

The Commission is adopting Rules 4.24(b) and 4.34(b)¹⁴⁸ as proposed with the following exceptions. As adopted, Rules 4.24(b)(1) and 4.34(b)(1) recognize that foreign jurisdictions may require specific information on the cover page by adding the language "or by any applicable laws of non-United States jurisdictions." As adopted, Rule 4.24(b) incorporates the requirement of former Rule 4.21(a)(17)(ii) to include in the Risk Disclosure Statement additional language if the pool participant's liability can exceed the purchase price of his interest in the pool. Further, Rule 4.34(b) as adopted omits reference to a break-even point. In addition, Rule 1.55 is being amended, as proposed, to provide that pools need not be treated as customers for purposes of delivery of the Risk Disclosure Statement required thereunder.

The Commission believes that the different risks and characteristics of pools as compared to direct trading through a managed account, perhaps most notably the difference between participating in a limited liability trading vehicle as opposed to an individually-managed account, warrant different risk disclosure statements. Accordingly, the Commission is not prescribing a single, common statement for both CPO and CTA Disclosure Documents. Further, the Commission believes that the information contained in the Risk Disclosure Statement is critical in order to inform potential investors as to many of the generic risks inherent in commodity interest trading, and that the importance of this information is appropriately highlighted by placing the Risk Disclosure Statement at the beginning of the document.

c. Table of Contents¹⁴⁹

Rules 4.24(c) and 4.34(c) specify that the Disclosure Document must include a table of contents immediately following the Risk Disclosure Statement. The table of contents must show, by subject matter, the location of disclosures in the Disclosure Document.

One commenter stated that a table of contents should be optional for smaller documents. Several commenters favored requiring a table of contents but requested latitude in its placement, e.g., to permit it to appear on the back cover page. The Commission believes that placement of the table of contents at the beginning, rather than the end of (or elsewhere in) the Disclosure Document will be most helpful to investors, given the format of most pool documents, and that the benefits of a table of contents outweigh any burdens attendant to its preparation. The Commission thus is adopting as proposed the requirement that a table of contents be included in all Disclosure Documents immediately following the Risk Disclosure Statement.

d. Information To Be Included in Forepart¹⁵⁰

Proposed Rules 4.24(d) and 4.33(d) would have required that specified basic information appear immediately following the table of contents, in the forepart of the Disclosure Document. With respect to CPO documents, this information would have included the following: The name, business address, business phone number and form of organization of the offered pool and of the CPO (and if the pool's address is a post office box or is outside the United States, the location of the books and records); a statement whether the offered pool is privately offered under the Securities Act, a multi-advisor pool or a limited risk pool;¹⁵¹ the closing date of the pool offering (or a statement that the offering is continuous); the date the Disclosure Document will first be used; and the break-even point of the pool.¹⁵² The forepart of a CTA document would have been required to contain the business address, business phone number and form of organization of the CTA (and if the address is a post office box or is outside the United States, the location of the books and records) as well as the date the Disclosure Document will first be used.

The Commission is adopting Rules 4.24(d) and 4.33(d) as proposed, with the following exceptions. Instead of requiring a "statement whether the pool is" privately offered, a multi-advisor pool or a limited risk (principal-protected) pool, Rule 4.24(d)(3) requires

disclosure only in the event that one or more of such descriptions applies to the offered pool. In addition, instead of the date the Disclosure Document will actually be used, the forepart must indicate the date the CPO or CTA first intends to use it.¹⁵³ Cross-references have been conformed and corrected. Finally, proposed Rule 4.33(d) is adopted as 4.34(d).

e. Persons To Be Identified

Proposed Rule 4.24(e) would have required disclosure of names of the CPO's principals, the trading manager (if any) and its principals, each investee pool allocated at least ten percent of the assets of the offered pool, each CTA allocated at least ten percent of the pools initial margin and option premiums, the person who will make trading decisions for the offered pool, and, if known, the FCM to be used by the offered pool. Proposed Rule 4.33(e) would have required a CTA to name each of its principals, as well as any FCM or IB the CTA's client will be required to use.

Rule 4.24(e), as adopted, eliminates the initial margin and premiums standard for CTA disclosure and requires instead that only CTAs (and investee pools) that are "major" must be named. Rule 4.24(e) also requires identification of any IB the offered pool will use, and otherwise is adopted as proposed. Rule 4.33(e) is adopted as proposed except that it is renumbered 4.34(e).

2. Business Background: Rules 4.24(f) for CPOs and 4.34(f) for CTAs

As proposed, Rule 4.24(f) would have required disclosure in a pool document of the business backgrounds of the CPO, any trading manager of the pool, major CTAs, and the operators of major investee pools. The only principals of the foregoing for whom disclosure of business backgrounds would have been required are those "who participate in making trading or operational decisions * * * or who supervise those so engaged." Proposed Rule 4.33(f) would have required a CTA document to provide the business background of the CTA and the principals thereof participating in making trading or operational decisions.

Former Rule 4.21(a)(2) required business backgrounds for the CPO, the CTA and all of their respective principals, and, similarly, former Rule 4.31(a)(2) called for the backgrounds of the CTA and all of its principals. The

¹⁴⁸ Rule 4.34(b) was proposed as Rule 4.33(b).

¹⁴⁹ Neither former Rule 4.21 for CPOs nor former Rule 4.31 for CTAs required a table of contents. However, most Disclosure Documents reviewed by the Division contain such a table. Further, Form S-1, the form most frequently used to register pool offerings with the SEC, requires "a reasonably detailed table of contents showing the subject matter of the various sections or subdivisions of the prospectus and the page number on which each section or subdivision begins." See Item 502(g) of Regulation S-K, 17 CFR 229.502(g) (1994), incorporated by reference into Item 2 of Form S-1, 17 CFR 239.11 (1994). The Commission believes that a table of contents should contribute to making the disclosure document "reader-friendly" and readily reviewable.

¹⁵⁰ Neither former Rule 4.21 nor 4.31 required specified information to be placed in the forepart of the Disclosure Document.

¹⁵¹ As discussed at Section IV above, new Rule 4.10(d)(3) replaces the proposed term "limited risk pool" with the term "principal-protected pool" (while continuing to define it, as proposed, as pool designed to limit the loss of the initial investment of its participants).

¹⁵² The term "break-even point" is discussed in Section IV above.

¹⁵³ Proposed Rules 4.24(d)(4) and 4.33(d)(2) had required "[t]he date when the Disclosure Document will first be used."