or not specifically called for under proposed Rule 4.24(j).[169]

Several commenters supported the expansion of the range of required conflicts disclosure to include persons not registered with the Commission. However, several commenters noted that conflict of interest disclosures have expanded beyond reasonable measure and recommended restricting disclosure to ''actual'' as opposed to ''potential'' conflicts. Others urged that only those conflicts that the CPO reasonably believes might be considered material should be required. One commenter suggested that only conflicts likely to have a direct material adverse effect on the pool, its performance or its relationships with its FCMs should be required.

The Commission is adopting Rule 4.24(j) generally as proposed. However, the Commission has added to the final rule new § 4.24(j)(2) which requires description of ''(a)ny other material conflict of interest involving the pool,'' to make clear that material conflicts involving non-major CTAs and the operators of non-major investee pools must be disclosed. Under the general materiality standard, disclosure of conflicts of interest on the part of CTAs and CPOs of investee pools below the ten percent thresholds is required if, in light of all relevant circumstances, including, for example, the nature and severity of the conflict, such disclosure would be material to prospective pool participants. Thus, the additional subparagraph will reinforce the dictates of the general materiality standard stated in Rule 4.24(w) in this area.

With respect to the comments concerning the desirability of limiting conflict of interest disclosures, for example, by requiring the disclosure only of ''actual'' as opposed to ''potential'' conflicts of interest or material conflicts, the Commission does not believe that a clear bright line distinction of this nature can meaningfully be drawn on a prospective basis. A situation that may ripen into a conflict of interest, although it has not done so as of the date of the Disclosure Document, nonetheless may be as material as an actual conflict that currently exists. However, the Commission does believe that conflict of interest disclosure should be guided by a rule of reason and that only those conflicts that are reasonably likely to be material must be disclosed. The Commission stresses, however, that materiality in this context should not necessarily be determined on a strictly quantitative basis, *e.g.*, in terms of the expected quantitative impact on a pool's rate of return, but rather, on the basis of what a prospective investor would consider to be material.

b. Conflicts of Interest—CTAs

Proposed Rule 4.33(j) differed from former Rule 4.31(a)(5) in that the proposed rule would have added the words ''(a) full description of'' any actual or potential conflict. Also, the following paragraph, which was proposed as part of the conflicts of interest provision for CPO Disclosure Documents in proposed Rule 4.24(j), was inadvertently omitted from Rule 4.33(j) in the Proposing Release, and it has been included in the rule as adopted:[170]

(2) Included in the description of such conflict shall be any arrangement whereby the trading advisor or any principal thereof may benefit, directly or indirectly, from the maintenance of the client's commodity interest account with a futures commission merchant or the introduction of that account through an introducing broker (such as payment for order flow or soft dollar arrangements).

No comments were received specifically addressing proposed Rule 4.33(j). The Commission is adopting Rule 4.33(j) as proposed (renumbering it as 4.34(j)), with the addition of the foregoing paragraph, including the reference to payment for order flow and soft dollar arrangements.

c. Related Party Transactions

Proposed Rule 4.24(k) would have required that the CPO describe and discuss the costs to the pool of any material transactions or arrangements between the pool and any person affiliated with a person providing services to the pool for which there is no publicly disseminated price. Although the rules previously contained no corresponding provision, the Commission believes that this type of disclosure is already mandated in many cases under the general requirement that material information be disclosed. However, given the increasing use of over-the-counter transactions in which pools contract with their CPO or an affiliate of the CPO as counterparty to the transaction, the Commission believes that an express requirement for such disclosure is warranted.

Two commenters claimed that computing costs of related party transactions is difficult. One asked the Commission to consider requiring disclosure of the benefit to the related entity and the potential detriment to the pool. Another commenter stated that it will be very difficult, if not impossible, for a sponsor to quantify the spreads charged on forward trades between its pools and counterparties affiliated with the sponsor and urged that no greater cost detail be required than ''cannot be quantified but will constitute a significant cost to the pool.'' One commenter urged that if Rule 4.24(k) applies to investee pools, no disclosure should be required with respect to pools allocated less than ten percent of pool assets; an intermediate level of disclosure should be required for pools allocated at least ten but less than twenty-five percent; and full disclosure should be required for pools allocated more than twenty-five percent.

The Commission is adopting Rule 4.24(k) as proposed (with a word order change for clarity).[171] In situations in which a transaction is undertaken with an affiliate for which there is no publicly disseminated price, the Commission recognizes that quantification of the ''cost'' thereof to the pool may be difficult. In such contexts, the Commission believes that, as suggested by a commenter, an explanation of the benefit to the related party and the potential detriment to the pool may be sufficient. In other cases, a good faith estimate or a qualitative description of the potential negative impact on the pool may be sufficient. The fact that such transactions are entered into on a noncompetitive basis should also be highlighted. With respect to investee pools, the Commission does not believe that the three-level disclosure suggested by one of the commenters is warranted because Rule 4.24(k) applies to transactions or arrangements that directly involve, and that are material to, the offered pool.[172] Thus, in applying Rule 4.24(k) to investee pool transactions, pool operators may consider the extent of the pool's allocation of funds to an investee pool in assessing the materiality of a related party transaction.

7. Litigation: Rules 4.24(l) for CPOs and 4.34(k) for CTAs

As proposed, Rule 4.24(l) would have required disclosure of any material administrative, civil or criminal action within the preceding five years against the pool's CPO, trading manager (if any), major CTAs and operators of major

[169] Former Rule 4.21(h) and new Rule 4.24(w).

[170] Except for the language in parentheses, the paragraph is identical to the last paragraph of former Rule 4.31(a)(5)(i). The parenthetical language conforms to proposed Rule 4.24(j) for CPOs.

[171] *See* 59 F.R. 25351, 25365 n.67 for a discussion of the litigation involving Stotler Funds, Inc., as an illustration of the purpose of this requirement.

[172] Moreover, as adopted, the revised rules do not retain the proposed three-level disclosure framework for past performance disclosures.