

**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 the Federal Aviation Administration Order 7400.9F, Airspace Designations and Reporting Points, dated September 10, 1998, and effective September 16, 1998, is amended as follows:

*Paragraph 6002 Class E airspace designated as a surface area for an airport.*

\* \* \* \* \*

#### ANM WY E2 Riverton, WY [Revised]

Riverton Regional Airport, WY

(Lat. 43°03'51"N, Long. 108°27'35"W)

Riverton VOR/DME

(Lat. 43°03'57"N, Long. 108°27'20"W)

Within a 4.2-mile radius of the Riverton Regional Airport, and within 1.8 miles each side of the Riverton VOR/DME, 291° radial extending from the 4.2-mile radius to 7 miles west of the VOR/DME, and within 2.7 miles each side of the Riverton VOR/DME 123° radial extending from the 4.2-mile radius to 7 miles southeast of the VOR/DME.

\* \* \* \* \*

Issued in Seattle, Washington, on October 19, 1998.

**Helen Fabian Parke,**

*Manager, Air Traffic Division, Northwest Mountain Region.*

[FR Doc. 98-29128 Filed 10-29-98; 8:45 am]

BILLING CODE 4910-13-M

## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 4

#### Two-Part Documents for Commodity Pools

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** On March 30, 1998, the Commodity Futures Trading Commission ("CFTC" or "Commission") published for comment the National Futures Association's ("NFA") Compliance Rule 2-35 subsections (a) through (c)<sup>1</sup> ("the Rule"), its related Interpretive Notice, and proposed amendments to Commission rules concerning the use of two-part documents for commodity pools (collectively "the Proposal"). The comment period for the Proposal was 30

<sup>1</sup> NFA has since submitted new subsections (d) and (e) to NFA Rule 2-35, which are not related to the use of a two-part document. NFA Rule 2-35 subsections (d) and (e) will be reviewed by the Commission as a separate submission pursuant to § 17(j) of the Commodity Exchange Act.

days and closed on April 29, 1998. The Commission has carefully considered the comments received on the Proposal and, based upon its review of these comments and its consideration of the Rule, the Interpretive Notice and the proposed Commission rule amendments, is approving the Proposal pursuant to Section 17(j) of the Commodity Exchange Act<sup>2</sup> ("Act") subject to the revisions discussed herein.

**EFFECTIVE DATE:** April 30, 1999.

#### FOR FURTHER INFORMATION CONTACT:

Leanna L. Morris, Staff Attorney, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW, Washington, DC 20581. Telephone: (202) 418-5466.

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Pursuant to Commission Rule 4.21,<sup>3</sup> no commodity pool operator ("CPO") registered or required to be registered under the Act may, directly or indirectly, solicit, accept or receive funds, securities or other property from a prospective participant in a pool that it operates or intends to operate unless, on or before the date it engages in that activity, the CPO delivers or causes to be delivered to the prospective participant a Disclosure Document for the pool containing the information set forth in Commission Rule 4.24.<sup>4</sup> NFA and the Commission have worked to identify ways in which the required disclosures could be more succinct and clear, while adhering to the objective of protecting pool participants by ensuring that participants are informed about the material facts concerning the pool before committing funds.

Over the years, however, pool Disclosure Documents have become more voluminous and more difficult to understand. In an effort to address concerns that essential information is not reaching investors in a form that can be easily understood, NFA submitted NFA Compliance Rule 2-35 subsections (a) through (c) and its related Interpretive Notice for Commission approval. The purpose of the Rule is to provide potential investors with

<sup>2</sup> 7 U.S.C. § 21(j) (1994).

<sup>3</sup> Commission rules referred to herein can be found at 17 CFR Ch. I (1998).

<sup>4</sup> Commission Rule 4.24 also contains a proviso that, where the prospective participant is an accredited investor as defined in 17 CFR 230.501(a), a notice of intended offering and statement of the terms of the intended offering may be provided prior to delivery of a Disclosure Document, subject to compliance with the rules promulgated by a registered futures association pursuant to section 17(j) of the Act.

material information concerning the commodity pool in a concise, readable format prior to their deciding whether to invest in a commodity pool.

The comment period for the Proposal ended on April 29, 1998. The Commission received seven comment letters. The commenters consisted of: one self-regulatory organization; one registered futures commission merchant ("FCM"); one formerly registered associated person of an FCM; one law firm; one futures industry trade association; one bar association; and one academician.

All commenters supported the rulemaking in general. Some commenters, however, advocated various changes to the proposed rules. The Commission has carefully considered the comments received and, based upon its review of the comments and its own consideration of the Rule, the Interpretive Notice and the proposed Commission rule amendments, has determined to adopt the Proposal, subject to the modifications discussed herein. Comments received on the Proposal are discussed below.

##### II. Transitional Provision

To facilitate the transition to compliance with the Rule and the Commission rule amendments, NFA and the Commission have determined that the revisions being announced today will become effective six months from the date hereof, but Disclosure Documents may be prepared, filed and used in accordance with the revised rules prior to the effective date. For pools that are continuously offered, amendment of the Disclosure Document is not required solely due to the rule revisions announced herein, and operators of such pools may make conforming changes as part of their next regular update in accordance with Commission Rule 4.26.

##### III. Discussion

###### A. Delivery of a Two-Part Document

The Rule requires that the CPO of a commodity pool required to register its securities under the Securities Act of 1933 ("public pool") deliver a two-part document. The first part of the document must be the Disclosure Document required by Commission Rule 4.21(a), written using plain English principles<sup>5</sup> and limited to specific

<sup>5</sup> NFA's Interpretive Notice to Rule 2-35 provides guidance on what is meant by the use of "plain English principles." Such principles include: using active voice; using short sentences and paragraphs; breaking up the document into short sections; using titles and sub-titles that specifically describe the contents of each section; using words that are definite, concrete, and part of everyday language;

disclosure information, as discussed in detail below. The second part is the Statement of Additional Information ("SAI"), which may include information that is not in the Disclosure Document, provided that the information is not misleading or otherwise inconsistent with applicable statutes, rules or regulations.

The CPO of a commodity pool that is not required to register its securities under the Securities Act of 1933 ("private pool")<sup>6</sup> must prepare and distribute a Disclosure Document and may prepare and distribute an SAI, but is not required to do so. If the CPO of a private pool chooses to prepare an SAI, it may be bound together with the Disclosure Document, so long as the Disclosure Document comes first. If the CPO of a private pool binds the SAI separately, the CPO is not required to provide it to a prospective participant unless requested by the prospective participant.

One commenter stated that the use of the two-part format should be optional for CPOs of private pools. The Commission notes that the intent of the Rule is to provide all investors with a more concise and readable document. Accordingly, it would defeat the purpose of the Rule if CPOs of private pools were allowed to choose whether to adhere to the format and disclosure requirements of the Rule. As discussed in detail below, if the CPO of a private pool chooses not to disclose supplemental information as defined in Commission Rule 4.24(v), the CPO needs to prepare and distribute only the Disclosure Document containing the information required by the Rule and does not need to prepare a separate SAI. Also, CPOs of private pools have the choice of binding the SAI to the Disclosure Document or separately providing the SAI upon request of the prospective participant. Accordingly, the Commission does not believe that CPOs of private pools should be given the option of choosing between the new two-part format or the previous disclosure format of Part 4 of the Commission's rules.

#### *B. Information Required To Be in the Disclosure Document*

The Rule provides that the Disclosure Document required by Commission Rule

4.21(a) be clear and concise, written using plain English principles, and limited to the information required by Commission Rules 4.24 and 4.25, provided, however, that the CPO may provide the performance information required by Commission Rule 4.25(c)(5) in the SAI. It should be noted that, if the CPO does not prepare an SAI, the performance information required under Commission Rule 4.25(c)(5) must be included in the Disclosure Document. The Disclosure Document must also include any other information necessary to understand the fundamental characteristics of the pool or to keep the Disclosure Document from being misleading.

In support of the Rule, the Commission has amended Commission Rule 4.25(c)(5) to permit the summary description of the performance history of the CTAs and investee pools for which performance is not required to be disclosed pursuant to Commission Rules 4.25(c)(3) and 4.25(c)(4) (hereinafter "non-major CTAs" and "non-major investee pools")<sup>7</sup> to be provided in the SAI.

The Rule originally proposed also permitting the CPO to provide the monthly rate of return information of the offered pool, required under Commission Rule 4.25(a)(1)(i)(H), in the SAI, separated from the remainder of the required performance capsule. One commenter stated, however, that the monthly performance information of the offered pool is too crucial to the evaluation of a CPO to permit the information to be placed in the SAI, where it may be missed or overlooked. The commenter stated that the "[r]eliance on a single yearly rate of return will allow a CPO to better disguise wildly aberrant performance of the pool."

The Commission has considered the Proposal and has concluded that the monthly rate of return information of the offered pool is necessary to disclose the volatility of the pool to investors. The Commission does not believe that such material information concerning the pool's performance should be separated between two parts of a Disclosure Document. Thus, NFA has revised its Rule by deleting that specific provision from the final rule.

<sup>7</sup> Commission Rule 4.10(d)(5) defines *major investee pool* as any investee pool that is allocated or intended to be allocated at least ten percent of the net asset value of the pool. Commission Rule 4.10(i) defines *major commodity trading advisor* as, with respect to a pool, any CTA that is allocated or intended to be allocated at least ten percent of the pool's funds available for commodity interest trading. Accordingly, "non-major CTAs" and "non-major investee pools" do not meet the ten percent allocation requirement.

Commission Rule 4.25(a)(2)(i) also will not be revised as originally proposed. Accordingly, the offered pool's monthly rate of return information must be provided in the first part of a two-part document in the performance capsule required by Commission Rule 4.25.

#### *C. Commission Rule 4.24(v)—Supplemental Information*

The Rule provides that the Disclosure Document must be limited to and include all of the required information of Commission Rules 4.24 and 4.25, with the noted exception that the summary performance information required by Commission Rule 4.25(c)(5) may be provided in an SAI if one is prepared. Accordingly, Commission Rule 4.24(v) has been revised to require that supplemental information, which is not required information<sup>8</sup> be contained only in the second part of a two-part document. Such information may not be presented in the Disclosure Document.

Several commenters stated that the provisions should not be so restrictive on what is allowed to be included in the Disclosure Document. They maintained that, because of the varying structure and objectives of each commodity pool, discretion should be provided to CPOs in deciding what information to include in the Disclosure Document. For example, some CPOs may want to include the limited partnership agreement in the Disclosure Document. One commenter also stated that CPOs should be permitted to include supplemental performance information with the required performance disclosures, since "[s]upplemental performance information is often closely related to the required performance disclosures and is often based [on] required performance figures."

As discussed earlier, the intent behind providing investors with a two-part document is to provide a more understandable Disclosure Document that discloses essential information about a pool in such a way that will assist investors in making informed decisions about whether to invest in the pool. Accordingly, permitting the inclusion of supplemental information, such as a limited partnership agreement or non-required performance information which will increase the length of the Disclosure Document, is not in accordance with the intent of the two-part document format. Such information would be more

<sup>8</sup> Pursuant to Commission Rule 4.24(v), supplemental information is any information that is not required by Commission rules, the antifraud provisions of the Act, other federal or state laws or regulations, rules of a self-regulatory agency or laws of a non-United States jurisdiction.

avoiding legal jargon and highly technical terms; using glossaries to define technical terms that cannot be avoided; avoiding multiple negatives; and using tables and bullet lists, where appropriate. The Rule does not affect the prescribed statements of Commission Rules 4.24(a) and 4.24(b).

<sup>6</sup> Pursuant to Commission Rule 4.24(d)(3)(i), a "private pool" is one that is privately offered pursuant to section 4(2) of the Securities Act of 1933 or pursuant to Regulation D thereunder.

appropriately placed in the SAI, where it will not distract the investor from the material disclosures contained in the Disclosure Document.

That is not to say that the information provided in the SAI may not be useful information to prospective participants. The SAI may include information that expands upon the required information found in the Disclosure Document, provided that such information is not misleading or inconsistent with applicable statutes, rules or regulations. However, the Commission believes that it is more useful to the typical or average investor to provide essential information concerning an investment in the pool in a shorter and simpler Disclosure Document.

#### *D. Coordination With Other Regulatory Agencies*

Several commenters expressed concern over CFTC and Securities and Exchange Commission ("SEC") coordination of regulatory requirements for publicly offered commodity pools. Specifically, the commenters want the Commission to be certain that the use of the two-part format and plain English requirements will not conflict with any disclosure requirements of the SEC for commodity pools. The commenters urge the CFTC and the SEC to develop uniform standards on the use of two-part documents and plain English principles.

In drafting the Rule and its related Interpretive Notice, NFA considered the disclosure and formatting requirements of the SEC and state securities administrators in an effort to avoid any conflicting regulatory requirements. Accordingly, the Rule provides that any information required by the SEC or state securities administrators to be included in the first part of a two-part document must be included in the Disclosure Document.

The Rule also substantially adopts the "plain English" initiative of the SEC.<sup>9</sup> The Rule, however, requires that all parts of the Disclosure Document must be written using plain English principles, rather than limiting the plain English principles to a few specific disclosures, as provided in the SEC's rule.<sup>10</sup> Accordingly, although the Rule

expands the use of plain English principles, it does not conflict with the SEC's requirements.

In preparing the related Interpretive Notice, which provides guidance on plain English principles and the disclosures that must be provided in the Disclosure Document, NFA's Subcommittee for the Review of Non-Performance CPO/CTA Disclosure Issues ("Subcommittee") looked at what was then SEC Form N-1A. SEC Form N-1A sets out the disclosures required to be included in the prospectus and the SAI for mutual funds. The Subcommittee used SEC Form N-1A as a general guide for determining what disclosures the SEC might require to be included in the Disclosure Document for publicly offered commodity pools. Although the SEC has since adopted amendments to SEC Form N-1A,<sup>11</sup> the Commission believes that NFA Compliance Rule 2-35 and its related Interpretive Notice provide sufficient guidance on what disclosures the SEC and state securities administrators will require to be included in the Disclosure Document. Additionally, the Rule and the Interpretive Notice have been written to contain the necessary flexibility to address the disclosure requirements of the SEC and state securities administrators as they may change over time.<sup>12</sup> Accordingly, the Commission believes that any concerns about conflicting regulatory requirements have been addressed adequately. The Commission will continue to coordinate with the SEC on maintaining consistent requirements for publicly offered commodity pools.

#### **IV. Related Matters**

##### *A. Regulatory Flexibility Act*

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601-611, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments discussed herein will affect registered CPOs. The Commission has previously established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the

document, but does not enhance the quality of the information.

<sup>11</sup> 63 FR 13916 (March 23, 1998).

<sup>12</sup> The Interpretive Notice to NFA Compliance Rule 2-35 provides: "The Disclosure Document may also include information required by the Securities and Exchange Commission and state securities administrators. Such information currently includes items such as \* \* \*" (emphasis added). The language of the Interpretive Notice acknowledges that the disclosures required by the SEC and state securities administrators may differ over time from the requirements as of the date of the Interpretive Notice.

RFA.<sup>13</sup> The Commission previously has determined that registered CPOs are not small entities for the purpose of the RFA.<sup>14</sup> Therefore, the Chairperson, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action taken herein will not have a significant economic impact on a substantial number of small entities.

##### *B. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995<sup>15</sup> imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act.

There is no burden associated with the amendments to Commission Rules 4.24(v) or 4.25(c)(5) to implement the NFA rule. The group of rules contained in all of Part 4, "Commodity Pool Operators and Commodity Trading Advisors," of which Rules 4.24(v) and 4.25(c)(5) are a part, was approved on September 4, 1998 and assigned OMB control number 3038-0005. The group of rules contained in OMB control number 3038-0005 has the following burden:

Average burden hours per response:  
124.65

Number of respondents: 4,624

Frequency of response: On occasion

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW, Washington, DC 20581, (202) 418-5160.

##### **List of Subjects in 17 CFR Part 4**

Brokers, Commodity futures, Commodity pool operators, Commodity trading advisors.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and in particular sections 2(a)(1), 4l, 4m, 4n, 4o, and 8a, 7 U.S.C. 2, 6l, 6m, 6n, 6o, and 12(a), the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations 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. Section 4.24(v) is amended by revising paragraph (v)(3) introductory text to read as follows:

<sup>13</sup> 47 FR 18618-18621 (April 30, 1982).

<sup>14</sup> 47 FR 18619-18620.

<sup>15</sup> Pub. L. 104-13 (May 13, 1995).

<sup>9</sup> See 63 FR 6370 (February 6, 1998).

<sup>10</sup> SEC Rule 421(b), however, does require that the entire prospectus be clear, concise and understandable and requires using the following techniques, among others: present information in clear, concise sections, paragraphs and sentences; avoid legal and highly technical business terminology; avoid legalistic or overly complex presentations that make the substance of the disclosure difficult to understand; and avoid repetitive disclosure that increases the size of the

**§ 4.24 General disclosures required.**

\* \* \* \* \*

(v) \* \* \*

(3) Must be placed as follows, unless otherwise specified by Commission rules, provided that where a two-part document is used pursuant to rules promulgated by a registered futures association pursuant to Section 17(j) of the Act, all supplemental information must be provided in the second part of the two-part document:

\* \* \* \* \*

3. Section 4.25 is amended by revising paragraph (c)(5) introductory text to read as follows:

**§ 4.25 Performance disclosures.**

(c) \* \* \*

(5) With respect to commodity trading advisors and investee pools for which performance is not required to be disclosed pursuant to § 4.25(c)(3) and (4), the pool operator must provide a summary description of the performance history of each of such advisors and pools including the following information, provided that where the pool operator uses a two-part document pursuant to the rules promulgated by a registered futures association pursuant to Section 17(j) of the Act, such summary description may be provided in the second part of the two-part document:

\* \* \* \* \*

Dated: October 26, 1998.

By the Commission.

**Jean A. Webb,***Secretary of the Commission.*

[FR Doc. 98-29102 Filed 10-29-98; 8:45 am]

BILLING CODE 6351-01-P

**DEPARTMENT OF JUSTICE****28 CFR Part 25****[AG Order No. 2186-98]****RIN 1105-AA51****National Instant Criminal Background Check System Regulation****AGENCY:** Federal Bureau of Investigation, Department of Justice.**ACTION:** Final rule.

**SUMMARY:** The United States Department of Justice (DOJ) is publishing a final rule implementing the National Instant Criminal Background Check System (NICS) pursuant to the Brady Handgun Violence Prevention Act ("Brady Act"), to provide notice of the establishment of the NICS, to establish policies and procedures for ensuring the privacy and security of this system, and to

implement a NICS appeals policy for persons denied acquisition of a firearm based on information in the NICS that they believe to be erroneous or incomplete.

**EFFECTIVE DATE:** November 30, 1998.**FOR FURTHER INFORMATION CONTACT:**

Emmet A. Rathbun, Unit Chief, Federal Bureau of Investigation, Module C-3, 1000 Custer Hollow Road, Clarksburg, West Virginia 26306-0147, telephone number (304) 625-2000.

**SUPPLEMENTARY INFORMATION:** This rule finalizes two notices of proposed rulemaking: the National Instant Criminal Background Check System Regulation published in the **Federal Register** on June 4, 1998 (63 FR 30430), and the National Instant Criminal Background Check System User Fee Regulation, published in the **Federal Register** on August 17, 1998 (63 FR 43893). The FBI accepted comments on the proposed rules from interested parties until September 16, 1998, and approximately 2,000 comments were received.

In publishing this final rule, the Department also is giving notice, pursuant to section 103(d) of the Brady Act, Public Law 103-159, 107 Stat. 1536, to Federal Firearm Licensees (FFLs) and the chief law enforcement officer of each state that the NICS is established as of October 31, 1998. With limited exceptions, FFLs are required by the Brady Act to begin contacting the system beginning on November 30, 1998, thirty days after the establishment of the system, before they may transfer a firearm to a non-licensee. FFLs shall contact the NICS by contacting either the FBI NICS Operations Center or a state point of contact (POC) for the NICS, as specified by the Bureau of Alcohol, Tobacco, and Firearms (ATF), United States Department of the Treasury. The ATF will notify each FFL of the method by which FFLs must contact the NICS in their state.

**Significant Comments or Changes***The NICS User Fee*

The largest number of comments pertained to the FBI's proposed user fee to be charged FFLs that contact the FBI NICS Operations Center directly for a NICS background check. All of those who commented on the proposed user fee opposed the fee. This issue was the subject of Congressional action since the time of the initial publication of the proposed NICS rule. The Omnibus Appropriations Act for fiscal year 1999 provided additional monies to the FBI to fund the operation of the NICS and prohibited the FBI from charging a fee for NICS checks. Accordingly, the FBI

will not be charging the user fee set forth in the proposed NICS user fee regulation. This does not preclude state or local agencies acting as POCs for the NICS from charging such fees as may be appropriate under state or local law.

*The NICS Audit Log*

A significant number of comments were received opposing the retention by the NICS of a temporary log of background check transactions that allow a firearm transfer to proceed. Most of these comments expressed an opinion that such a log would constitute a national firearms registry, the establishment of which is prohibited by the Brady Act.

The FBI will not establish a federal firearms registry. The FBI is expressly barred from doing so by section 103(i) of the Brady Act. In order to meet her responsibility to maintain the integrity of Department systems, however, the Attorney General must establish an adequate system of oversight and review. Consequently, the FBI has proposed to retain records of approved transactions in an audit log for a limited period of time solely for the purpose of satisfying the statutory requirement of ensuring the privacy and security of the NICS and the proper operation of the system. Although the Brady Act mandates the destruction of all personally identified information in the NICS associated with approved firearms transactions (other than the identifying number and the date the number was assigned), the statute does not specify a period of time within which records of approvals must be destroyed. The Department attempted to balance various interests involved and comply with both statutory requirements by retaining such records in the NICS Audit Log for a limited, but sufficient, period of time to conduct audits of the NICS.

The NICS Audit Log will contain information relating to each NICS background check requested by FFLs and will allow the FBI to audit use of the system by FFLs and POCs. By auditing the system, the FBI can identify instances in which the NICS is used for unauthorized purposes, such as running checks of people other than actual gun transferees, and protect against the invasions of privacy that would result from such misuse. Audits can also determine whether potential handgun purchasers or FFLs have stolen the identity of innocent and unsuspecting individuals or otherwise submitted false identification information, in order to thwart the name check system. The Audit Log will also allow the FBI to perform quality control checks on the