

## Commodity Futures Trading Commission

## § 4.41

(9) *Required legend.* Any past performance presentation, whether or not required by Commission rules, must be preceded with the following statement, prominently displayed:

PAST PERFORMANCE IS NOT NECESSARILY INDICATIVE OF FUTURE RESULTS.

(b) *Performance to be disclosed.* Except as provided in § 4.35(a)(7), the commodity trading advisor must disclose the actual performance of all accounts directed by the commodity trading advisor and by each of its trading principals; *Provided, however,* that if the trading advisor or its trading principals previously have not directed any accounts, the trading advisor must prominently disclose this fact with one of the following statements, as applicable:

(1) THIS TRADING ADVISOR PREVIOUSLY HAS NOT DIRECTED ANY ACCOUNTS; or

(2) NONE OF THE TRADING PRINCIPALS OF THIS TRADING ADVISOR HAS PREVIOUSLY DIRECTED ANY ACCOUNTS; or

(3) NEITHER THIS TRADING ADVISOR NOR ANY OF ITS TRADING PRINCIPALS HAVE PREVIOUSLY DIRECTED ANY ACCOUNTS.

If the commodity trading advisor is a sole proprietorship, reference to its trading principals need not be included in the prescribed statement.

[60 FR 38191, July 25, 1995, as amended at 68 FR 42967, July 21, 2003; 68 FR 47235, Aug. 8, 2003]

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

(a) Subject to paragraph (c) of this section, all information contained in the Disclosure Document must be current as of the date of the Document; *Provided, however,* that performance information must be current as of a date not more than three months preceding the date of the Document.

(b) No commodity trading advisor may use a Disclosure Document dated more than nine months prior to the date of its use.

(c)(1) If the commodity trading advisor knows or should know that the Disclosure Document is materially inaccurate or incomplete in any respect, it

must correct that defect and must distribute the correction to:

(i) All existing clients in the trading program within 21 calendar days of the date upon which the trading advisor first knows or has reason to know of the defect; and

(ii) Each previously solicited prospective client for the trading program prior to entering into an agreement to direct or to guide such prospective client's commodity interest account pursuant to the program. The trading advisor may furnish the correction by way of an amended Disclosure Document, a sticker on the Document, or other similar means.

(2) The trading advisor may not use the Disclosure Document until such correction is made.

(d)(1) The commodity trading advisor must file with the National Futures Association one copy of the Disclosure Document for trading program that it offers or that it intends to offer not less than 21 calendar days prior to the date the trading advisor first intends to deliver the Document to a prospective client in the trading program; and

(2) The commodity trading advisor must file with the National Futures Association one copy of the subsequent amendments to the Disclosure Document for each trading program that it offers or that it intends to offer within 21 calendar days of the date upon which the trading advisor first knows or has reason to know of the defect requiring the amendment.

[60 FR 38192, July 25, 1995, as amended at 62 FR 18268, Apr. 15, 1997; 65 FR 58650, Oct. 2, 2000; 67 FR 77411, Dec. 18, 2002]

## Subpart D—Advertising

### § 4.40 [Reserved]

### § 4.41 Advertising by commodity pool operators, commodity trading advisors, and the principals thereof.

(a) No commodity pool operator, commodity trading advisor, or any principal thereof, may advertise in a manner which:

(1) Employs any device, scheme or artifice to defraud any participant or client or prospective participant or client; or

(2) Involves any transaction, practice or course of business which operates as a fraud or deceit upon any participant or client or any prospective participant or client.

(b)(1) No person may present the performance of any simulated or hypothetical commodity interest account, transaction in a commodity interest or series of transactions in a commodity interest of a commodity pool operator, commodity trading advisor, or any principal thereof, unless such performance is accompanied by one of the following:

(i) The following statement: “Hypothetical or simulated performance results have certain inherent limitations. Unlike an actual performance record, simulated results do not represent actual trading. Also, since the trades have not actually been executed, the results may have under- or over-compensated for the impact, if any, of certain market factors, such as lack of liquidity. Simulated trading programs in general are also subject to the fact that they are designed with the benefit of hindsight. No representation is being made that any account will or is likely to achieve profits or losses similar to those shown;” or

(ii) A statement prescribed pursuant to rules promulgated by a registered futures association pursuant to section 17(j) of the Act.

(2) If the presentation of such simulated or hypothetical performance is other than oral, the prescribed statement must be prominently disclosed.

(c) The provisions of this section shall apply:

(1) To any publication, distribution or broadcast of any 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, and

(2) Regardless of whether the commodity pool operator or commodity trading advisor is exempt from registration under the Act.

(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; 60 FR 38192, July 25, 1995]

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

The following provides guidance on the application of the trading limits of Rule 4.13(a)(3)(ii) to commodity pool operators (CPOs) who operate “fund-of-funds.” For the purpose of this Appendix A, it is presumed that the CPO can comply with all of the other requirements of Rule 4.13(a)(3). It also is presumed that where the investor fund CPO is relying on its own computations, the investor fund is participating in each investee fund that trades commodity interests as a passive investor, with limited liability (*e.g.*, as a limited partner of a limited partnership or a non-managing member of a limited liability company). Fund-of-funds CPOs who seek to claim exemption from registration under Rule 4.13(a)(1), (a)(2) or (a)(4) may do so without regard to the trading engaged in by an investee fund, because none of the registration exemptions set forth in those rules concerns limits on or levels of commodity interest trading. Persons whose fact situations do not fit any of the scenarios below should contact Commission staff to discuss the applicability of the registration exemption in Rule 4.13(a)(3) to their particular situations.

1. *Situation:* An investor fund CPO allocates the fund’s assets to one or more investee funds, none of which meets the trading limits of Rule 4.13(a)(3) and each of which is operated by a registered CPO. It does not allocate any of the investor fund’s assets directly to commodity interest trading.

*Application:* The investor fund CPO may claim relief under Rule 4.13(a)(3) provided the investor fund itself meets the trading limits of Rule 4.13(a)(3)(ii)(A).

2. *Situation:* An investor fund CPO allocates the fund’s assets to one or more investee funds, each having a CPO who is either: (1) itself claiming exemption from CPO registration under Rule 4.13(a)(3); or (2) a registered CPO that is complying with the trading restrictions of Rule 4.13(a)(3). It does not allocate any of the investor fund’s assets directly to commodity interest trading.

*Application:* The investor fund CPO fund may rely upon the representations of the investee fund CPOs that they are complying with the trading limits of Rule 4.13(a)(3).

3. *Situation:* An investor fund CPO allocates the fund’s assets to investee funds, each of which operates under a percentage restriction on the amount of margin or option premiums that may be used to establish its commodity interest positions (whether pursuant to Rule 4.12(b), Rule 4.13(a)(3)(ii)(A) or otherwise), by, *e.g.*, contractual agreement. It does not allocate any of the investor fund’s assets directly to commodity interest trading.

*Application:* The CPO of the investor fund may multiply the percentage restriction applicable to each investee fund by the percentage of the investor fund's allocation of assets to that investee fund to determine whether the CPO is operating the investor fund in compliance with Rule 4.13(a)(3)(ii)(A).

4. *Situation:* An investor fund CPO allocates the fund's assets to one or more investee funds, and it has actual knowledge of the trading limits and commodity interest positions of the investee funds, *e.g.*, where the CPO or one or more affiliates of the CPO operate the investee funds. (For this purpose, an "affiliate" is a person who controls, who is controlled by, or who is under common control with, the CPO.) It does not allocate any of the investor fund's assets directly to commodity interest trading.

*Application:* The investor fund CPO may aggregate commodity interest positions across investee funds to determine compliance with the trading restrictions of Rule 4.13(a)(3). For this purpose, the aggregate assets of the investee funds would be compared to the aggregate of their commodity interest positions (as to margin or as to net notional value). The investor fund CPO should use the results of this computation to determine its compliance with the trading limits of Rule 4.13(a)(3).

5. *Situation:* An investor fund CPO allocates no more than 50 percent of the fund's assets to investee funds that trade commodity interests (without regard to the level of commodity interest trading engaged in by those investee pools). It does not allocate any of the investor fund's assets directly to commodity interest trading.

*Application:* The investor fund CPO may claim relief under Rule 4.13(a)(3).

6. *Situation:* An investor fund CPO allocates the fund's assets to both investee funds and direct trading of commodity interests.

*Application:* The investor fund CPO must treat the amount of investor fund assets committed to such direct trading as a separate pool for purposes of determining compli-

ance with Rule 4.13(a)(3)(ii), such that the commodity interest trading of that pool must meet the criteria of Rule 4.13(a)(3)(ii) independently of the portion of investor fund assets allocated to investee funds.

[68 FR 47236, Aug. 8, 2003; 68 FR 52837, Sept. 8, 2003]

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

This appendix provides guidance concerning alternate methods by which commodity pool operators and commodity trading advisors may calculate the rate of return information required by Rules 4.25(a)(7)(i)(F) and 4.35(a)(6)(i)(F). The methods described herein are illustrative of calculation methods the Commission has reviewed and determined may be appropriate to address potential material distortions in the computation of rate of return due to additions and withdrawals that occur during a performance reporting period. A commodity pool operator or commodity trading advisor may present to the Commission proposals regarding any alternative method of addressing the effect of additions and withdrawals on the rate of return computation, including documentation supporting the rationale for use of that alternate method.

1. *Compounded Rate of Return Method*

Rate of return for a period may be calculated by computing the net performance divided by the beginning net asset value for each trading day in the period and compounding each daily rate of return to determine the rate of return for the period. If daily compounding is not practicable, the rate of return may be compounded on the basis of each sub-period within which an addition or withdrawal occurs during a month. For example:

	Account value	Change in value
Start of month .....	\$10,000	+10% (\$1,000 profit).
End of 1st acct. period .....	11,000	\$4,000 addition.
Start of 2nd acct. period .....	15,000	-20% (\$3,000 loss).
End of 2nd acct. period .....	12,000	\$2,000 withdrawal.
Start of 3rd acct. period .....	10,000	+25% (\$2,500 profit).
End of month .....	12,500	

Compounded ROR = [(1 + .1)(1 - .2)(1 + .25)] - 1 = 10%.

2. *Time-weighted method*

Time-weighting allows for adjustment to the denominator of the rate of return calculation for additions and withdrawals, weighted for the amount of time such funds were available during the period. Several methods exist for time-weighting, all of

which will have the same arithmetic result. These methods include: dividing the net performance by the average weighted account sizes for the month; dividing the net performance by the arithmetic mean of the account sizes for each trading day during the period; and taking the number of days funds

were available for trading divided by the total number of days in the period.

[68 FR 47236, Aug. 8, 2003; 68 FR 53430, Sept. 10, 2003]

## PART 5 [RESERVED]

### PART 7—CONTRACT MARKET RULES ALTERED OR SUPPLEMENTED BY THE COMMISSION

#### Subpart A—General Provisions

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7.1 Scope of rules.

#### Subpart B [Reserved]

7.100–7.101 [Reserved]

#### Subpart C—Board of Trade of the City of Chicago Rules

7.200 [Reserved]

7.201 Regulation 620.01(B).

AUTHORITY: 7 U.S.C. 7a(a)(12)(A) and 12a(7).

SOURCE: 45 FR 51526, Aug. 1, 1980, unless otherwise noted.

#### Subpart A—General Provisions

##### § 7.1 Scope of rules.

This part sets forth contract market rules altered or supplemented by the Commission pursuant to section 8a(7) of the Act.

#### Subpart B [Reserved]

§§ 7.100–7.101 [Reserved]

#### Subpart C—Board of Trade of the City of Chicago Rules

§ 7.200 [Reserved]

##### § 7.201 Regulation 620.01(B).

*Customers' claims and grievances.* The Arbitration Committee and Mixed Panels constituted pursuant to Regulation 620.02 have jurisdiction to arbitrate all customers' claims and grievances against any member or employee thereof which have arisen prior to the date the customer's claim is asserted. If the customer elects to initiate an arbitration proceeding of any customer claim or grievance, the member shall submit to arbitration in accordance

with these Arbitration Rules and Regulations. The Arbitration shall be initiated by delivery to the Administrator of (a) a Statement of Claim and a "Chicago Board of Trade Arbitration Submission Agreement for Customer's Claims and Grievances" signed by the customer or (b) a Statement of Claim and another arbitration agreement between the parties, which agreement conforms in all respects with any applicable requirements prescribed by the Commodity Futures Trading Commission. The refusal of any member or employee to sign the "Chicago Board of Trade Arbitration Submission Agreement for Customer's Claims and Grievances" shall not deprive the Arbitration Committee or a Mixed Panel constituted pursuant to Regulation 620.02 of jurisdiction to arbitrate customers' claims under these Arbitration Rules and Regulations. The Committee and Mixed Panels have jurisdiction to arbitrate a counterclaim asserted in such an arbitration, but only if it arises out of the transaction or occurrence that is the subject of the customer's claim or grievance and does not require for adjudication the presence of essential witnesses, parties or third persons over whom the Association does not have jurisdiction. Other counterclaims are subject to arbitration by the Committee, or a Mixed Panel, only if the customer agrees to the submission after the counterclaim has arisen.

[49 FR 10660, Mar. 22, 1984]

### PART 8—EXCHANGE PROCEDURES FOR DISCIPLINARY, SUMMARY, AND MEMBERSHIP DENIAL ACTIONS

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