

§ 4.15

the person was exempt from registration.

(Secs. 8a(5) and 19 of the Commodity Exchange Act, as amended, 7 U.S.C. 12a(5) and 23 (1982); 5 U.S.C. 552 and 552b)

[46 FR 26013, May 8, 1981; 46 FR 26761, May 15, 1981; 48 FR 35298, Aug. 3, 1983; 49 FR 5526, Feb. 13, 1984; 52 FR 41985, Nov 2, 1987; 52 FR 43827, Nov 16, 1987; 65 FR 12943, Mar. 10, 2000; 67 FR 77411, Dec. 18, 2002; 68 FR 47233, Aug. 8, 2003; 68 FR 52837, Sept. 8, 2003; 68 FR 59114, Oct. 14, 2003; 72 FR 1664, Jan. 16, 2007; 75 FR 55428, Sept. 10, 2010]

EFFECTIVE DATE NOTES: 1. At 77 FR 11284, Feb. 24, 2012, § 4.14 was amended by revising paragraph (a)(8)(i)(D); and redesignating paragraph (a)(8)(iii)(D) as (a)(8)(iii)(E) and add a new paragraph (a)(8)(iii)(D), effective April 24, 2012. For the convenience of the user, the added and revised text is set forth as follows:

§ 4.14 Exemption from registration as a commodity trading adviser.

* * * * *

- (a) * * *
(8) * * *
(i) * * *

(D) A commodity pool operator who has claimed an exemption from registration under § 4.13(a)(3), or, if registered as a commodity pool operator, who may treat each pool it operates that meets the criteria of § 4.13(a)(3) as if it were not so registered; and

* * * * *

- (iii) * * *

(D) Annual notice. Each person who has filed a notice of exemption from registration under this section must affirm on an annual basis the notice of exemption from registration, withdraw such exemption due to the cessation of activities requiring registration or exemption therefrom, or withdraw such exemption and apply for registration within 30 days of the calendar year end through National Futures Association's electronic exemption filing system.

2. At 77 FR 17330, Mar. 26, 2012, § 4.14 was amended by revising paragraph (a)(8)(i)(D); and redesignating paragraph (a)(8)(iii)(D) as (a)(8)(iii)(E) and add a new paragraph (a)(8)(iii)(D), effective April 24, 2012. For the convenience of the user, the added and revised text is set forth as follows:

§ 4.14 Exemption from registration as a commodity trading adviser.

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(8) * * *

17 CFR Ch. I (4-1-12 Edition)

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(D) A commodity pool operator who has claimed an exemption from registration under § 4.13(a)(3), or, if registered as a commodity pool operator, who may treat each pool it operates that meets the criteria of § 4.13(a)(3) as if it were not so registered; and

* * * * *

- (iii) * * *

(D) Annual notice. Each person who has filed a notice of exemption from registration under this section must affirm on an annual basis the notice of exemption from registration, withdraw such exemption due to the cessation of activities requiring registration or exemption therefrom, or withdraw such exemption and apply for registration within 60 days of the calendar year end through National Futures Association's electronic exemption filing system.

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§ 4.15 Continued applicability of anti-fraud section.

The provisions of section 40 of the Act shall apply to any person even though such person is exempt from registration under this part 4, and it shall continue to be unlawful for any such person to violate section 40 of the Act.

[50 FR 15884, Apr. 23, 1985]

§ 4.16 Prohibited representations.

It shall be unlawful for any commodity pool operator, commodity trading advisor, principal thereof or person who solicits therefor to represent or imply in any manner whatsoever that such commodity pool operator or commodity trading advisor has been sponsored, recommended or approved, or that its abilities or qualifications have in any respect been passed upon, by the Commission, the Federal government or any agency thereof.

Subpart B—Commodity Pool Operators

§ 4.20 Prohibited activities.

(a)(1) Except as provided in paragraph (a)(2) of this section, a commodity pool operator must operate its pool as an entity cognizable as a legal entity separate from that of the pool operator.

Commodity Futures Trading Commission

§ 4.22

(2) The Commission may exempt a corporation from the requirements of paragraph (a)(1) of this section if:

(i) The corporation represents in writing to the Commission that each participant in its pool will be issued stock or other evidences of ownership in the corporation for all funds, securities or other property that the participant contributes for the purchase of an ownership interest in the pool;

(ii) The corporation demonstrates to the satisfaction of the Commission that it has established procedures adequate to assure compliance with paragraphs (b) and (c) of this section; and

(iii) The Commission finds that the exemption is not contrary to the public interest and to the purposes of the provision from which the exemption is sought.

(b) All funds, securities or other property received by a commodity pool operator from an existing or prospective pool participant for the purchase of an interest or as an assessment (whether voluntary or involuntary) on an interest in a pool that it operates or that it intends to operate must be received in the pool's name.

(c) No commodity pool operator may commingle the property of any pool that it operates or that it intends to operate with the property of any other person.

(Approved by the Office of Management and Budget under control number 3038-0005)

[46 FR 26013, May 8, 1981, as amended at 46 FR 34311, July 1, 1981; 46 FR 63035, Dec. 30, 1981]

§ 4.21 Required delivery of pool Disclosure Document.

(a)(1) Subject to the provisions of paragraph (a)(2) of this section, each commodity pool operator registered or required to be registered under the Act must deliver or cause to be delivered to a prospective participant in a pool that it operates or intends to operate a Disclosure Document for the pool prepared in accordance with §§ 4.24 and 4.25 by no later than the time it delivers to the prospective participant a subscription agreement for the pool; *Provided*, That any information distributed in advance of the delivery of the Disclosure Document to a prospective participant is consistent with or amended by the in-

formation contained in the Disclosure Document and with the obligations of the commodity pool operator 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 its subscription being accepted by the pool operator.

(2) For the purpose of the Disclosure Document delivery requirement, including any offering memorandum delivered pursuant to § 4.7(b)(1) or 4.12(b)(2)(i), the term "prospective pool participant" does not include a commodity pool operated by a pool operator that is the same as, or that controls, is controlled by, or is under common control with, the pool operator of the offered pool.

(b) The commodity pool operator may not accept or receive funds, securities or other property from a prospective participant unless the pool operator first receives from the prospective participant an acknowledgment signed and dated by the prospective participant stating that the prospective participant received a Disclosure Document for the pool. Where a Disclosure Document is delivered to a prospective pool participant by electronic means, in lieu of a manually signed and dated acknowledgment, the pool operator 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 § 4.23(a)(3) 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 38183, July 25, 1995, as amended at 62 FR 39115, July 22, 1997; 65 FR 58649, Oct. 2, 2000; 68 FR 47234, Aug. 8, 2003]

§ 4.22 Reporting to pool participants.

(a) Except as provided in paragraph (a)(4) or (a)(6) of this section, each commodity pool operator registered or