and in which no investee pool is allocated or intended to be allocated more than twenty-five percent of the pool's net assets. (Rule 4.10(d)(2)). In determining whether a CTA has been allocated more than twenty-five percent of the pool's funds available for commodity interest trading, the alternate standard in the major CTA definition should be used, i.e., the percentage allocation is the amount of funds allocated to the trading advisor by agreement with the CPO, expressed as a percentage of the lesser of the aggregate value of the assets allocated to the pool's trading advisors or the net assets of the pool at the time of allocation.

D. Principal-Protected Pool: Rule 4.10(d)(3)

The term "limited risk pool" was defined in proposed Rule 4.10(i) as a pool (commonly referred to as a 'guaranteed pool'') that is designed to limit the loss of the initial investment of its participants. Commenters pointed out that most pools are formed as limited partnerships, thus limiting at least some of the participant's risk. Other commenters offered alternative terms 40 or suggested that the definition specify that loss would be limited by guaranty, letter of credit or other thirdparty undertaking. As adopted in Rule 4.10(d)(3), the term has been redesignated "principal-protected pool," but the definition is unchanged from that set forth in the Proposing Release.

E. Trading Manager: Rule 4.10(h)

As proposed in Rule 4.10(j), and as adopted in Rule 4.10(h), the "trading manager" of a pool is defined as any person other than the pool's CPO with authority to allocate pool assets to CTAs or investee pools. Rule 4.10(h) further makes clear that sole or partial authority will bring a person within the trading manager definition.

No comments addressing the trading manager definition were received. Commission rules have not previously expressly taken account of pool structures in which a trading manager, rather than the pool's CPO, allocates pool assets. The Commission emphasizes that trading managers are CTAs and are required to be registered as such. Thus, although trading managers do not function as direct traders for the pool, they have the ability to influence the pool's trading to a very significant degree. Due to the importance of the role of trading manager, in a number of contexts the

proposed rules would have made disclosure of the trading manager's performance a substitute for that of the CPO. However, as noted below, the Commission has revised the proposed rules to require disclosure both as to a pool's CPO and the trading manager, if any, in a number of contexts, e.g., conflicts of interest, on the ground that in the vast majority of cases, even if the CPO has delegated substantial responsibility to the trading manager to hire and monitor CTAs, the CPO retains ultimate responsibility for operation of the pool. However, with respect to past performance disclosure, if the CPO has completely delegated trading authority to a trading manager and the past performance of the trading manager does not differ materially from that of the commodity pool operator, only the trading manager's past performance is required to be disclosed.

F. Trading Principal: Rule 4.10(e)(2)

A "trading principal" would have been defined in proposed Rule 4.10(m) as a principal of a CPO or CTA who participates in making commodity interest trading decisions for a pool or client or who supervises, or has authority to allocate pool assets to, persons so engaged. The sole commenter who addressed this definition urged that it be limited to principals who make trading decisions, excluding principals who supervise or hire traders. The Commission notes, however, that persons who select or supervise traders effectively determine how a pool's or client's assets will be traded. Accordingly, where disclosure of information concerning traders is appropriate, the same information should be required of those who supervise or hire them. As adopted in Rule 4.10(e)(2) only grammatical changes were made to the definition of 'trading principal'' in proposed Rule 4.10(m)

G. Break-Even Point: Rule 4.10(j)

In order to make the impact of costs and fees on an investment more understandable to the prospective investor, the Commission proposed that the narrative discussion of fees and expenses be supplemented by presentation of the "break-even point" for an offered pool and a clear explanation of how that break-even point is calculated. Proposed Rule 4.10(n) would have defined "break-even point" as the trading profit that a pool or trading program must realize in its first year to equal all fees and expenses such that a participant or client will recoup its initial investment, as calculated pursuant to rules

promulgated by a registered futures association.⁴¹

Many commenters supported the proposal to require disclosure of a pool's break-even point.42 However, comments on the break-even point (and the requirement to disclose the relevant calculations) indicated some confusion regarding whether the break-even point is based on the pool's first year of operation or an investor's first year of participation in the pool. For ongoing pool offerings, commenters suggested that the break-even point be optional after the first year of a pool's operation, that it be based on a prior year's actual results, or that a range of break-even points be permitted keyed to various total offering sizes.

As adopted, Rule 4.10(j) defines the term "break-even point" as the trading profit that a pool must realize in the first year of a participant's investment to equal all fees and expenses such that the participant will recoup its initial investment. The break-even point is required to be calculated pursuant to rules promulgated by a registered futures association and it must be expressed both as a dollar amount and as a percentage of the minimum unit of initial investment. The proposed definition referred to the trading profit that a pool or trading program must realize in the pool or trading program's first year, and the break-even point was not expressly required to be presented as a dollar amount.43

The Commission is clarifying that the break-even point must present the trading profit that the pool must realize in the first year of an investor's participation in order for the investor to recoup his initial investment, and Rule 4.10(j) as adopted so states. As noted above, Rule 4.10(j) provides that the break-even point must be calculated pursuant to rules promulgated by a registered futures association. NFA's Interpretive Notice accompanying its Compliance Rule 2–13(b) sets forth the manner in which the break-even point must be calculated and includes a sample break-even presentation. The amount of trading profit required for the

⁴² Comments addressing the manner of calculating the break-even point are discussed below with Rule 4.24(i) ("Fees and Expenses") in paragraph B.5. of Section VI.

⁴⁰ Suggested options included "capital protected pools" and "principal return guaranteed pools."

⁴¹ Proposed Rule 4.10(n) would also have required that the break-even point be expressed as a percentage of the minimum unit of initial investment based upon assumed redemption of the initial investment at the end of the first year of investment.

⁴³ Rule 4.10(j) omits the reference in the proposed rule to "trading program" and "client." A breakeven point is not required for CTA Disclosure Documents, as CTA clients generally are subject to a much simpler fee and expense structure than are pool participants.