

substantial number of small entities under the criteria of the Regulatory Flexibility Act. The FAA's authority to issue rules regarding aviation safety is found in Title 49 of the U.S. Code. Subtitle 1, Section 106 describes the authority of the FAA Administrator. Subtitle VII, Aviation Programs, describes in more detail the scope of the agency's authority. This rulemaking is promulgated under the authority described in Subtitle VII, Part A, Subpart I, Section 40103. Under that section, the FAA is charged with prescribing regulations to assign the use of airspace necessary to ensure the safety of aircraft and the efficient use of airspace. This regulation is within the scope of that authority as it would add additional controlled airspace at Coleman Municipal Airport, Coleman, TX.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (Air).

The Proposed Amendment

In consideration of the foregoing, the Federal Aviation Administration proposes to amend 14 CFR Part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIRWAYS; ROUTES; AND REPORTING POINTS

1. The authority citation for Part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g); 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of Federal Aviation Administration Order 7400.9S, Airspace Designations and Reporting Points, dated October 3, 2008, and effective October 31, 2008, is amended as follows:

Paragraph 6005 Class E Airspace areas extending upward from 700 feet or more above the surface of the earth.

* * * * *

ASW TX E5 Coleman, TX [Amended]

Coleman Municipal Airport, TX
(Lat. 31°50'32" N., long. 99°24'14" W.)

That airspace extending upward from 700 feet above the surface within an 8-mile radius of Coleman Municipal Airport.

* * * * *

Issued in Fort Worth, TX on February 12, 2009.

Roger M. Trevino,

*Acting Manager, Operations Support Group,
ATO Central Service Center.*

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

RIN 3038–AC38

Commodity Pool Operator Periodic Account Statements and Annual Financial Reports

AGENCY: Commodity Futures Trading Commission.

ACTION: Proposed rules.

SUMMARY: The Commodity Futures Trading Commission (“Commission” or “CFTC”) is proposing to amend its regulations governing the periodic account statements that commodity pool operators (“CPOs”) are required to provide to commodity pool participants and the annual financial reports that CPOs are required to provide to commodity pool participants and file with the National Futures Association (“NFA”). The proposed amendments would: Specify detailed information that must be included in the periodic account statements and annual reports for commodity pools with more than one series or class of ownership interest; clarify that the periodic account statements must disclose either the net asset value per outstanding participation unit in the pool, or the total value of a participant's interest or share in the pool; extend the time period for filing and distributing annual reports of commodity pools that invest in other funds; codify existing Commission staff interpretations regarding the proper accounting treatment and financial statement presentation of certain income and expense items in the periodic account statements and annual reports; streamline annual reporting requirements for pools ceasing operation; and clarify and update several other requirements for periodic and annual reports prepared and distributed by CPOs.

DATES: Comments must be received on or before March 26, 2009.

ADDRESSES: You may submit comments, identified by RIN 3038–AC38 by any of the following methods:

• **Federal eRulemaking Portal:** <http://www.regulations.gov/search/index.jsp>.

Follow the instructions for submitting comments.

• **E-mail:** secretary@cftc.gov. Include “Commodity Pool Operator Periodic and Annual Reports” in the subject line of the message.

• **Fax:** (202) 418–5521.

• **Mail:** Send to David Stawick, Secretary, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581.

• **Courier:** Same as Mail above.

All comments received will be posted without change to <http://www.cftc.gov>, including any personal information provided.

FOR FURTHER INFORMATION CONTACT:

Eileen R. Chotiner, Futures Trading Specialist, at (202) 418–5467, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Electronic mail: echotiner@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

Commission Regulation 4.22(a)¹ requires a registered CPO to distribute an account statement to each participant in each commodity pool that it operates within 30 days of the end of the reporting period.² Regulation 4.22(c) requires a CPO to file with NFA, and to provide to each participant, an annual financial report, audited by an independent public accountant, for each commodity pool that it operates within 90 days of the end of the pool's fiscal year or the permanent cessation of the pool's trading.³

CPOs operating pools offered solely to qualified eligible persons (“QEPs”) pursuant to Regulation 4.7 may claim relief from certain reporting requirements.⁴ In this regard, a CPO that has claimed an exemption from certain regulatory requirements pursuant to Regulation 4.7 must distribute periodic account statements to each participant of an exempt pool at least quarterly, and also must file with NFA and distribute to participants in the exempt pool an annual report within 90 days of the end

¹ The regulations of the Commission cited in this release may be found at 17 CFR Ch. I (2008).

² Pursuant to Regulation 4.22(b), account statements must be provided monthly for pools with net asset values greater than \$500,000 at the beginning of the pool's fiscal year; otherwise, account statements may be provided quarterly.

³ NFA is a registered futures association pursuant to Section 17 of the Commodity Exchange Act (“Act”), 7 U.S.C. 21.

⁴ Regulation 4.7(a) defines “qualified eligible person” to include participants that meet certain eligibility criteria regarding their net worth, income, and investments.

of the pool's fiscal year or the permanent cessation of the pool's trading. Annual reports for Regulation 4.7 exempt pools are not required to be audited by an independent public accountant.⁵

II. Proposed Changes to Periodic Account Statements and Annual Financial Reports

A. Periodic Account Statements for Regulation 4.7—Exempt Pools

Regulation 4.7(b)(2) requires the CPO of a Regulation 4.7-exempt commodity pool to provide each participant in the pool with an account statement that must indicate: (1) The net asset value of the exempt pool as of the end of the reporting period; (2) the change in net asset value of the exempt pool from the end of the previous reporting period; and (3) the net asset value per outstanding unit of participation in the exempt pool as of the end of the reporting period. The account statement must be prepared in accordance with generally accepted accounting principles ("GAAP"), signed and affirmed by the CPO, and distributed to pool participants no less frequently than quarterly within 30 calendar days of the end of the reporting period.

The Commission is proposing to amend Regulation 4.7(b)(2) to clarify that the periodic account statement provided to each pool participant must disclose either the net asset value per outstanding participation unit, or the total value of the participant's interest or share, in the commodity pool as of the end of the reporting period. The proposal is intended to ensure that pool participants receive sufficient information to determine the value of their investments in the commodity pool from the periodic account statement. Furthermore, the proposal is consistent with the comparable provision of Regulation 4.22(a) for pools that are not Regulation 4.7-exempt, which specifies that either the net asset value per outstanding participation unit or the total value of the participant's interest or share in the pool be included in an account statement.

B. Series Pools and Pools With Multiple Classes of Ownership Interests

A commodity pool may contain an organizational structure that includes more than one series or class of ownership interest. Different ownership

series or classes may exist due to differences in fees and expenses, currency denomination, trading, cash management strategies, and other aspects of the operation of the pool.

GAAP provides guidance regarding the presentation of financial statements for series funds⁶ and for investment funds with multiple ownership classes,⁷ and pool financial statements prepared pursuant to both Regulation 4.22(c) and Regulation 4.7(b)(3) must be in accordance with GAAP. Commission staff has received many questions from CPOs, their attorneys and accountants, and NFA regarding the proper presentation of periodic account statements and annual financial reports for series funds and multi-class pools. Therefore, the Commission is proposing to amend Regulations 4.7(b)(2) and 4.22(a) to specify that, for series funds structured with a limitation on liability among the different series, the periodic account statement may include only the information for the series being reported, although additional information on other series may be provided; however, for other series funds and for multi-class funds, net asset value and other information required by the regulations must be presented for both the pool as a whole as well as for each series or class of ownership interest.

The Commission also is proposing to amend Regulations 4.7(b)(3) and 4.22(c) to clarify that, for series funds structured with a limitation on liability among the different series, the annual report may include only the information for the series being reported. For both periodic account statements and annual financial reports, CPOs of series funds with a limitation on liability among the different series are not precluded by these amendments from providing financial information to participants for other series or classes of the pool.

C. Changes to Extension Provisions Under Regulation 4.22(f)

Regulations 4.7(b)(3) and 4.22(c) require a CPO to provide to each participant in each commodity pool that the CPO operates an annual report for the commodity pool within 90 calendar days of the end of the pool's fiscal year. The CPO is further required to submit a copy of the annual report electronically to NFA.

Regulation 4.22(f)(2) permits a CPO of a commodity pool that invests in other

funds (referred to as a "fund of funds") to claim up to an additional 60 days to distribute the pool's annual report to pool participants and to file a copy with NFA. CPOs may claim the Regulation 4.22(f)(2) fund of funds 60-day extension by filing with NFA an initial notice, containing specified representations, in advance of the annual report's due date for the first year the extension is claimed. In subsequent years, the CPO may confirm that the circumstances necessitating the relief continue to apply by restating certain representations in a statement filed at the same time as the pool's annual report.

Regulation 4.22(f)(2) currently is applicable only to CPOs that distribute annual reports that are audited by independent public accountants. CPOs of commodity pools that are permitted to distribute unaudited annual financial reports to participants pursuant to Regulation 4.7(b)(3) may request from NFA up to a 90-day extension of the filing deadline under Regulation 4.22(f)(1).

In adopting Regulation 4.22(f)(2), the Commission anticipated, based upon its experience, that a substantial majority of the CPOs of funds of funds would be able to distribute to the participants and to file with NFA the pools' annual reports within 150 days of the end of the respective commodity pool's fiscal year.⁸ The Commission further noted that CPOs that could not meet the 150-day filing timeframe under Regulation 4.22(f)(2) could continue to request an extension of time to distribute and to file the pools' annual reports pursuant to Regulation 4.22(f)(1).⁹

In recent years, however, the number of CPOs that have requested additional extensions under Regulation 4.22(f)(1) after having claimed the 60-day extension under Regulation 4.22(f)(2) has increased significantly. According to data provided by NFA for pool annual reports with a fiscal year ending in 2006, CPOs claimed the 60-day fund of funds extension under Regulation 4.22(f)(2) for over 650 commodity pools. Subsequently, CPOs of approximately 50 percent of such pools filed requests with NFA for an additional extension of up to 30 calendar days pursuant to Regulation 4.22(f)(1). Similarly, for

⁸ 65 FR 81333 at 81334 (December 26, 2000).

⁹ However, the CPO of a commodity pool that operated as a fund of funds and claimed an automatic extension of 60 days pursuant to Regulation 4.22(f)(2) for the filing of the pool's annual report would be limited to requesting no more than an additional 30-day extension under Regulation 4.22(f)(1). Thus, under Regulations 4.22(f)(1) and (2), all pool annual reports must be distributed to pool participants and filed with NFA within 180 days of the end of the pool's fiscal year.

⁵ Regulation 4.7(b)(3) permits the CPO of a Regulation 4.7-qualifying pool to claim exemption from the specific annual report content requirements and annual report certification requirements, respectively, of Regulations 4.22(c) and (d).

⁶ American Institute of Certified Public Accountants ("AICPA") Audit and Accounting Guide, Investment Companies paragraph 7.03.

⁷ AICPA Audit and Accounting Guide, Investment Companies, Chapter 5, *Complex Capital Structures*.

pools with fiscal years ending in 2007, CPOs claimed the 60-day filing extension under Regulation 4.22(f)(2) for over 500 commodity pools. Subsequently, CPOs of approximately 45 percent of such pools filed requests with NFA for an additional extension of up to 30 calendar days under Regulation 4.22(f)(1).

To address this issue, the Commission is proposing to extend from 60 to 90 days the maximum amount of additional time that a CPO that operates a commodity pool that invests in other funds may claim under Regulation 4.22(f)(2). Therefore, under the proposal, annual financial reports for funds of funds may be distributed to pool participants and filed with NFA a maximum of 180 days from the end of a qualifying pool's fiscal year. This amendment would eliminate the need for CPOs to file an additional request under Regulation 4.22(f)(1), and also would reduce the administrative burden to NFA of processing these additional requests. The Commission, however, expects CPOs to distribute pool annual reports to participants as soon after the end of the pool's fiscal year-end as possible, notwithstanding the availability of the additional extension.¹⁰

The 180-day timeframe for CPOs of funds of funds to prepare and to distribute pool annual reports also would be consistent with the timeframe within which registered investment advisers distribute annual reports to investors in funds of funds under the Securities and Exchange Commission's ("SEC's") custody rule.¹¹ Registered investment advisers are not required to comply with certain provisions of the SEC's custody rule with respect to the accounts of limited partnerships, limited liability companies, or other pooled investment vehicles that are subject to audit at least annually and for which the audited financial statements are distributed to partners, members or other beneficial owners within 120 days of the fund's fiscal year-end or, in the case of a fund of funds, within 180 days of the end of its fiscal year.

The Commission also is proposing to extend the application of Regulation 4.22(f)(2) to CPOs that operate Regulation 4.7-exempt commodity pools that do not prepare audited financial

statements certified by independent public accountants. As previously noted, a CPO operating a pool that meets the criteria of Regulation 4.7 may claim exemption from certain annual reporting requirements, including the requirement of Regulation 4.22(d) that the financial statements contained in the annual report be audited by an independent public accountant.

Regulation 4.22(f)(2) was adopted, in large part, to address difficulties that CPOs experience in obtaining timely information about their pools' investments in other funds in order for the pools' public accountants to prepare audited financial statements. Annual reports that are not audited, however, are still required to be prepared in accordance with GAAP. The CPOs of unaudited funds of funds have explained that they often experience difficulties in obtaining the information necessary from investee funds to complete the preparation of the pools' financial statements by the time specified in Regulation 4.22(c). In order to complete the financial statements of the pools, the CPOs need information establishing the value of the pools' material investments from the investee funds. These investments may be in a number of investee funds, such as other commodity pools, securities funds, or hedge funds, both domestic and offshore. The information that the CPOs require frequently is unavailable until the investee funds complete their own audited financial statements. Thus, in many cases, the CPOs cannot obtain the information they require about the investee funds in time for the annual financial reports of the pools to be prepared and distributed by the due date. Under the proposed amendment, CPOs of funds of funds for which unaudited annual reports are prepared also would be able to claim the extension under Regulation 4.22(f)(2).

In addition, the Commission is proposing to remove the requirement that a CPO that has filed a claim of extension under Regulation 4.22(f)(2) for a particular pool must restate certain representations in a statement filed with the pool's annual reports in subsequent years. Instead, having filed the initial claim, the CPO will be presumed to operate the pool as a fund of funds and otherwise continue to qualify for the automatic extension; however, if the pool no longer operates as a fund of funds, then its CPO must provide NFA with notice of the change in the pool's status and must file the pool's annual report within 90 days of the pool's fiscal year-end, as required by Regulation 4.22(c).

If the proposed extension of the time period under Regulation 4.22(f)(2) is adopted, CPOs that have claimed the fund of funds extension will not need to file new notices with NFA in order to claim the additional 30 days to file and to distribute their qualifying pools' annual reports. As noted previously, however, the Commission expects CPOs to file and to distribute their pools' annual reports as soon as possible after the pools' fiscal year-ends to ensure that participants obtain information that is as current as possible.

D. Streamlined Filing Procedures for Liquidating Pools

Regulation 4.22(c) requires a CPO of a commodity pool that has ceased operation to distribute a final annual report to commodity pool participants and to file a copy with NFA within 90 days of the pool's permanent cessation of trading, but in no event longer than 90 days after funds are returned to pool participants. Due to confusion created by the reference in Regulation 4.22(c) to two possible timeframes for filing a final annual report, the Commission is proposing to amend this regulation to specify that the final annual report must be filed no later than 90 days after the pool ceases trading. A CPO that has not distributed all funds to participants by the date that the report is issued must provide information about the return of funds to pool participants, including an estimate of the value of funds remaining to be distributed and the anticipated timeframe of when those funds are expected to be returned. When the remaining funds are returned to participants, the CPO should send a notice to all participants and to NFA.

The Commission further acknowledges that the cost of preparing audited financial statements, which may reduce significantly the amount of funds available to return to participants, particularly where the pool has ceased operation due to material trading and investment losses, may exceed the benefits to the pool participants. In these situations, the most significant information for participants is disclosure of the factors that led to the decline in the pool's value, the fees and expenses attributable to the pool leading up to the liquidation, the manner in which the pool's operations were concluded, and when and how much of the participants' investment has been, or will be, returned.

The Commission therefore is proposing to simplify the reporting requirements for CPOs of pools ceasing operation in order to assist them in providing participants with the most timely and meaningful information.

¹⁰ In this regard, the Commission would expect that pool annual financial reports would be issued to the pool's participants shortly after the completion of the reports by the independent public accountant or, for unaudited annual financial reports, by the CPO.

¹¹ 17 CFR 275.206(4)-2(b)(3). "Fund of funds" is defined for purposes of the custody rule at 275.206(4)-2(b)(3)(c)(4).

This information would include a Statement of Operations and a Statement of Changes in Net Assets since the last fiscal year-end annual report, an explanation of the winding down of the pool's operations, and a written disclosure that all interests in, and assets of, the pool have been redeemed, distributed, or transferred on behalf of the participants. If the report would otherwise be required to be audited pursuant to Regulation 4.22(d), the CPO may prepare an unaudited annual report provided that the CPO obtains from all participants, and files with NFA, written waivers of each of the participant's rights to receive an audited annual report. This latter provision is consistent with case-by-case exemptions that Commission staff has provided to CPOs of pools that have ceased operation.

In order to clarify that the requirement to file an annual financial report upon the permanent cessation of trading applies to Regulation 4.7-exempt pools, the Commission proposes to add to the introductory text of Regulation 4.7(b)(3) the language that appears in the introductory text of Regulation 4.22(c) to this effect, subject to the clarification proposed above. Commission staff has confirmed that Regulation 4.7-exempt pools are subject to the same requirements as non-exempt pools with respect to their final annual reports in the annual report guidance letter issued to CPOs each year by Commission staff.¹²

E. Codifying Existing Policies Regarding Special Allocations of Ownership Equity, Unrealized Gains and Losses, and Investee Funds' Income and Expenses

1. Special Allocations of Ownership Interests

CFTC Interpretative Letter No. 94–3, Special Allocations of Investment Partnership Equity,¹³ describes the procedures for reporting in a pool's annual financial report special allocations of partnership equity from limited partners to the general partner.¹⁴

These special allocations must be recognized in the financial statements in the same reporting period as the net income, interest income, or other basis of computation of the special allocation; classified in the Statement of Operations as either an expense or a special allocation of net income; separately reported in the Statement of Partnership Equity; and deducted in the computation of the GAAP-required disclosures.

At the time Interpretative Letter 94–3 was issued, no specific accounting standard existed to address special allocations of partnership equity. Subsequently, the AICPA issued the Audit and Accounting Guide, *Audits of Investment Companies*, which contains a provision stating that special allocations of investment partnership equity can be accounted for in one of two ways. Pursuant to the Audit and Accounting Guide, the amounts of any special allocations may be presented in either the Statement of Operations or the Statement of Changes in Partners' Capital in accordance with the partnership agreement, and the method of computing such payments or allocations should be described in the notes to the financial statements.¹⁵

Commission staff has consistently taken the position that requiring a CPO to report a special allocation in a pool's Statement of Operations provides the pool's participants with more complete information of the impact of a distribution of a special allocation to their respective capital accounts, notwithstanding the flexibility provided by the Audit and Accounting Guide.¹⁶ The Commission, therefore, is proposing to amend Regulation 4.22(e) to incorporate the requirements currently detailed in Interpretative Letter No. 94–3. CPOs may continue to use the sample financial statement reporting formats set forth in the Interpretative Letter.

2. Combining Gains and Losses on Regulated Futures Transactions With Gains and Losses on Non-CFTC Regulated Transactions in the Statement of Operations

Regulation 4.22(e) provides that a commodity pool's Statement of Operations must itemize the pool's total realized net gain or loss from commodity interest trading and the change in unrealized net gain or loss in commodity interest positions during the pool's fiscal year. Regulation 4.22(e)

does not provide explicitly for separate disclosure on the Statement of Operations of realized and unrealized gains and losses on non-commodity interest trading activities.

In 1995, Commission staff issued an interpretation of the requirements for itemization of realized and unrealized gains or losses in the commodity pool's Statement of Operations.¹⁷ The interpretation noted that trading is often done by commodity pools using strategies that combine financial instruments from different types of markets, and, to reflect meaningfully the results of such trading strategies, permits the separate reporting of realized and unrealized gains and losses that combines the results of commodity interest trading and non-commodity interest trading that are part of the same trading strategy. The interpretation further noted that reporting realized and unrealized gains and/or losses for commodity interest transactions separately from other financial instruments that are part of the pool's trading strategy may be misleading to pool participants as the separate reporting may distort the real results of the pool's trading strategies.

In order to formally establish staff's interpretation, the Commission is proposing to amend Regulation 4.22(e) to state that realized and unrealized gains and losses on regulated commodities transactions presented in the Statement of Operations of a commodity pool may be combined with realized or unrealized gains and losses, respectively, from non-commodity interest trading, provided that the gains and losses to be combined are part of a related trading strategy. Furthermore, gains or losses from foreign currency translations and conversions also may be included with the related trading strategy, or reported separately.¹⁸

3. Fees and Expenses of Investee Funds

Commission Regulation 4.22(e) requires a CPO to itemize in the Statement of Operations brokerage commissions, management fees, advisory fees, incentive fees, interest income and expense, total realized net gain or loss from commodity interest trading, and change in unrealized net gain or loss on commodity interest positions during the pool's fiscal year directly incurred by the pool during the course of the reporting period. A purpose of this provision is to ensure

¹² CPO guidance letters issued by the Commission's Division of Clearing and Intermediary Oversight ("DCIO") are available at <http://www.cftc.gov/industryoversight/intermediaries/guidancecporereports.html>.

¹³ Available at <http://www.cftc.gov/tm/tm94-03.htm>.

¹⁴ "Special allocations" are generally distributions of profits or transfers of equity that exceed a class's proportionate share of profits based upon the class's proportionate capital contribution to the pool. As noted in Interpretative Letter No. 94–3, a partnership agreement may often provide that a special allocation is to be made for the advisory services provided by the general partner,

and that the amount of the allocation is based upon a percentage of the partnership's net income.

¹⁵ AICPA Audit and Accounting Guide, *Investment Companies*, paragraph 7.49.

¹⁶ This position has been stated in DCIO's annual CPO guidance letters.

¹⁷ CFTC Letter No. 95–52, Comm. Fut. L. Rep. (CCH) ¶ 26,421.

¹⁸ The proposed treatment of gains or losses from foreign currency translation is consistent with AICPA Audit and Accounting Guide, *Audits of Investment Companies*, paragraphs 7.51 and 7.54.

that pool participants receive a detailed listing of the fees and other expenses incurred by the pool for the reporting period.

For over a decade, consistent with the policy of detailed disclosure of material fees and expenses set forth in Regulation 4.22(e), Commission staff has encouraged CPOs to disclose separately in pool annual reports income received from, and fees paid to, investee pools.¹⁹ Specifically, CPOs were encouraged to disclose in the notes to the financial statements the amounts of management and incentive fees and expenses indirectly incurred as a result of investing in any fund where the investment in the fund exceeded five percent of the pool's net asset value. Commission staff took the position that such income, fees, and expenses should be disclosed separately for each fund in which a CPO invested five or more percent of a pool's net asset value. Income, fees, and expenses incurred from investments in one or more funds where each investment in a fund represented less than five percent of the pool's net asset value could be combined and reported in the aggregate; the total income on the detail schedule should agree with the amount of income reported for the income from investments in other funds in the pool's Statement of Operations.²⁰ The rationale for this disclosure is that such information is material for pool participants to comprehend fully the investment strategy and fee structure of a commodity pool. In addition, the five percent threshold is consistent with the reporting thresholds set forth in the relevant accounting requirements regarding disclosure of investments in other funds.²¹

Accordingly, the Commission is proposing that information on the amounts of income and expenses associated with a pool's investments in investee funds, and identifying by name the investee funds in which investments exceed five percent of the pool's net assets, be required in annual reports for pools prepared under both Regulation 4.22(c) and Regulation 4.7(b)(3).

¹⁹ Commission staff has discussed these disclosures in the annual CPO guidance letters.

²⁰ Fees and expenses are generally reported net of any income by the investee fund to the CPO.

²¹ AICPA Statement of Position ("SOP") 03-04, Reporting Financial Highlights and Schedule of Investments by Nonregistered Investment Partnerships: An Amendment to the Audit and Accounting Guide, Audits of Investment Companies.

F. Use of GAAP

1. Regulations 4.22(c) and 4.7(b)(3)

Commission regulations require that audited and unaudited financial statements, as well as periodic account statements, be presented and computed in accordance with GAAP. This provision consistently has been interpreted by Commission staff to mean GAAP as established in the United States ("U.S. GAAP"). Nevertheless, Commission staff has, on a case-by-case basis, provided limited relief to CPOs that operate commodity pools organized under the laws of a foreign jurisdiction by allowing the financial statements of such pools to be prepared and presented in accordance with International Financial Reporting Standards ("IFRS") instead of U.S. GAAP.²² In cases where staff has provided relief, the relief was conditioned upon the offshore pool following certain key elements of U.S. GAAP standards, including preparing a condensed Schedule of Investments;²³ reporting special allocations of partnership equity in accordance with CFTC Interpretative Letter 94-3, proposed to be codified as Regulation 4.22(e)(2); and, in the event that IFRS would require consolidated financial statements for the pool, adequately reporting results of operations and financial position specific to each class of the pool's investors. In addition, using accounting standards other than U.S. GAAP must not conflict with any representations made to participants or potential participants in the pool.

Because these criteria under which CPOs have been granted relief from the requirement to prepare pool financial reports in accordance with U.S. GAAP have remained constant, the Commission is proposing that CPOs be permitted to claim relief to prepare financial statements pursuant to IFRS by filing a notice that includes representations regarding the operations of their offshore pools, the preparation of the pools' financial statements in accordance with IFRS, and the additional information that will be included in the reports in order for the financial statements to be consistent with U.S. GAAP. If IFRS would require consolidated financial statements for a pool, such as those with complex capital structures (for example, master-

feeder structures or funds of funds), such financial statements must contain disclosures that adequately report results of operations and financial position specific to each class of the pool's investors.

Under the proposal, the notice must be filed with NFA prior to the due date for the report, and the CPO can continue to prepare annual reports for future years in accordance with IFRS as long as all representations made in the initial notice remain in effect. A single notice may be filed for more than one pool operated by the CPO as long as all the representations in the notice apply to each of the pools named therein.

Commission staff also has provided relief on a case-by-case basis to CPOs operating offshore commodity pools permitting the use of accounting standards established in other jurisdictions, including the United Kingdom, Ireland, and Luxembourg. However, the Commission currently is proposing to establish the notice procedure solely for pools that are following IFRS, due to IFRS's global nature and the various efforts under way in the U.S. and other countries to achieve convergence between IFRS and local accounting standards.²⁴ CPOs of offshore pools that meet the criteria specified in proposed Regulation 4.22(d)(2) but are using accounting standards other than IFRS may continue to seek case-by-case relief from the U.S. GAAP requirement by filing relief requests with Commission staff.

2. GAAP Requirement in Regulation 4.13

Regulation 4.13 provides an exemption from registration for CPOs that operate only one pool at a time, for which no advertising is done and no compensation is received; or that operate pools that include no more than 15 participants each, and the aggregate subscriptions to all pools do not exceed \$400,000. In 2003, the Commission adopted additional registration exemptions for CPOs of pools whose participants are SEC "accredited investors"²⁵ and that limit their trading of commodity interests to a *de minimis* amount, or that limit participation to certain highly sophisticated investors. In proposing the Regulation 4.13(a)(3) and (4) exemptions that were adopted in 2003, the Commission stated that "this relief is intended to encourage and

²² The annual CPO guidance letters issued by Commission staff have discussed the conditions under which such exemptions may be granted and the procedure for making exemption requests. See, e.g., Section III of the January 16, 2008 annual guidance letter at <http://www.cftc.gov/stellent/groups/public/@iointermediaries/documents/generic/cpoannualguidanceletter2007.pdf>.

²³ As required by AICPA SOP 95-2, subsequently amended by SOP 01-1 and SOP 03-4.

²⁴ See, e.g., the February 27, 2006 Memorandum of Understanding between the Financial Accounting Standards Board and the International Accounting Standards Board on convergence of IFRS and U.S. GAAP: http://www.fasb.org/intl/mou_02-27-06.pdf.

²⁵ 17 CFR 230.501(a) (2008).

facilitate participation in the commodity interest markets by additional collective investment vehicles and their advisers, with the added benefit to all market participants of increased liquidity.”²⁶

Regulation 4.13(c) specifies that, if a CPO that has claimed an exemption from registration under Regulation 4.13 distributes an annual report to pool participants, the annual report must be presented and computed in accordance with GAAP and, if audited by an independent public accountant, certified in accordance with Regulation 1.16. The Commission has reconsidered this requirement and determined that it does not need to prescribe the form of an annual report that is not required by its regulations to be prepared, distributed, or filed. Accordingly, the Commission is proposing to remove the requirement in Regulation 4.13(c) that an annual report distributed to participants in a pool for which exemption under Regulation 4.13 has been claimed must be prepared in accordance with GAAP. The Commission expects, however, that CPOs will prepare their pools’ reports pursuant to the terms of the pools’ operating documents.

III. Updating References to Financial Schedules

The Commission is proposing to update both the periodic and annual reporting provisions of Part 4 to conform with current accounting practices with respect to the references to various financial schedules. These changes would delete references to the Statement of Changes in Financial Position, which no longer exists; rename the Statement of Income (Loss) as the Statement of Operations; and rename the Statement of Changes in Net Asset Value as the Statement of Changes in Net Assets.

IV. Related Matters

Regulatory Flexibility Act

The Regulatory Flexibility Act (“RFA”), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing regulations, consider the impact of those regulations on small businesses. The Commission previously has established certain definitions of “small entities” to be used by the Commission in evaluating the impact of its regulations on such entities in accordance with the RFA.²⁷ The Commission has determined previously that registered CPOs are not small entities for the purpose of the RFA.²⁸ The proposed amendments to

Regulation 4.7 and Regulation 4.22 would apply only to registered CPOs. With respect to CPOs exempt from registration, the Commission has previously determined that a CPO is a small entity if it meets the criteria for exemption from registration under current Regulation 4.13(a)(2). The proposed amendment to Regulation 4.13 would remove an existing requirement and does not impose any significant burdens. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action proposed to be taken herein will not have a significant economic impact on a substantial number of small entities.

A. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (“PRA”) ²⁹ imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. Pursuant to the PRA, the Commission has submitted a copy of this section to the Office of Management and Budget (“OMB”) for its review.

Collection of Information. (Rules Relating to the Operations and Activities of Commodity Pool Operators and Commodity Trading Advisors and to Monthly Reporting by Futures Commission Merchants, OMB Control Number 3038–0005.)

The proposed amendments will not require a new collection of information on the part of any entities subject to the proposed amendments. Specifically, the proposed amendments will modify existing regulatory requirements by clarifying information that must be included in required periodic and annual reports. The expected effect of the proposed amended regulations will be to increase slightly the burden for this collection of information due to including specific fee and expense information in annual reports for funds of funds. This increase affects only annual reports for pools that invest in other funds and therefore are required to include the additional fee and expense information, and does not affect reports for pools that do not invest in other funds. In addition, because the previous submission of this collection contained a calculation error with respect to the total number of respondents, the burden has been recalculated and the corrected numbers are included in the current estimate. The Commission estimates the burden of this collection of information as follows:

Estimated Annual Reporting Burden:
Number of Respondents: 9,200.
Total Annual Responses: 28,275.
Total Annual Hours: 167,550.

The Commission considers comments by the public on this proposed collection of information in—

Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

Evaluating the accuracy of the Commission’s estimate of the burden of the proposed collection of information, including the validity of the methodology and assumptions used;

Enhancing the quality, utility, and clarity of the information to be collected; and

Minimizing the burden of the collection of information on those who are to respond, including through the use of appropriate automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g., permitting electronic submission of responses.

Organizations and individuals desiring to submit comments on the information collection should contact the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer of the Commodity Futures Commission. OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 90 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations. Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581 or (202) 418–5160.

B. Cost-Benefit Analysis

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the regulation outweigh its costs. Rather, Section 15(a) simply requires the

²⁶ 68 FR 12625 (March 17, 2003).

²⁷ 47 FR 18618 (April 30, 1982).

²⁸ 47 FR at 18619.

²⁹ 44 U.S.C. 3507(d).

Commission to “consider the costs and benefits” of its action.

Section 15(a) of the Act further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular regulation was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission has considered the costs and benefits of this proposed regulation in light of the specific provisions of Section 15(a) of the Act, as follows:

1. Protection of market participants and the public. The proposed amendments should not affect the protection of market participants and the public as they primarily clarify existing reporting requirements for commodity pools.

2. Efficiency and competition. The Commission anticipates that the proposed amendments will benefit efficiency by streamlining the annual report filing process for funds of funds and pools ceasing operation. The proposal will also reduce the number of requests for additional extensions for funds of funds that must be processed by NFA. The proposed amendments are considered by the Commission as benefiting efficiency and not impacting competition.

3. Financial integrity of futures markets and price discovery. The proposed amendments should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity of futures markets or the price discovery function of such markets.

4. Sound risk management practices. The proposed amendments should have no effect, from the standpoint of imposing costs or creating benefits, on sound risk management practices.

5. Other public interest considerations. The Commission believes that the proposed clarification of requirements for periodic reporting of multi-class or series pools is beneficial in that it results in the provision of more meaningful information to participants in those pools.

After considering these factors, the Commission has determined to propose the amendments discussed above. The Commission invites public comment on its application of the cost-benefit provision. Commenters also are invited to submit any data that they may have quantifying the costs and benefits of the proposal with their comment letters.

List of Subjects in 17 CFR Part 4

Advertising, Commodity futures, Commodity pool operators, Consumer protection, Reporting and recordkeeping requirements.

For the reasons discussed in the preamble, the Commission proposes to amend 17 CFR part 4 as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for part 4 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 4, 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

2. Amend § 4.7 to revise paragraphs (b)(2)(iii), (b)(3)(i) introductory text, (b)(3)(i)(B), and (b)(3)(i)(C), and to add paragraph (b)(3)(i)(D) to read as follows:

§ 4.7 Exemption from certain part 4 requirements for commodity pool operators with respect to offerings to qualified eligible persons and for commodity trading advisors with respect to advising qualified eligible persons.

* * * * *

(b) * * *

(2) * * *

(iii)(A) Either the net asset value per outstanding participation unit in the exempt pool as of the end of the reporting period, or

(B) The total value of the participant's interest or share in the exempt pool as of the end of the reporting period;

(C) Where the pool is comprised of more than one ownership class or series, the net asset value of the series or class on which the account statement is reporting, and the net asset value per unit or value of the participant's share, also must be included in the statement required by this paragraph (b)(2); except that, for a pool that is a series fund structured with a limitation on liability among the different series, the account statement required by this paragraph (b)(2) is not required to include the consolidated net asset value of all series of the pool.

(3) *Annual report relief.* (i) 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 or the permanent cessation of trading,

whichever is earlier, the commodity pool operator electronically files with the National Futures Association and distributes to each participant in lieu of the financial information and statements specified by those sections, an annual report for the exempt pool, affirmed in accordance with § 4.22(h) which contains, at a minimum:

* * * * *

(B) A Statement of Operations for that year;

(C) Appropriate footnote disclosure and such further material information as may be necessary to make the required statements not misleading. For a pool that invests in other funds, this information must include, but is not limited to, separately disclosing the amounts of income and expenses associated with each investment in an investee fund that exceeds five percent of the pool's net assets. The income and expenses associated with an investment in an investee fund that is less than five percent of the pool's net assets may be combined and reported in the aggregate with the income and expenses of other investee funds that, individually, represent an investment of less than five percent of the pool's net assets;

(D) Where the pool is comprised of more than one ownership class or series, information for the series or class on which the financial statements are reporting should be presented in addition to the information presented for the pool as a whole; except that, for a pool that is a series fund structured with a limitation on liability among the different series, the financial statements are not required to include consolidated information for all series.

* * * * *

§ 4.22 [Amended]

3. Amend § 4.13 by removing paragraph (c)(2) and redesignating paragraph (c)(3) as (c)(2).

4. Amend § 4.22 to revise paragraphs (a) introductory text, (a)(1) introductory text, (a)(2) introductory text, (c) introductory text, (c)(4), (c)(5), (d), (e) and (f)(2), and to add paragraphs (a)(2)(vii) and (c)(7) to read as follows:

§ 4.22 Reporting to pool participants.

(a) Except as provided in paragraph (a)(4) of this section, each commodity pool operator registered or required to be registered under the Act must periodically distribute to each participant in each pool that it operates, within 30 calendar days after the last date of the reporting period prescribed in paragraph (b) of this section, an Account Statement, which shall be presented in the form of a Statement of Operations and a Statement of Changes

in Net Assets, for the prescribed period. These financial statements must be presented and computed in accordance with generally accepted accounting principles consistently applied. The Account Statement must be signed in accordance with paragraph (h) of this section.

(1) The portion of the Account Statement which must be presented in the form of a Statement of Operations must separately itemize the following information:

* * * * *

(2) The portion of the Account Statement that must be presented in the form of a Statement of Changes in Net Assets must separately itemize the following information:

* * * * *

(vii) Where the pool is comprised of more than one ownership class or series, information for the series or class on which the account statement is reporting should be presented in addition to the information presented for the pool as a whole; except that, for a pool that is a series fund structured with a limitation on liability among the different series, the account statement is not required to include consolidated information for all series.

* * * * *

(c) Except as provided in paragraph (c)(6) of this section, each commodity pool operator registered or required to be registered under the Act must distribute an Annual Report to each participant in each pool that it operates, and must electronically submit a copy of the Report and key financial balances from the Report to the National Futures Association pursuant to the electronic filing procedures of the National Futures Association, within 90 calendar days after the end of the pool's fiscal year or the permanent cessation of trading, whichever is earlier; *Provided, however,* that if during any calendar year the commodity pool operator did not operate a commodity pool, the pool operator must so notify the National Futures Association within 30 calendar days after the end of such calendar year. The Annual Report must be affirmed pursuant to paragraph (h) of this section and must contain the following:

* * * * *

(4) Statements of Operations, and Changes in Net Assets, for the period between:

(i) The later of:

(A) The date of the most recent Statement of Financial Condition delivered to the National Futures Association pursuant to this paragraph (c), or

(B) The date of the formation of the pool, and

(ii) The close of the pool's fiscal year, together with Statements of Operations, and Changes in Net Assets for the corresponding period of the previous fiscal year.

(5) Appropriate footnote disclosure and such further material information as may be necessary to make the required statements not misleading.

(i) For a pool that invests in other funds, this information must include, but is not limited to, separately disclosing the amounts of income and expenses associated with each investment in an investee fund that exceeds five percent of the pool's net assets. The income and expenses associated with an investment in an investee fund that is less than five percent of the pool's net assets may be combined and reported in the aggregate with the income and expenses of other investee funds that, individually, represent an investment of less than five percent of the pool's net assets;

(ii) Where the pool is comprised of more than one ownership class or series, information for the series or class on which the financial statements are reporting should be presented in addition to the information presented for the pool as a whole; except that, for a pool that is a series fund structured with a limitation on liability among the different series, the financial statements are not required to include consolidated information for all series.

* * * * *

(7) For a pool that has ceased operation prior to, or as of, the end of the fiscal year, the commodity pool operator may provide the following in lieu of the annual report that would otherwise be required by § 4.22(c) or § 4.7(b)(3):

(i) Statements of Operations and Changes in Net Assets for the period between:

(A) The later of:

(1) The date of the most recent Statement of Financial Condition filed with the National Futures Association pursuant to this paragraph (c), or

(2) The date of the formation of the pool; and

(B) The close of the pool's fiscal year or the date of the cessation of trading, whichever is earlier,

(ii)(A) An explanation of the winding down of the pool's operations and written disclosure that all interests in, and assets of, the pool have been redeemed, distributed or transferred on behalf of the participants;

(B) If all funds have not yet been distributed or transferred to participants

by the time that the final report is issued, disclosure of the value of assets remaining to be distributed and an approximate time frame of when the distribution will occur. At the time of the final distribution of the pool's assets, the commodity pool operator must provide written notice to each participant and to the National Futures Association that all interests in, and assets of, the pool have been redeemed, distributed or transferred on behalf of the participants.

(iii) A report filed pursuant to paragraph (c)(7) of this section that would otherwise be required by § 4.22(c) is not required to be certified in accordance with paragraph (d) of this section if the commodity pool operator obtains from all participants, and files with the National Futures Association no later than the time that the commodity pool operator files the Annual Report, written waivers of their rights to receive an audited Annual Report.

* * * * *

(d)(1) The financial statements in the Annual Report must be presented and computed in accordance with generally accepted accounting principles consistently applied and must be certified by an independent public accountant. The requirements of § 1.16(g) of this chapter shall apply with respect to the engagement of such independent public accountants, except that any related notifications to be made may be made solely to the National Futures Association, and the certification must be in accordance with § 1.16 of this chapter, except that the following requirements of that section shall not apply:

(i) The audit objectives of § 1.16(d)(1) of this chapter concerning the periodic computation of minimum capital and property in segregation;

(ii) All other references in § 1.16 of this chapter to the segregation requirements; and

(iii) Sections 1.16(c)(5), (d)(2), (e)(2), and (f) of this chapter.

(2)(i) The financial statements in the Annual Report required by this section or by § 4.7(b)(3) may be presented and computed in accordance with International Financial Reporting Standards issued by the International Accounting Standards Board if the following conditions are met:

(A) The pool is organized under the laws of a foreign jurisdiction;

(B) The Annual Report will include a condensed schedule of investments, or, if required by the alternate accounting standards, a full schedule of investments;

(C) The preparation of the pool's financial statements under International Financial Reporting Standards is not inconsistent with representations set forth in the pool's offering memorandum or similar document;

(D) Special allocations of ownership equity will be reported in accordance with § 4.22(e)(2); and

(E) In the event that the International Financial Reporting Standards require consolidated financial statements for the pool, such financial statements must contain disclosures that adequately report results of operations and financial position specific to each class of the pool's investors.

(ii) The commodity pool operator of a pool that meets the conditions specified in paragraph (d)(2) of this section may claim relief from the requirement in paragraph (d)(1) of this section by filing a notice with the National Futures Association, within 90 calendar days of the end of the pool's fiscal year.

(A) The notice must contain the name, main business address, main telephone number and the National Futures Association registration identification number of the commodity pool operator, and name and the identification number of the commodity pool.

(B) The notice must include representations regarding the pool's compliance with each of the conditions specified in § 4.22(d)(2)(i)(A) through (D), and, if applicable, (d)(2)(i)(E); and

(C) The notice must be signed by the commodity pool operator in accordance with paragraph (h) of this section.

(e)(1) The Statement of Operations required by this section must itemize brokerage commissions, management fees, advisory fees, incentive fees, interest income and expense, total realized net gain or loss from commodity interest trading, and change in unrealized net gain or loss on commodity interest positions during the pool's fiscal year. Gains and losses on commodity interests need not be itemized by commodity or by specific delivery or expiration date.

(2)(i) Any share of a pool's profits or transfer of a pool's equity which exceeds the general partner's or any other class's share of profits computed on the general partner's or other class's pro rata capital contribution are "special allocations." Special allocations of partnership equity or other interests must be recognized in the pool's Statement of Operations in the same period as the net income, interest income, or other basis of computation of the special allocation is recognized. Special allocations must be recognized

and classified either as an expense of the pool or, if not recognized as an expense of the pool, presented in the Statement of Operations as a separate, itemized allocation of the pool's net income to arrive at net income available for pro rata distribution to all partners.

(ii) Special allocations of ownership interest also must be reported separately in the Statement of Partners' Equity, in addition to the pro-rata allocations of net income, as to each class of ownership interest.

(3) Realized gains or losses on regulated commodities transactions presented in the Statement of Operations of a commodity pool may be combined with realized gains or losses from trading in non-commodity interest transactions, provided that the gains or losses to be combined are part of a related trading strategy. Unrealized gains or losses on open regulated commodity positions presented in the Statement of Operations of a commodity pool may be combined with unrealized gains or losses from open positions in non-commodity positions, provided that the gains or losses to be combined are part of a related trading strategy.

(f) * * *

(2) In the event a commodity pool operator finds that it cannot obtain information necessary to prepare annual financial statements for a pool that it operates within the time specified in either paragraph (c) of this section or § 4.7(b)(3)(i), as a result of the pool investing in another collective investment vehicle, it may claim an extension of time under the following conditions:

(i) The commodity pool operator must, within 90 calendar days of the end of the pool's fiscal year, file a notice with the National Futures Association, except as provided in paragraph (f)(2)(v) of this section.

(ii) The notice must contain the name, main business address, main telephone number and the National Futures Association registration identification number of the commodity pool operator, and name and the identification number of the commodity pool.

(iii) The notice must state the date by which the Annual Report will be distributed and filed (the "Extended Date"), which must be no more than 180 calendar days after the end of the pool's fiscal year. The Annual Report must be distributed and filed by the Extended Date.

(iv) The notice must include representations by the commodity pool operator that:

(A) The pool for which the Annual Report is being prepared has

investments in one or more collective investment vehicles (the "Investments");

(B) For all reports prepared under paragraph (c) of this section and for reports prepared under § 4.7(b)(3)(i) that are certified by an independent public accountant, the commodity pool operator has been informed by the certified public accountant engaged to audit the commodity pool's financial statements that specified information required to complete the pool's annual report is necessary in order for the accountant to render an opinion on the commodity pool's financial statements. The notice must include the name, main business address, main telephone number, and contact person of the accountant; and

(C) The information specified by the accountant cannot be obtained in sufficient time for the Annual Report to be prepared, audited, and distributed before the Extended Date.

(D) For unaudited reports prepared under § 4.7(b)(3)(i), the commodity pool operator has been informed by the operators of the Investments that specified information required to complete the pool's annual report cannot be obtained in sufficient time for the Annual Report to be prepared and distributed before the Extended Date.

(v) For each fiscal year following the filing of the notice described in paragraph (f)(2)(i) of this section, for a particular pool, it shall be presumed that the particular pool continues to invest in another collective investment vehicle and the commodity pool operator may claim the extension of time; provided, however, that if the particular pool is no longer investing in another collective investment vehicle, then the commodity pool operator must file electronically with the National Futures Association an Annual Report within 90 days after the pool's fiscal year-end accompanied by a notice indicating the change in the pool's status.

(vi) Any notice or statement filed pursuant to paragraph (f)(2) of this section must be signed by the commodity pool operator in accordance with paragraph (h) of this section.

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Issued in Washington, DC, on February 18, 2009 by the Commission.

David A. Stawick,

Secretary of the Commission.

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