

person files a notice of eligibility as specified in §4.5 to claim the relief available under that section.

(b) Any person who has claimed an exclusion under this §4.6 must submit to such special calls as the Commission may make to require the person to demonstrate compliance with the provisions of paragraph (a) of this section.

(c) An exclusion claimed under this §4.6 shall cease to be effective upon any change which would render the person claiming the exclusion ineligible under paragraph (a) of this section.

[52 FR 41984, Nov. 2, 1987]

§ 4.7 Exemption from certain part 4 requirements with respect to pools whose participants are limited to qualified eligible participants and with respect to commodity trading advisors' accounts for clients that are qualified eligible clients.

(a) *Relief for commodity pool operators*—(1) *Definitions*. For the purposes of this section:

(i) An *exempt pool* means a pool that is operated pursuant to an effective claim for exemption under §4.7.

(ii) The term *qualified eligible participant* means:

(A) Any person, acting for its own account or for the account of a qualified eligible participant, who the commodity pool operator reasonably believes, at the time of the sale to that person of a pool participation in the exempt pool, is:

(1) A futures commission merchant registered pursuant to section 4d of the Act;

(2) A broker or dealer registered pursuant to section 15 of the Securities Exchange Act of 1934;

(3) A registered commodity pool operator who has been registered and active as such for two years or who operates pools which, in the aggregate, have total assets in excess of \$5,000,000;

(4) A registered commodity trading advisor who has been registered and active as such for two years or who provides commodity interest trading advice to commodity accounts which, in the aggregate, have total assets in excess of \$5,000,000 deposited at one or more futures commission merchants; or

(5) The commodity pool operator and the commodity trading advisor of the exempt pool offered or sold.

(B) Any person who the commodity pool operator reasonably believes, at the time of the sale to that person of a pool participation in the exempt pool:

(1)(i) Owns securities (including pool participations) of issuers not affiliated with such participant and other investments with an aggregate market value of at least \$2,000,000;

(ii) Has had on deposit with a futures commission merchant, for its own account at any time during the six-month period preceding the date of sale to that person of a pool participation in the exempt pool, at least \$200,000 in exchange-specified initial margin and option premiums for commodity interest transactions; or

(iii) Owns a portfolio comprised of a combination of the funds or property specified in paragraphs (a)(1)(ii)(B)(1)(i) and (ii) of this section in which the sum of the funds or property includable under paragraph (a)(1)(ii)(B)(1)(i), expressed as a percentage of the minimum amount required thereunder, and the amount of futures margin and option premiums includable under paragraph (a)(1)(ii)(B)(1)(ii), expressed as a percentage of the minimum amount required thereunder, equals at least one hundred percent. An example of a composite portfolio acceptable under this paragraph (a)(1)(ii)(B)(1)(iii) would consist of \$1,000,000 in securities and other property (50% of paragraph (a)(1)(ii)(B)(1)(i) and \$100,000 in exchange-specified initial margin and option premiums (50% of paragraph (a)(1)(ii)(B)(1)(ii));

(2) and is:

(i) An investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act not formed for the specific purpose of investing in the exempt pool;

(ii) A bank as defined in section 3(a)(2) of the Securities Act of 1933 (the "Securities Act"), or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Securities Act acting for its own account or for the account of a qualified eligible participant;

(iii) An insurance company as defined in section 2(13) of the Securities Act acting for its own account or for the account of a qualified eligible participant;

(iv) A plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000;

(v) An employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974, *Provided*, That the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is a bank, savings and loan association, insurance company, or registered investment adviser; or that the employee benefit plan has total assets in excess of \$5,000,000; or, if the plan is self-directed, that investment decisions are made solely by persons that are qualified eligible participants;

(vi) A private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940;

(vii) An organization described in section 501(c)(3) of the Internal Revenue Code, with total assets in excess of \$5,000,000;

(viii) A corporation, Massachusetts or similar business trust, or partnership, other than a pool, which has total assets in excess of \$5,000,000, and is not formed for the specific purpose of participating in the exempt pool;

(ix) A natural person whose individual net worth, or joint net worth with that person's spouse, at the time of his purchase in the exempt pool exceeds \$1,000,000;

(x) A natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has a reasonable expectation of reaching the same income level in the current year;

(xi) A pool, trust, insurance company separate account or bank collective trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of participating in the exempt pool, and whose participation in the exempt pool is directed by a qualified eli-

gible participant; *Provided*, That except where the pool, trust, insurance company separate account or bank collective trust would constitute a qualified eligible participant under paragraph (a)(1)(ii)(D) of this section, no more than 10 percent of the fair market value of the assets of such entity are used to purchase units in exempt pools; or

(xii) Except as provided for the governmental entities referenced in paragraph (a)(1)(ii)(B)(2)(iv) of this section, if otherwise authorized by law to engage in such transactions, a governmental entity (including the United States, a state, or a foreign government) or political subdivision thereof, or a multinational or supranational entity or an instrumentality, agency, or department of any of the foregoing;

(C) A person that is not a United States person for purposes of this Rule 4.7. For the purposes of this paragraph, the term "United States" means the United States, its states, territories or possessions, or an enclave of the United States government, its agencies or instrumentalities, and the following persons are not considered to be "United States persons":

(1) A natural person who is not a resident of the United States;

(2) A partnership, corporation or other entity, other than an entity organized principally for passive investment, organized under the laws of a foreign jurisdiction and which has its principal places of business in a foreign jurisdiction;

(3) An estate or trust, the income of which is not subject to United States income tax regardless of source;

(4) An entity organized principally for passive investment such as a pool, investment company or other similar entity *Provided*, That units of participation in the entity held by United States persons represent in the aggregate less than 10% of the beneficial interest in the entity, and that such entity was not formed principally for the purpose of facilitating investment by United States persons in a pool with respect to which the operator is exempt from certain requirements of part 4 of the Commission's regulations by virtue of its participants being non-United States persons;

(5) A pension plan for the employees, officers or principals of an entity organized and with its principal place of business outside the United States; and

(D) An entity in which all of the unit owners or participants are persons listed in paragraphs (a)(1)(ii)(A) or (a)(1)(ii)(B) of this section.

(2) *Relief.* Subject to the conditions specified in paragraph (a)(3) of this section, any registered commodity pool operator who offers or sells participations in a pool solely to qualified eligible participants in an offering which qualifies for exemption from the registration requirements of the Securities Act pursuant to section 4(2) of that Act or pursuant to Regulation S, 17 CFR 230.901 *et seq.*, and any bank registered as a commodity pool operator in connection with a pool that is a collective trust fund whose securities are exempt from registration under the Securities Act pursuant to section 3(a)(2) of that Act and are offered or sold, without marketing to the public, solely to qualified eligible participants, may claim any or all of the following relief with respect to such pool by filing the notice required by paragraph (a)(3) of this section.

(i) *Disclosure.* (A) Exemption from the specific requirements of §§4.21, 4.24, 4.25, and 4.26 with respect to each exempt pool; *Provided*, That if an offering memorandum is distributed in connection with soliciting prospective participants in the exempt pool, such offering memorandum must include all disclosures necessary to make the information contained therein, in the context in which it is furnished, not misleading; and that the following statement is prominently disclosed on the cover page of the offering memorandum, or, if none is provided, immediately above the signature line on the subscription agreement or other document that the prospective participant must execute to become a participant in the pool: "PURSUANT TO AN EXEMPTION FROM THE COMMODITY FUTURES TRADING COMMISSION IN CONNECTION WITH POOLS WHOSE PARTICIPANTS ARE LIMITED TO QUALIFIED ELIGIBLE PARTICIPANTS, AN OFFERING MEMORANDUM FOR THIS POOL IS NOT REQUIRED TO BE, AND HAS NOT BEEN, FILED WITH THE

COMMISSION. THE COMMODITY FUTURES TRADING COMMISSION DOES NOT PASS UPON THE MERITS OF PARTICIPATING IN A POOL OR UPON THE ADEQUACY OR ACCURACY OF AN OFFERING MEMORANDUM. CONSEQUENTLY, THE COMMODITY FUTURES TRADING COMMISSION HAS NOT REVIEWED OR APPROVED THIS OFFERING OR ANY OFFERING MEMORANDUM FOR THIS POOL".

(B) Exemption from disclosing the past performance of exempt pools in the Disclosure Document of non-exempt pools except to the extent that such past performance is material to the non-exempt pool being offered; *Provided, however*, That a pool operator that has claimed exemption hereunder and elects not to disclose any such performance in the Disclosure Document of non-exempt pools shall state in a footnote to the performance disclosure therein that the operator is operating or has operated exempt pools whose performance is not disclosed in this Disclosure Document.

(ii) *Periodic reporting.* Exemption from the specific requirements of §4.22(a) and (b); *Provided*, That a statement signed and affirmed in accordance with §4.22(h) is prepared and distributed to pool participants no less frequently than quarterly within 30 calendar days after the end of the reporting period. This statement must indicate:

(A) The net asset value of the exempt pool as of the end of the reporting period;

(B) The change in net asset value from the end of the previous reporting period; and

(C) The net asset value per outstanding unit of participation in the exempt pool as of the end of the reporting period.

(iii) *Annual report.* (A) Exemption from the specific requirements of §§4.22(c) and (d); *Provided*, That within 90 calendar days after the end of the exempt pool's fiscal year, the commodity pool operator files with the Commission and with the National Futures Association and distributes to each participant in lieu of the financial information and statements specified by those section, an annual report for the

exempt pool, signed and affirmed in accordance with § 4.22(h) which contains, at a minimum:

(1) A Statement of Financial Condition as of the close of the exempt pool's fiscal year (elected in accordance with § 4.22(g));

(2) A Statement of Income (Loss) for that year; and

(3) Appropriate footnote disclosure and any other material information.

(B) Such annual report must be presented and computed in accordance with generally accepted accounting principles consistently applied and, if certified by an independent public accountant, so certified in accordance with § 1.16 as applicable.

(C) *Legend.* (1) If a claim for exemption has been made pursuant to this section, the commodity pool operator must make a statement to that effect on the cover page of each annual report.

(2) If the annual report is not certified in accordance with § 1.16, the pool operator must make a statement to that effect on the cover page of each annual report and state that a certified audit will be provided upon the request of the holders of a majority of the units of participation in the pool who are unaffiliated with the commodity pool operator.

(iv) *Recordkeeping.* Exemption from the specific requirements of § 4.23; *Provided*, That the commodity pool operator must maintain the reports referred to in paragraphs (a)(2)(ii) and (a)(2)(iii) of this section and all books and records prepared in connection with his activities as the pool operator of the exempt pool (including, without limitation, records relating to the qualifications of qualified eligible participants and substantiating any performance representations) at his main business address and must make such reports and records available to any representative of the Commission, the National Futures Association and the United States Department of Justice in accordance with the provisions of § 1.31.

(3) *Notice of claim for exemption.* (i) The notice of a claim for exemption under this section must:

(A) Be in writing;

(B) Provide the name, main business address, main business telephone num-

ber and the National Futures Association commodity pool operator identification number of the person claiming the exemption;

(C) Provide the name(s) of the pool(s) for which the request is made; *Provided*, That a single notice representing that the commodity pool operator anticipates operating single-investor pools may be filed to claim exemption for single-investor pools and such notice need not name each such pool;

(D) Contain representations that (1) neither the commodity pool operator nor any of his principals is subject to any statutory disqualification under section 8a(2) or 8a(3) of the Act unless such disqualification arises from a matter which was previously disclosed in connection with a previous application for registration if such registration was granted or which was disclosed more than thirty days prior to the filing of the notice under this paragraph; (2) the commodity pool operator will comply with the applicable requirements of § 4.7; and (3) the exempt pool will be offered and operated in compliance with the applicable requirements of § 4.7;

(E) Specify the relief claimed under this § 4.7;

(F) State the closing date of the offering or that the offering will be continuous.

(G) Be signed by the pool operator, as follows:

If the pool operator is a sole proprietorship, by the sole proprietor; if a partnership, by a general partner; and if a corporation, by the chief executive officer or chief financial officer;

(H) Be filed in duplicate with the Commission at the address specified in § 4.2 and with the National Futures Association at its headquarters office (Attn: Director of Compliance, Compliance Department); and

(I) (1) Except as provided in paragraph (a)(3)(i)(C) of this section with respect to single-investor pools and in paragraph (a)(3)(i)(1)(2) of this section, be received by the Commission (i) before the date the pool first enters into a commodity interest transaction, if the relief claimed is limited to that provided under paragraphs (a)(2) (ii), (iii) and (iv) of this section; or (ii) prior to any offer or sale of any participation in

the exempt pool if the claimed relief includes that provided under § 4.7(a)(2)(i).

(2) Where participations in a pool have been offered or sold in full compliance with part 4, the notice of a claim for exemption may be filed with the Commission at any time, *Provided*, That the claim for exemption is otherwise consistent with the duties of the commodity pool operator and the rights of pool participants and that the commodity pool operator notifies the pool participants of his intention, absent objection by the holders of a majority of the units of participation in the pool who are unaffiliated with the commodity pool operator within twenty-one days after the date of the notification, to file a notice of claim for exemption under Rule 4.7 and such holders have not objected within such period. A commodity pool operator filing a notice under this paragraph (a)(3)(i)(I)(2) shall either provide disclosure and reporting in accordance with the requirements of part 4 to those participants objecting to the filing of such notice or allow such participants to redeem their units of participation in the pool within three months of the filing of such notice.

(ii) The notice will be effective upon receipt by the Commission with respect to each pool for which it was made, *Provided*, That any notice which does not include all the required information shall not be effective, and that if at the time the Commission receives the notice, 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, the exemption will not be effective until twenty-one calendar days after receipt of the notice by the Commission and that in such case an exemption may be denied by the Commission or made subject to such conditions as the Commission may impose.

(iii) Any exemption claimed hereunder shall cease to be effective with respect to a particular pool upon any change which would cause the commodity pool operator for the pool to be ineligible for the relief claimed with respect to such pool. The commodity pool operator must promptly file a no-

tice advising the Commission of such change.

(4) Any exemption from the requirements of §§ 4.21, 4.22, 4.23, 4.24, 4.25 or 4.26 of this part with respect to a pool shall not affect the obligation of the commodity pool operator to comply with all other applicable provisions of part 4, the Act and the Commission's rules and regulations, with respect to the pool and with respect to any other pool such pool operator operates or intends to operate.

(b) *Relief for commodity trading advisors*—(1) *Definitions*. For the purposes of this section:

(i) An *exempt account* means the account of a qualified eligible client that is directed or guided by a commodity trading advisor pursuant to an effective claim for exemption under § 4.7.

(ii) The term *qualified eligible client* means:

(A) Any person acting, for its own account or for the account of a qualified eligible client, who the commodity trading advisor reasonably believes, at the time that person opens an exempt account with the commodity trading advisor, is a person described in paragraphs (a)(1)(ii)(A) (I) through (4) above;

(B) Any person who the commodity trading advisor reasonably believes, at the time that person opens an exempt account with the commodity trading advisor;

(I)(i) Owns securities (including pool participations) of issuers not affiliated with such client and other investments with an aggregate market value of at least \$2,000,000;

(ii) Has had on deposit with a futures commission merchant, for its own account at any time during the six-month period preceding the date that person opens an exempt account with the commodity trading advisor, at least \$200,000 in exchange-specified initial margin and option premiums for commodity interest transactions; or

(iii) Owns a portfolio comprised of a combination of the funds or property specified in paragraphs (b)(1)(ii)(B)(I) (i) and (ii) of this section in which the sum of the funds or property includable under paragraph (b)(1)(ii)(B)(I)(i), expressed as a percentage of the minimum amount required thereunder, and

the amount of futures margin and option premiums includable in paragraph (b)(1)(ii)(B)(I)(ii), expressed as a percentage of the minimum amount required thereunder, equals at least one hundred percent. An example of a composite portfolio acceptable under this paragraph (b)(1)(ii)(B)(I)(iii) would consist of \$1,000,000 in securities and other property (50% of paragraph (b)(1)(ii)(B)(I)(i) and \$100,000 in exchange-specified initial margin and option premiums (50% of paragraph (b)(1)(ii)(B)(I)(ii));

(2) and is:

(i) An investment company registered under the Investment Company Act of 1940 or a business development company as defined in section 2(a)(48) of that Act not formed for the specific purpose of opening an exempt account with the commodity trading advisor;

(ii) A bank as defined in section 3(a)(2) of the Securities Act of 1933 (the "Securities Act"), or any savings and loan association or other institution as defined in section 3(a)(5)(A) of the Securities Act acting for its own account or for the account of a qualified eligible client;

(iii) An insurance company as defined in section 2(13) of the Securities Act acting for its own account or for the account of a qualified eligible client;

(iv) A plan established and maintained by a state, its political subdivisions, or any agency or instrumentality of a state or its political subdivisions, for the benefit of its employees, if such plan has total assets in excess of \$5,000,000;

(v) An employee benefit plan within the meaning of the Employee Retirement Income Security Act of 1974, *Provided*, That the investment decision is made by a plan fiduciary, as defined in section 3(21) of such Act, which is a bank, savings and loan association, insurance company, or registered investment adviser; or that the employee benefit plan has total assets in excess of \$5,000,000; or, if the plan is self-directed, that investment decisions are made solely by persons that are qualified eligible clients;

(vi) A private business development company as defined in section 202(a)(22) of the Investment Advisers Act of 1940;

(vii) An organization described in section 501(c)(3) of the Internal Revenue Code, with total assets in excess of \$5,000,000;

(viii) A corporation, Massachusetts or similar business trust, or partnership, other than a pool, which has total assets in excess of \$5,000,000, and is not formed for the specific purpose of opening an exempt account with the commodity trading advisor;

(ix) A natural person whose individual net worth, or joint net worth with that person's spouse, at the time that person opens an exempt account exceeds \$1,000,000;

(x) A natural person who had an individual income in excess of \$200,000 in each of the two most recent years or joint income with that person's spouse in excess of \$300,000 in each of those years and has reasonable expectation of reaching the same income level in the current year;

(xi) A trust, insurance company separate account or bank collective trust, with total assets in excess of \$5,000,000, not formed for the specific purpose of opening an exempt account with the commodity trading advisor, whose investment in the exempt account is directed by a qualified eligible client or participant and in which all of the unit owners or participants, other than the commodity trading advisor claiming relief under this section, are qualified eligible participants;

(xii) Except as otherwise provided in paragraph (b)(1)(ii)(B)(2)(iv) of this section, if otherwise authorized by law to engage in such transactions, a governmental entity (including the United States, a state, or a foreign government) or political subdivision thereof, or a multinational or supranational entity or an instrumentality, agency, or department of any of the foregoing;

(C) An exempt pool as defined in paragraph (a)(1)(i) of this section;

(D) An entity in which all of the unit owners or participants, other than the commodity trading advisor claiming relief under this section, are persons listed in paragraphs (b)(1)(ii)(A) through (b)(1)(ii)(C) of this section; and

(E) Notwithstanding paragraph (b)(1)(B) of this section, an entity as to which a notice of eligibility has been

filed pursuant to Rule 4.5 which is operated in accordance with such rule and in which all unit owners or participants, other than the commodity trading advisor claiming relief under this section, are qualified eligible participants.

(2) *Relief.* Subject to the conditions specified in paragraph (b)(3) of this section and upon filing the notice required by paragraph (b)(3) of this section, any registered commodity trading advisor who anticipates directing or guiding the commodity interest accounts of qualified eligible clients will be exempt as follows with respect to the accounts of qualified eligible clients who have given due consent to their account being an exempt account under Rule 4.7.

(i) *Disclosure.* (A) Exemption from the specific requirements of §§4.31, 4.34, 4.35, and 4.36; *Provided,* That if the commodity trading advisor delivers a brochure or other disclosure statement to such qualified eligible clients, such brochure or statement shall include all additional disclosures necessary to make the information contained therein, in the context in which it is furnished, not misleading; and that the following statement is prominently displayed on the cover page of the brochure or statement or, if none is provided, immediately above the signature line of the agreement that the client must execute before it opens an account with the commodity trading advisor: "PURSUANT TO AN EXEMPTION FROM THE COMMODITY FUTURES TRADING COMMISSION IN CONNECTION WITH ACCOUNTS OF QUALIFIED ELIGIBLE CLIENTS, THIS BROCHURE OR ACCOUNT DOCUMENT IS NOT REQUIRED TO BE, AND HAS NOT BEEN, FILED WITH THE COMMISSION. THE COMMODITY FUTURES TRADING COMMISSION DOES NOT PASS UPON THE MERITS OF PARTICIPATING IN A TRADING PROGRAM OR UPON THE ADEQUACY OR ACCURACY OF COMMODITY TRADING ADVISOR DISCLOSURE. CONSEQUENTLY, THE COMMODITY FUTURES TRADING COMMISSION HAS NOT REVIEWED OR APPROVED THIS TRADING PROGRAM OR THIS BROCHURE OR ACCOUNT DOCUMENT".

(B) Exemption from disclosing the past performance of exempt accounts in the Disclosure Document for non-exempt accounts except to the extent that such past performance is material to the non-exempt account being offered; *Provided, however,* That a commodity trading advisor that has claimed exemption hereunder and elects not to disclose any such performance in the Disclosure Document for non-exempt accounts shall state in a footnote to the performance disclosure therein that the advisor is advising or has advised exempt accounts for qualified eligible clients whose performance is not disclosed in this Disclosure Document.

(ii) *Recordkeeping.* Exemption from the specific requirements of §4.32; *Provided,* That the commodity trading advisor must maintain, at its main business office, all books and records prepared in connection with his activities as the commodity trading advisor of the qualified eligible clients (including, without limitation, records relating to the qualifications of such qualified eligible clients and substantiating any performance representations) and must make such records available to any representative of the Commission, the National Futures Association and the United States Department of Justice in accordance with the provisions of §1.31.

(3) *Notice of claim for exemption.* (i) The notice of a claim for exemption under this section must:

(A) Be in writing;

(B) Provide the name, main business address, main business telephone number and the National Futures Association commodity trading advisor identification number of the person claiming the exemption;

(C) Contain a representation that the commodity trading advisor anticipates providing commodity interest trading advice to qualified eligible clients and that it will comply with the applicable requirements of §4.7 with respect to accounts of such clients;

(D) Contain a representation that neither the commodity trading advisor nor any of its principals is subject to any statutory disqualification under section 8a(2) or 8a(3) of the Act unless such disqualification arises from a matter which was previously disclosed

in connection with a previous application for registration if such registration was granted or which was disclosed more than thirty days prior to the filing of the notice under this paragraph;

(E) Specify the relief claimed under § 4.7;

(F) Be signed by the commodity trading advisor, as follows:

If the commodity trading advisor is a sole proprietorship, by the sole proprietor; if a partnership, by a general partner; and if a corporation, by the chief executive officer or chief financial officer;

(G) Be filed in duplicate with the Commission at the address specified in § 4.2 and with the National Futures Association at its headquarters office (Attn: Director of Compliance, Compliance Department); and

(H) Be received by the Commission before the date the commodity trading advisor first enters into an agreement to direct or guide the commodity interest account of a qualified eligible client pursuant to § 4.7.

(ii) The notice will be effective upon receipt by the Commission, *Provided*, That any notice which does not include all of the required information shall not be effective, and that if at the time the Commission receives the notice, an enforcement proceeding brought by the Commission under the Act or the regulations is pending against the commodity trading advisor or any of its principals, the exemption will not be effective until twenty-one calendar days after receipt of the notice by the Commission and that in such case an exemption may be denied by the Commission or made subject to such conditions as the Commission may impose.

(iii) Any exemption claimed hereunder shall cease to be effective upon any change which would cause the commodity trading advisor to be ineligible for the relief claimed. The commodity trading advisor must promptly file a notice advising the Commission of such change.

(4) Any exemption from the requirements of § 4.31, 4.33, 4.34, 4.35, or 4.36 made 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 client and with respect to any other client to which the commodity trading advisor provides or intends to provide commodity interest trading advice.

(c) *Insignificant deviations from a term, condition or requirement of Rule 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 participant or client; and

(ii) The failure to comply was insignificant with respect to the exempt pool as a whole or to the particular qualified eligible client of the commodity trading advisor; 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 (c)(1) of this section, the failure to comply shall nonetheless be actionable by the Commission.

[57 FR 34860, Aug. 7, 1992; 57 FR 41173, Sept. 9, 1992, as amended at 60 FR 38182, July 25, 1995]

§ 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 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, may