has actually been subject. To ensure that the worst long-term draw-down is properly represented, Rules 4.25(a) and 4.35(a), as adopted, require the capsule to include the ''worst peak-to-valley draw-down,'' eliminating the qualification ''continuous.''[58]

The Commission also is adopting definitions of the terms ''draw-down'' and ''worst peak-to-valley draw-down.'' Rule 4.10(k) provides that ''draw-down'' means losses experienced by a pool or account over a specified time period. Thus, a draw-down is a decline in net asset value due to reasons other than redemptions or withdrawals. To assist readers who may not be familiar with industry terminology, the Commission has also added a requirement that the capsule format include, in a footnote or otherwise, a definition of the term ''draw-down'' that is consistent with the definition set forth in Rule 4.10(k). Rule 4.10(*l*) defines ''worst peak-to-valley draw-down'' as the greatest cumulative percentage decline in month-end net asset value due to losses sustained by a pool, account or trading program during any period in which the initial month-end net asset value is not equaled or exceeded by a subsequent month-end net asset value. The rule specifies that the worst peak-to-valley draw-down must be expressed as a percentage of the initial month-end net asset value, together with an indication of the months and year(s) of such decline from the initial month-end net asset value to the lowest month-end net asset value of such decline. For purposes of the revised rules, a peak-to-valley draw-down which began prior to the beginning of the most recent five calendar years is deemed to have occurred during such five-calendar-year period.

Both monthly and peak-to-valley draw-down amounts are to be expressed as a percentage of the net asset value at the beginning of the specified period. The largest monthly draw-down indicates the largest net asset loss experienced by the pool in any calendar month, and the month and year in which that loss occurred. The worst peak-to-valley draw-down indicates the largest calendar month-to-calendar month net asset loss experienced by the pool during any period and the months and year in which it occurred. Dating the monthly and peak-to-valley draw-downs permits participants to assess whether the losses were connected to market conditions by comparing the draw-downs of several pools. As explained in the Proposing Release,[59] a peak-to-valley draw-down of 4 to 8–91/25% would indicate that the peak-to-valley lasted from April to August of 1991 and resulted in a twenty-five percent draw-down of the pool's net asset value.

Monthly Rates of Return

The Commission has determined to modify the proposal with respect to monthly rates of return for the offered pool to permit flexibility as to the form of presentation. As adopted, Rule 4.25(a)(2) provides that the capsule for the offered pool must contain monthly rates of return for the five most recent calendar years and year-to-date (or the pool's life, if shorter) presented either in tabular form or in a bar graph. If a bar chart is used, the bar chart must clearly indicate monthly rates of return and must also prominently indicate annual rates of return. Rule 4.25(a)(2)(iv) requires that the CPO make available upon request to prospective and existing participants the supporting data necessary to calculate monthly rates of return for the offered pool as specified in Rule 4.25(a)(1).

The Commission notes that registrants may present performance information in the multi-column format specified by former Rule 4.21(a)(4) *in addition to* the capsule format specified by Rule 4.25(a)(1), provided that any performance presented in the superseded format is treated as supplemental information and is placed following all of the required performance disclosures in the Disclosure Document.[60]

Registrants who offer notional programs may disclose monthly rates of return in the capsule disclosure for CTA programs using the fully-funded subset described in Advisory 93–13.[61] Commission staff will provide guidance concerning supplemental data to accompany the capsule disclosure to reflect the range of levels of partial funding and the generic disclosures discussed in Advisory 93–13.

b. Pools With Three or More Years Operating History That Meet Contribution Criteria: Rule 4.25(b)[62]

As proposed, Rule 4.25(b) would have limited required performance disclosures in pool Disclosure Documents to the offered pool's performance if: (1) The pool had traded commodity interests for three years or more, (2) no fewer than fifteen pool participants were unaffiliated with the CPO, and (3) no more than ten percent of the pool's assets were contributed by the CPO. As stated in the Proposing Release, the Commission believes that, generally, ''where a pool has an extensive operational history, presentation of the pool's own past performance record should fulfill the objectives of past performance disclosure.''[63] If, however, the pool's past performance record was accrued under conditions that differed materially from those which will obtain prospectively, the pool's historical performance record alone may not be sufficient. For example, if the pool's past performance record encompasses periods when the pool was essentially a proprietary trading vehicle investing a relatively small amount of funds contributed by third party sources, the performance record generated may have little or no relevance to a publicly offered pool.[64] Accordingly, to assure that the three-year performance history would not represent the performance of a significantly dissimilar trading vehicle, the Commission proposed to limit past performance disclosure to the past performance of only the offered pool where, and only where, the pool

[58] The word ''continuous'' is eliminated from Rules 4.25(a)(1) (i)(G) and (ii)(F), and the extraneous word ''ever'' is eliminated from Rule 4.25(a)(1)(ii)(F).

[59] 59 FR 25351, 25356.

[60] This statement also applies to CTAs. *See* Rule 4.24(v) for CPOs and Rule 4.34(n) for CTAs, concerning supplemental disclosures, discussed in paragraph C.1. of this Section V.

[61] CFTC Advisory 93–13, (Current Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶ 25,554 (February 12, 1993). Advisory 93–13 requires that CTAs who manage or offer to manage partially-funded (''notionally'' funded) accounts present both actual and nominal funds under management and give certain disclosures in connection with partially-funded accounts. The Advisory also provides a method for presenting rates of return for a trading program in a single table on the basis of a ''fully funded subset'' of accounts within that trading program.

[62] Former Rule 4.21(a)(4) required disclosure of the performance record of the offered pool. If the offered pool had less than a twelve-month performance history, the performance of the CPO and of each of its principals was also required to be disclosed. Former Rule 4.21(a)(5) also required disclosure of the past performance of all other accounts directed by the pool's CTA and each of its principals, regardless of the duration of the pool's operating history.

[63] 59 FR 25351, 25356.

[64] *See* Elton, Gruber and Rentzler, *New Public Offerings. Information and Investor Rationality: The Case of Publicly Offered Funds,* 62 J. Bus. 1 (1988); and Edwards and Ma, *Commodity Pool Performance: Is the Information Contained in Pool Prospectuses Useful?*, Working Paper Series No. 16, Center for the Study of Futures Markets, Col. Bus. Sch. (January 1988). *See also, Statement of the Commodity Futures Trading Commission Regarding Disclosure by Commodity Pool Operators of Past Performance Records and Pool Expenses and Request for Comments,* 54 FR 5597, (February 6, 1989); and companion release of the Securities and Exchange Commission, *Statement of the Commission Regarding Disclosure by Issuers of Interest in Publicly Offered Commodity Pools,* 54 FR 5600 (February 6, 1989).