

#### § 4.32

agreement to direct or guide the client's account; *Provided*, That any information distributed in advance of the delivery of the Disclosure Document to a prospective client is consistent with or amended by the information contained in the Disclosure Document and with the obligations of the commodity trading advisor 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 the advisory agreement being accepted by the trading advisor.

(b) The commodity trading advisor may not enter into an agreement with a prospective client to direct the client's commodity interest account or to guide the client's commodity interest trading unless the trading advisor first receives from the prospective client an acknowledgment signed and dated by the prospective client stating that the client received a Disclosure Document for the trading program pursuant to which the trading advisor will direct his account or will guide his trading. Where a Disclosure Document is delivered to a prospective client by electronic means, in lieu of a manually signed and dated acknowledgment the trading advisor 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 § 4.33(a)(2) to retain the acknowledgment specified in this paragraph (b) applies equally to such substitute evidence of receipt, which must be retained either in hard copy form or in another form approved by the Commission.

[60 FR 38189, July 25, 1995, as amended at 62 FR 39115, July 22, 1997; 68 FR 47235, Aug. 8, 2003; 68 FR 59114, Oct. 14, 2003]

#### § 4.32 Trading on a Registered Derivatives Transaction Execution Facility for Non-Institutional Customers.

(a) A registered commodity trading advisor may enter trades on or subject to the rules of a registered derivatives

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transaction execution facility on behalf of a client who does not qualify as an "institutional customer" as defined in § 1.3(g) of this chapter, provided that the trading advisor:

(1) Directs the client's commodity interest account;

(2) Directs accounts containing total assets of not less than \$25,000,000 at the time the trade is entered; and

(3) Discloses to the client that the trading advisor may enter trades on or subject to the rules of a registered derivatives transaction execution facility on the client's behalf.

(b) The commodity interest account of a client described in paragraph (a) of this section must be carried by a registered futures commission merchant.

[66 FR 53522, Oct. 23, 2001]

#### § 4.33 Recordkeeping.

Each commodity trading advisor registered or required to be registered under the Act must make and keep the following books and records in an accurate, current and orderly manner at its main business office and in accordance with § 1.31. If the commodity trading advisor's main business office is located outside the United States, its territories or possessions, then upon the request of a Commission representative the trading advisor must provide such books and records as requested at the place designated by the representative in the United States, its territories or possessions within 72 hours after receipt of the request.

(a) Concerning the clients and subscribers of the commodity trading advisor:

(1) The name and address of each client and each subscriber.

(2) The acknowledgement specified in § 4.31(b).

(3) All powers of attorney and other documents, or copies thereof, authorizing the commodity trading advisor to direct the commodity interest account of a client or subscriber.

(4) All other written agreements, or copies thereof, entered into by the commodity trading advisor with any client or subscriber.

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(5) A list or other record of all commodity interest accounts of clients directed by the commodity trading advisor and of all transactions effected therefor.

(6) Copies of each confirmation of a commodity interest transaction, each purchase and sale statement and each monthly statement received from a futures commission merchant.

(7) The original or a copy of each report, letter, circular, memorandum, publication, writing, advertisement or other literature or advice (including the texts of standardized oral presentations and of radio, television, seminar or similar mass media presentations) distributed or caused to be distributed by the commodity trading advisor to any existing or prospective client or subscriber, showing the first date of distribution if not otherwise shown on the document.

(b) Concerning the commodity trading advisor:

(1) An itemized daily record of each commodity interest transaction of the commodity trading advisor, showing the transaction date, quantity, commodity interest, and, as applicable, price or premium, delivery month or expiration date, whether a put or a call, strike price, underlying contract for future delivery or underlying physical, the futures commission merchant carrying the account and the introducing broker, if any, whether the commodity interest was purchased, sold, exercised, or expired, and the gain or loss realized.

(2) Each confirmation of a commodity interest transaction, each purchase and sale statement and each monthly statement furnished by a futures commission merchant to (i) the commodity trading advisor relating to a personal account of the trading advisor, and (ii) each principal of the trading advisor relating to a personal account of such principal.

(3) Books and records of all other transactions in all other business dealings and of all cash market transactions in which the commodity trading advisor and each principal thereof engages. Those books and records must include, as applicable, books and records of the type specified in paragraphs (a)(1)

through (a)(7) of this section and in paragraphs (a)(1) through (a)(8) of § 4.23.

(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 57012, Dec. 22, 1982; 48 FR 35299, Aug. 3, 1983. Redesignated and amended at 60 FR 38189, July 25, 1995]

### § 4.34 General disclosures required.

Except as otherwise provided herein, a Disclosure Document must include the following information.

(a) *Cautionary Statement.* The following Cautionary Statement must be prominently displayed on the cover page of the Disclosure Document:

THE COMMODITY FUTURES TRADING COMMISSION HAS NOT PASSED UPON THE MERITS OF PARTICIPATING IN THIS TRADING PROGRAM NOR HAS THE COMMISSION PASSED ON THE ADEQUACY OR ACCURACY OF THIS DISCLOSURE DOCUMENT.

(b) *Risk Disclosure Statement.* (1) The following Risk Disclosure Statement must be prominently displayed immediately following any disclosures required to appear on the cover page of the Disclosure Document as provided by the Commission, by any applicable federal or state securities laws and regulations or by any applicable laws of non-United States jurisdictions:

#### Risk Disclosure Statement

THE RISK OF LOSS IN TRADING COMMODITIES CAN BE SUBSTANTIAL. YOU SHOULD THEREFORE CAREFULLY CONSIDER WHETHER SUCH TRADING IS SUITABLE FOR YOU IN LIGHT OF YOUR FINANCIAL CONDITION. IN CONSIDERING WHETHER TO TRADE OR TO AUTHORIZE SOMEONE ELSE TO TRADE FOR YOU, YOU SHOULD BE AWARE OF THE FOLLOWING:

IF YOU PURCHASE A COMMODITY OPTION YOU MAY SUSTAIN A TOTAL LOSS OF THE PREMIUM AND OF ALL TRANSACTION COSTS.

IF YOU PURCHASE OR SELL A COMMODITY FUTURE OR SELL A COMMODITY OPTION YOU MAY SUSTAIN A TOTAL LOSS OF THE INITIAL MARGIN FUNDS AND ANY ADDITIONAL FUNDS THAT YOU DEPOSIT WITH YOUR BROKER TO ESTABLISH OR MAINTAIN YOUR POSITION. IF