a prospective client a Disclosure Document containing the information set forth in §§ 4.34 and 4.35 for the trading program pursuant to which the trading advisor seeks to direct the client's commodity interest account or to guide the client's commodity interest trading by means of a systematic program that recommends specific transactions by no later than the time the trading advisor delivers to the prospective client an advisory