

not include performance information. Still others argued that Account Statements should not be used to update or amend Disclosure Documents. Other commenters criticized the requirement to identify all CTAs and investee pools, while under proposed Rules 4.24 (e)(3) and (e)(4) only those allocated ten percent or more of pool assets would be required to be identified in the Disclosure Document.

The Commission notes that the proposed expansion of the data to be included in Account Statements was designed largely in response to concerns expressed by CPOs as to how to efficiently update Disclosure Documents to include new CTAs and in response to claims that disclosure of the names of investee funds was less onerous and more appropriate in communications with existing pool participants than in Disclosure Documents. Further, such CTA and investee pool information would not be required to be certified by the pool's accountants. Thus, as proposed, the rule would have provided a convenient mechanism for providing a complete, current picture of the pool's CTAs and investee pools.

Nonetheless, since the commenters appeared to find the proposed modifications of Rule 4.22 burdensome rather than helpful, the Commission has determined not to amend Rule 4.22. Instead, the existing updating requirements for Disclosure Documents will continue to apply, except as noted below with respect to the periodic update requirement. When a pool acquires a new major CTA or major investee pool, if such event is of material significance, the CPO will be required to notify pool participants and to provide the relevant information including performance records, as required by Rule 4.26(c),⁸³ within twenty-one calendar days after the CPO knows or should know of this occurrence. As was the case under the former rules, correction of Disclosure Documents may be accomplished by way of an amended Disclosure Document, Account Statement, a sticker on the Disclosure Document, or other similar means.

(vi) *Trading Managers: Rule 4.25(c)(2)*

The revised rules take into account arrangements in which a CPO delegates authority to a trading manager to select CTAs or investee pools to which the pool's assets will be allocated.⁸⁴ The

term "trading manager" is defined in new Rule 4.10(h) as any person, other than the pool's CPO, with authority to allocate pool assets to CTAs or investee pools.⁸⁵ Rule 4.25(c)(2) requires trading manager performance in addition to CPO performance if the pool has a trading manager. In such cases, the trading manager is, in effect, a supervisory CTA and the performance of such manager is clearly material. As discussed *supra*, the requirement has been changed from an alternate one, *i.e.*, CPO or trading manager's performance, to include performance of both on the basis that even where a trading manager has been appointed, generally the CPO will continue to exercise ultimate control over the pool's operations. However, in cases where the trading manager has been given complete authority over the pool's trading and the performance of the trading manager does not differ materially from that of the pool operator, Rule 4.25(c)(2) provides that performance data for the pool operator may be omitted.

2. Required Past Performance Disclosure in CTA Disclosure Documents: Rule 4.35

Proposed Rule 4.34(a)(1) would have required CTAs to continue to present past performance of the offered trading program in the full multi-columnar format required by former Rule 4.31(a)(3). Most commenters strongly urged that CTAs be permitted to use the new capsule format. Some argued that if the offered trading program's performance must be presented in the multi-column format, the CTA will be forced to produce a separate Disclosure Document for each program he offers or to include all past performance in the multi-columnar format. One commenter suggested permitting use of the capsule format for the CTA's offered trading program but requiring monthly rates of return.

The Commission has determined to modify proposed Rule 4.34(a) to provide

⁸⁵ As the Commission noted in the Proposing Release, the practice of retaining trading managers to select and monitor the performance of CTAs and investee pools to which pool assets will be committed has become commonplace. CPOs commonly seek to maximize pool returns by allocating pool assets based on analysis of the returns achieved by CTAs retained for the pool and investee pools in which the pool has invested in light of their aggregate results, market conditions, and the performance of other CTAs and investee pools. CPOs frequently rely on trading managers to continuously review the performance of CTAs and investee pools and allocate and reallocate pool funds. Because of the importance of the trading manager and the fact that the trading manager is a CTA for the pool, when a pool has a trading manager, the trading manager's performance is generally required in addition to that of the CPO. 59 FR 25351, 25357.

that the past performance of the CTA's offered trading program be presented in capsule format.⁸⁶ The capsule will include the names of the CTA and the trading program, the dates on which the CTA began trading client accounts and on which accounts were first traded pursuant to the trading program, the number of accounts traded pursuant to the trading program, and the total assets under management by the CTA and total assets traded pursuant to the trading program. The worst monthly and peak-to-valley draw-downs experienced by the trading program are also required. Like the offered pool's performance in a CPO Disclosure Document, the capsule for a CTA's offered program is required to include monthly rates of return. The offered trading program's monthly rates of return may be presented either in a table or in a bar graph or chart. (Rule 4.35(a)(2) (ii) and (iii)). The offered program's capsule must also include the number of accounts closed with positive net performance during the most recent five calendar years and year-to-date, as well as the number of accounts closed with negative net performance during the same period. (Rule 4.35(a)(1)(viii)). CTAs will be required to provide prospective and existing clients, upon request, with the offered trading program's performance in the multi-column format previously required. (Rule 4.35(a)(2)(iv)).

The Commission believes that with the specified additional requirements for the offered trading program, this modification of the proposal will result in simplified CTA Disclosure Documents, while providing prospective clients with material information regarding trading program volatility.

3. Time Period for Which Required Past Performance Disclosures Must Be Made: Rules 4.25(a)(5) for CPOs and 4.35(a)(5) for CTAs⁸⁷

Proposed Rules 4.25(a)(7) and 4.34(a)(4) would have extended the time period for which performance must be disclosed from three years to five years (or the life of the pool or account, if less than five years). As stated in the Proposing Release, the Commission believes that requiring performance to

⁸⁶ With respect to CTAs calculating rates of return on the basis permitted by Advisory 93-13, as discussed *supra*, the capsule must include rates of return for the fully-funded subset and 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.

⁸⁷ Former Rules 4.21 (a)(4) and (a)(5) for CPOs and 4.31(a)(3) for CTAs generally required past performance to be presented for a three-year period.

⁸³ Rule 4.26(c), discussed below at paragraph B of Section VII, sets forth the requirements for amending pool Disclosure Documents to reflect a material change in the document. This requirement previously was found in former Rule 4.21(b).

⁸⁴ See, e.g., Rule 4.25 (c)(2).