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(i) All existing pool participants within 21 calendar days of the date upon which the pool operator first knows or has reason to know of the defect; and

(ii) Each previously solicited prospective pool participant prior to accepting or receiving funds, securities or other property from any such prospective participant.

(2) The pool operator may furnish the correction by any of the following means:

(i) An amended Disclosure Document or profile document;

(ii) With respect to a hard copy of the Disclosure Document, a sticker affixed to the Disclosure Document; or

(iii) Other similar means.

(3) The pool operator may not use the Disclosure Document or profile document until such correction has been made.

(d) Except as provided by § 4.8:

(1) The commodity pool operator must electronically file with the National Futures Association, pursuant to the electronic filing procedures of the National Futures Association, the Disclosure Document and, where used, profile document for each pool that it operates or that it intends to operate not less than 21 calendar days prior to the date the pool operator first intends to deliver such Document or documents to a prospective participant in the pool; and

(2) The commodity pool operator must electronically file with the National Futures Association, pursuant to the electronic filing procedures of the National Futures Association, the subsequent amendments to the Disclosure Document and, where used, profile document for each pool that it operates or that it intends to operate within 21 calendar days of the date upon which the pool operator first knows or has reason to know of the defect requiring the amendment.

[60 FR 38188, July 25, 1995, as amended at 62 FR 18268, Apr. 15, 1997; 65 FR 58649, Oct. 2, 2000; 67 FR 42710, June 25, 2002; 67 FR 77411, Dec. 18, 2002; 68 FR 12584, Mar. 17, 2003; 74 FR 9569, Mar. 5, 2009]

§ 4.27 Additional reporting by advisors of certain large commodity pools.

(a) *General definitions.* For the purposes of this section:

(1) *Commodity pool operator* or *CPO* has the same meaning as commodity pool operator defined in section 1a(11) of the Commodity Exchange Act;

(2) *Commodity trading advisor* or *CTA* has the same meaning as defined in section 1a(12);

(3) *Direct* has the same meaning as defined in section 4.10(f);

(4) *Net asset value* or *NAV* has the same meaning as net asset value as defined in section 4.10(b);

(5) *Pool* has the same meaning as defined in section 1(a)(10) of the Commodity Exchange Act;

(6) *Reporting period* means the reporting period as defined in the forms promulgated hereunder;

(b) *Persons required to report.* A reporting person is:

(1) Any commodity pool operator that is registered or required to be registered under the Commodity Exchange Act and the Commission's regulations thereunder; or

(2) Any commodity trading advisor that is registered or required to be registered under the Commodity Exchange Act and the Commission's regulations thereunder.

(c) *Reporting.* (1) Except as provided in paragraph (c)(2) of this section, each reporting person shall file with the National Futures Association, a report with respect to the directed assets of each pool under the advisement of the commodity pool operator consistent with appendix A to this part or commodity trading advisor consistent with appendix C to this part.

(2) All financial information shall be reported in accordance with generally accepted accounting principles consistently applied.

(d) *Investment advisers to private funds.* Except as otherwise expressly provided in this section, CPOs and CTAs that are dually registered with the Securities and Exchange Commission and are required to file Form PF pursuant to the rules promulgated under the Investment Advisers Act of 1940, shall file Form PF with the Securities and Exchange Commission in lieu of filing

such other reports with respect to private funds as may be required under this section. In addition, except as otherwise expressly provided in this section, CPOs and CTAs that are dually registered with the Securities and Exchange Commission and are required to file Form PF pursuant to the rules promulgated under the Investment Advisers Act of 1940, may file Form PF with the Securities and Exchange Commission in lieu of filing such other reports with respect to commodity pools that are not private funds as may be required under this section. Dually registered CPOs and CTAs that file Form PF with the Securities and Exchange Commission will be deemed to have filed Form PF with the Commission for purposes of any enforcement action regarding any false or misleading statement of a material fact in Form PF.

(e) *Filing requirements.* Each report required to be filed with the National Futures Association under this section shall:

(1)(i) Contain an oath and affirmation that, to the best of the knowledge and belief of the individual making the oath and affirmation, the information contained in the document is accurate and complete; *Provided, however,* That it shall be unlawful for the individual to make such oath or affirmation if the individual knows or should know that any of the information in the document is not accurate and complete and

(ii) Each oath or affirmation must be made by a representative duly authorized to bind the CPO or CTA.

(2) Be submitted consistent with the National Futures Association's electronic filing procedures.

(f) *Termination of reporting requirement.* All reporting persons shall continue to file such reports as are required under this section until the effective date of a Form 7W filed in accordance with the Commission's regulations.

(g) *Public records.* Reports filed pursuant to this section shall not be considered Public Records as defined in §145.0 of this chapter.

[77 FR 17330, Mar. 26, 2012]

Subpart C—Commodity Trading Advisors

§4.30 Prohibited activities.

(a) Except as provided in paragraph (b) of this section, no commodity trading advisor may solicit, accept or receive from an existing or prospective client funds, securities or other property in the trading advisor's name (or extend credit in lieu thereof) to purchase, margin, guarantee or secure any commodity interest of the client.

(b) The prohibition in paragraph (a) of this section shall not apply to:

(1) A futures commission merchant that is registered as such under the Act;

(2) A leverage transaction merchant that is registered as a commodity trading advisor under the Act;

(3) A retail foreign exchange dealer that is registered as such under the Act; or

(4) A swap dealer that is registered as such under the Act, with respect to funds, securities or other property accepted to purchase, margin, guarantee or secure any swap that is not cleared through a derivatives clearing organization.

[77 FR 54359, Sept. 5, 2012]

§4.31 Required delivery of Disclosure Document to prospective clients.

(a) Each commodity trading advisor registered or required to be registered under the Act must deliver or cause to be delivered to a prospective client a Disclosure Document containing the information set forth in §§4.34 and 4.35 for the trading program pursuant to which the trading advisor seeks to direct the client's commodity interest account or to guide the client's commodity interest trading by means of a systematic program that recommends specific transactions by no later than the time the trading advisor delivers to the prospective client an advisory agreement to direct or guide the client's account; *Provided,* That any information distributed in advance of the delivery of the Disclosure Document to a prospective client is consistent with or amended by the information contained in the Disclosure Document and with the obligations of the commodity