

Commodity Futures Trading Commission

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absent objection from the participant, which objection, if any, the participant must make no later than 10 business days following its receipt of the disclosure.

(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 57011, Dec. 22, 1982; 52 FR 41986, Nov. 2, 1987; 65 FR 81334, Dec. 26, 2000; 67 FR 77411, Dec. 18, 2002; 68 FR 47234, Aug. 8, 2003; 68 FR 52837, Sept. 8, 2003; 71 FR 8942, Feb. 22, 2006]

§ 4.23 Recordkeeping.

Each commodity pool operator 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. All books and records required by this section except those required by paragraphs (a)(3), (a)(4), (b)(1), (b)(2) and (b)(3) must be made available to participants for inspection and copying during normal business hours at the main business office of the pool operator. Upon request, copies must be sent by mail to any participant within five business days if reasonable reproduction and distribution costs are paid by the pool participant. If the commodity pool operator's main business office is outside of the United States, its territories or possessions, then upon the request of a Commission representative, the pool operator must provide such books and records as requested at the place in the United States, its territories or possessions designated by the representative within 72 hours after the pool operator receives the request.

(a) *Concerning the commodity pool:*

(1) An itemized daily record of each commodity interest transaction of the pool, 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) A journal of original entry or other equivalent record showing all receipts and disbursements of money, securities and other property.

(3) The acknowledgement specified by § 4.21(b) for each participant in the pool.

(4) A subsidiary ledger or other equivalent record for each participant in the pool showing the participant's name and address and all funds, securities and other property that the pool received from or distributed to the participant.

(5) Adjusting entries and any other records of original entry or their equivalent forming the basis of entries in any ledger.

(6) A general ledger or other equivalent record containing details of all asset, liability, capital, income and expense accounts.

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

(8) Cancelled checks, bank statements, journals, ledgers, invoices, computer generated records, and all other records, data and memoranda prepared or received in connection with the operation of the pool.

(9) 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 pool operator to any existing or prospective pool participant or received by the pool operator from any commodity trading advisor of the pool, showing the first date of distribution or receipt if not otherwise shown on the document.

(10) A Statement of Financial Condition as of the close of (i) each regular monthly period if the pool had net assets of \$500,000 or more at the beginning of the pool's fiscal year, or (ii) each regular quarterly period for all

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other pools. The Statement must be completed within 30 days after the end of that period.

(11) A Statement of Income (Loss) for the period between (i) the later of: (A) the date of the most recent Statement of Financial Condition furnished to the Commission pursuant to §4.22(c), (B) April 1, 1979 or (C) the formation of the pool, and (ii) the date of the Statement of Financial Condition required by paragraph (a)(10) of this section. The Statement must be completed within 30 days after the end of that period.

(12) A manually signed copy of each Account Statement and Annual Report provided pursuant to §4.22, 4.7(b) or 4.12(b), and records of the key financial balances submitted to the National Futures Association for each commodity pool Annual Report, which records must clearly demonstrate how the key financial balances were compiled from the Annual Report.

(b) *Concerning the commodity pool operator:*

(1) An itemized daily record of each commodity interest transaction of the commodity pool operator and each principal thereof, 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 pool operator relating to a personal account of the pool operator, and (ii) each principal of the pool operator relating to a personal account of such principal.

(3) Books and records of all other transactions in all other activities in which the pool operator engages. Those books and records must include cancelled checks, bank statements, journals, ledgers, invoices, computer generated records and all other records,

data and memoranda which have been prepared in the course of engaging in those activities.

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[46 FR 26013, May 8, 1981, as amended at 46 FR 63035, Dec. 30, 1981; 47 FR 57011, Dec. 22, 1982; 48 FR 35299, Aug. 3, 1983; 60 FR 38183, July 25, 1995; 71 FR 8943, Feb. 22, 2006]

§4.24 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 POOL 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

YOU SHOULD CAREFULLY CONSIDER WHETHER YOUR FINANCIAL CONDITION PERMITS YOU TO PARTICIPATE IN A COMMODITY POOL. IN SO DOING, YOU SHOULD BE AWARE THAT FUTURES AND OPTIONS TRADING CAN QUICKLY LEAD TO LARGE LOSSES AS WELL AS GAINS. SUCH TRADING LOSSES CAN SHARPLY REDUCE THE NET ASSET VALUE OF THE POOL AND CONSEQUENTLY THE VALUE OF YOUR INTEREST IN THE POOL. IN ADDITION, RESTRICTIONS ON REDEMPTIONS MAY AFFECT YOUR ABILITY TO WITHDRAW YOUR PARTICIPATION IN THE POOL.

FURTHER, COMMODITY POOLS MAY BE SUBJECT TO SUBSTANTIAL CHARGES FOR MANAGEMENT, AND ADVISORY AND BROKERAGE FEES. IT MAY BE NECESSARY FOR THOSE POOLS THAT ARE SUBJECT TO THESE CHARGES TO MAKE