

percent or more of the offered pool's net assets, rather than the proposed twenty-five percent standard of the proposed major investee pool definition. Rule 4.24(j) (conflicts of interest involving the pool) effectively retains the ten percent threshold of the proposal.

B. Required Non-Performance Disclosures

1. Prescribed Non-Performance Statements, Table of Contents and Forepart Information: Rules 4.24 (a) through (d) for CPOs and 4.34 (a) through (d) for CTAs

Proposed Rules 4.24 (a) through (d) for CPOs and 4.33 (a) through (d) for CTAs would have specified the content and order of certain core information required to be placed at the front of Disclosure Documents. In particular, proposed Rules 4.24 (a) and (b) would have required a cautionary statement to be placed on the cover page of a pool Disclosure Document, followed by a risk disclosure statement. Rule 4.24(c) would have required a table of contents to follow the risk disclosure statement, and Rule 4.24(d) would have required specified descriptive information regarding the offered pool and the CPO to follow the table of contents in the forepart of the Disclosure Document. Proposed Rules 4.33 (a), (b) and (c) would have required the cautionary statement, risk disclosure statement and table of contents to be sequenced in the same manner in CTA Disclosure Documents as in pool documents. Proposed Rule 4.33(d) would have required inclusion of descriptive information regarding the CTA in the forepart.¹⁴¹

Two commenters favored standardizing the order of disclosures, asserting that it would promote consistency, clarity and comparability within the industry, both for potential investors and for regulators. Of the five commenters who opposed regulation of the placement of information, two suggested that the Commission's review process is capable of effectuating more prominent disclosure of underemphasized or "buried" information and one claimed that a summary cross-reference to the body of the document should provide sufficient clarity.

¹⁴¹ In connection with developing its proposed revisions to the disclosure rules, the Commission also considered whether a particular order for all required information should be mandated in order to "standardize" the entire format of Disclosure Documents. However, the Commission determined to propose, and now to adopt, only the limited sequence requirements contained in Rules 4.24 (a) through (d) and 4.34 (a) through (d).

The Commission believes that investors are well served by requiring that certain items of particular significance be placed at the front of the Disclosure Document. With minor exceptions as noted below, it is adopting Rules 4.24(a) through (d) for CPO documents and Rules 4.33(a) through (d) for CTA documents (Rule 4.33 is renumbered 4.34) as proposed. The Commission notes that federal and state securities laws may also address the order and format of certain disclosures. These rules are not intended to supersede such requirements.

Placement of all required disclosures other than those specified in Rules 4.24(a) through (d) and 4.34(a) through (d) is left to the discretion of the registrant. Placement of information other than required disclosures is addressed by Rules 4.24(v) and 4.34(n), which are intended to maintain the prominence of required disclosures while giving discretion to the registrant with respect to placement of other matters, e.g., supplementally provided performance information.¹⁴² Thus, registrants will retain substantial discretion in arranging information in the Document. However, the required table of contents should facilitate review notwithstanding differences in placement of some items.

a. Cautionary Statement

Rules 4.24(a) and 4.34(a), which contain the requirements of former Rules 4.21(a)(18) and 4.31(a)(9), respectively, specify that a Cautionary Statement, *i.e.*, a statement that the Commission has not passed upon the merits of the investment or the adequacy of the Disclosure Document, appear on the cover page of the Document. Apart from comments generally urging that specific required statements and legends be minimized, no comments were received on the text of the proposed Cautionary Statement. The Commission is adopting Rules 4.24(a) and 4.33(a) as proposed (except that Rule 4.33(a) is renumbered 4.34(a)).¹⁴³

b. Risk Disclosure Statement

The Risk Disclosure Statement specified in Rules 4.24(b) and 4.34(b) is required to be "prominently displayed" immediately following any disclosures required to appear on the cover page of

¹⁴² Rules 4.24(v) and 4.34(n) are discussed in detail in Section C of this Section VI.

¹⁴³ The requirement in Rules 4.24(a) and 4.34(a) that the Cautionary Statement be "prominently" displayed means that, as with the former rules, capital letters and boldface type are required. See Rule 4.1(b).

the Disclosure Document as provided by the Commission or any applicable federal or state securities laws and regulations or by any applicable laws of non-United States jurisdictions.¹⁴⁴ As proposed, the revised Risk Disclosure Statement included page references to textual descriptions of fees and expenses, principal risk factors and the break-even point. Inadvertently omitted from the Proposing Release was the requirement for a legend (if applicable) to warn of potential liability in excess of the amount of a pool participant's investment. As explained in the Proposing Release, the proposed revisions to the prescribed Risk Disclosure Statements were also intended to address the potential for duplicative disclosure created by prior revisions of Rules 1.55¹⁴⁵ and 30.6(a)¹⁴⁶ by eliminating the need to provide two prescribed Risk Disclosure Statements, one for domestic futures trading and one for foreign futures trading.¹⁴⁷ Thus, the proposed revised statements addressed the risks of foreign as well as domestic transactions and revision of Rule 30.6(b) was proposed to cross-reference the Part 4 Risk Disclosure Statements. In addition, the proposal would have replaced the terms "domestic" and "foreign," previously used to refer to contract markets or exchanges in foreign jurisdictions, with the terms "United States" and "non-United States," in order to avoid confusion in the context of offerings in non-United States jurisdictions to non-United States participants for whom the term "foreign" does not mean "non-United States."

Some commenters encouraged minimizing required verbatim cautionary statements and legends. Two commenters suggested that the Commission prescribe one risk statement for inclusion in both CPO and CTA documents, incorporating all of the issues the Commission believes are necessary for investor protection, in order to increase the effectiveness of such disclosure. Another commenter asked whether the Risk Disclosure Statement would be more effective if set forth in the text of the Disclosure Document.

¹⁴⁴ The Risk Disclosure Statement must be printed in capital letters and in boldface type. Rule 4.1(b).

¹⁴⁵ 59 FR 25351, 25363. Rule 1.55 sets forth the basic risk disclosure requirement applicable to FCMs and IBs opening accounts for domestic futures and option contracts.

¹⁴⁶ Part 30 generally governs transactions in foreign futures and option contracts. Rule 30.6(a) requires an FCM or IB to deliver a risk disclosure statement (pursuant to Rule 1.55(b)) prior to the opening of a foreign futures or options account.

¹⁴⁷ 59 FR 25351, 25363.