

§ 4.8

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respect to the pool and any other pool the pool operator operates or intends to operate.

(ii) Any exemption from the requirements of § 4.31, 4.33, 4.34, 4.35 or 4.36 claimed hereunder shall not affect the obligation of the commodity trading advisor to comply with all other applicable provisions of Part 4, the Act and the Commission's rules and regulations, with respect to any qualified eligible person and any other client to which the commodity trading advisor provides or intends to provide commodity interest trading advice.

(e) *Insignificant deviations from a term, condition or requirement of § 4.7.* (1) A failure to comply with a term or condition of § 4.7 will not result in the loss of the exemption with respect to a particular pool or client if the commodity pool operator or the commodity trading advisor relying on the exemption shows that:

(i) The failure to comply did not pertain to a term, condition or requirement directly intended to protect that particular qualified eligible person;

(ii) The failure to comply was insignificant with respect to the exempt pool as a whole or to the particular exempt account; and

(iii) A good faith and reasonable attempt was made to comply with all applicable terms, conditions and requirements of § 4.7.

(2) A transaction made in reliance on § 4.7 must comply with all applicable terms, conditions and requirements of § 4.7. Where an exemption is established only through reliance upon paragraph (e)(1) of this section, the failure to comply shall nonetheless be actionable by the Commission.

[65 FR 47854, Aug. 4, 2000, as amended at 67 FR 77411, Dec. 18, 2002; 68 FR 47231, Aug. 8, 2003; 71 FR 8942, Feb. 22, 2006]

§ 4.8 Exemption from certain requirements of rule 4.26 with respect to pools offered or sold in certain offerings exempt from registration under the Securities Act.

(a) Notwithstanding paragraph (d) of § 4.26 and subject to the conditions specified herein, the registered commodity pool operator of a pool offered or sold solely to "accredited investors" as defined in 17 CFR 230.501 in an offer-

ing exempt from the registration requirements of the Securities Act of 1933 pursuant to Rule 505 or 506 of Regulation D, 17 CFR 230.505 or 230.506, may solicit, accept and receive funds, securities and other property from prospective participants in that pool upon filing with the Commission and providing to such participants the Disclosure Document for the pool.

(b) Notwithstanding paragraph (d) of § 4.26 and subject to the conditions specified herein, the registered commodity pool operator of a pool offered or sold in an offering exempt from the registration requirements of the Securities Act of 1933 pursuant to Rule 505 or 506 of Regulation D, 17 CFR 230.505 or 230.506, that is operated in compliance with, and has filed the notice required by, § 4.12(b) may solicit, accept and receive funds, securities and other property from prospective participants in that pool upon filing with the Commission and providing to such participants the Disclosure Document for the pool.

(c) The relief provided under § 4.8 is not available if an enforcement proceeding brought by the Commission under the Act or the regulations is pending against the commodity pool operator or any of its principals or if the commodity pool operator or any of its principals is subject to any statutory disqualification under §§ 8a(2) or 8a(3) of the Act.

[57 FR 34865, Aug. 7, 1992; 57 FR 41173, Sept. 9, 1992, as amended at 60 FR 38182, July 25, 1995]

§ 4.9 [Reserved]

§ 4.10 Definitions.

For purposes of this part:

(a) *Commodity interest* means:

(1) Any contract for the purchase or sale of a commodity for future delivery; and

(2) Any contract, agreement or transaction subject to Commission regulation under section 4c or 19 of the Act.

(b) *Net asset value* means total assets minus total liabilities, determined in accord with generally accepted accounting principles, with each position in a commodity interest accounted for at fair market value.