

SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

OMB CONTROL NUMBER 3038-0023

Commodity Pool Operators and Commodity Trading Advisors Amendments to Compliance Obligations (Final)

Justification

1. Explain the circumstances that make the collection of information necessary. Identify any legal or administrative requirements that necessitate the collection. Attach a copy of the appropriate section of each statute and regulation mandating or authorizing the collection of information.

The Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank Act”) was signed into law on July 21, 2010. The legislation was enacted to reduce risk, increase transparency, and promote market integrity within the financial system by, inter alia, enhancing the Commission’s rulemaking and enforcement authorities with respect to all registered entities and intermediaries subject to the Commission’s oversight. The Dodd-Frank Act has expanded the scope of federal financial regulation to include instruments such as swaps, enhanced the rulemaking authorities of existing federal financial regulatory agencies including the Commission and the Securities and Exchange Commission (“SEC”), and created new financial regulatory entities.

The Commodity Exchange Act (“CEA”) empowers the Commission with the authority to deny, revoke, or condition registration of commodity pool operators (CPOs) and commodity trading advisors (CTAs) and to exclude any entity from the definition of CPO. The Commission also has the power to promulgate such regulations as it deems necessary to implement the purposes of the CEA. It is pursuant to this authority that the Commission has promulgated the various exemptions from registration as a CPO as well as the exclusions from the definition of CPO. The registration application, which must be updated as necessary, requires information about an applicant’s or registrant’s disciplinary history so that the person’s fitness for registration may be evaluated. In addition, basic identifying information is required so that a database will be available to current and prospective customers, the public and news media.

Following the recent economic turmoil, and consistent with the tenor of the provisions of the Dodd-Frank Act, the Commission has reconsidered the level of regulation that it believes is appropriate with respect to entities participating in the commodity futures and derivatives markets. The Commission believes that it is necessary to rescind or modify several of its exemptions and exclusions from registration to more effectively oversee its market participants and manage the risks that such participants pose to the markets. Accordingly, this collection has been amended to reflect the registration of entities that were previously exempt from registration or excluded from the definition of CPO under the Commission’s regulations. The expected burdens for registering have not changed under this collection, but the Commission projects an increase in the number of registrants, and therefore, in the overall burden.

The proposed rule was published in the Federal Register on February 11, 2011. See 76 Fed. Reg. 7976 (Feb. 11, 2011). The proposed rule solicited public comments for a period of 60 days following the date of publication in the Federal Register (April 12, 2011). Notwithstanding the formal 60-day period, the Commission accepted public comments until July 28, 2011. Commission staff has reviewed the public comments received in response to the proposed rule and plans to address such comments in the final rulemaking.

Commission staff submitted Form 83-I and this supporting statement in September 2011, which is several months following the publication date of the proposed rule in the Federal Register. Commission staff plans to submit the revised supporting statement, identifying the public comments received regarding this collection of information, in connection with the submission its final rulemaking package to the Office of Management and Budget.

2. Indicate how, by whom, and for what purpose the data would be used. Except for a new collection, indicate the actual use the agency has made of the information received from the current collection.

The information on registration applications is used to determine fitness for registration under the Act. This determination is normally made, in the first instance, by the National Futures Association (NFA), an industry-funded self-regulatory organization registered as a futures association under the Act that the Commission has authorized to perform registration functions. The information on registration applications is used to develop the NFA database known as BASIC (Background Affiliation Status Information Center), which is Internet-accessible and consulted frequently by customers, prospective customers, the general public and the news media to review data provided by applicants and registrants and to compare it to information provided by entities making solicitations.

3. Describe whether, and to what extent, the collection of information involves the use of automated, electronic, mechanical, or other technological collection techniques or other forms of information technology, e.g. permitting electronic submission of responses, and the basis for the decision for adopting this means of collection. Also describe any consideration of using information technology to reduce burden.

The information is collected electronically to the extent possible. Certain data, such as fingerprint cards, are generally provided by paper, although submission of fingerprints digitally has begun.

4. Describe efforts to identify duplication. Show specifically why any similar information already available cannot be used or modified for use for the purposes described in Item 2 above.

Information of the type required to be collected as part of the registration process is not otherwise collected by the Commission. If an applicant concurrently or recently (within the preceding 90 days) submits a fingerprint card to another federal agency (the SEC), another set of fingerprints is not required.

5. If the collection of information involves small business or other small entities (Item 5 of OMB From 83-1), describe the methods used to minimize burden.

Information required by the registration process is essentially limited to statutorily mandated information or basic identifying data.

6. Describe the consequence to the Federal Program or policy activities if the collection were conducted less frequently as well as any technical or legal obstacles to reducing burden.

The collection is only required once. Moreover, it is mandated by law.

7. Explain any special circumstances that require the collection to be conducted in a manner:

- requiring respondents to report information to the agency more often than quarterly;

The regulations covered by this collection do not require the respondent to report any information to the Commission more often than quarterly, or even as often as quarterly. However, updating of information is required whenever necessary to maintain accurate and current registration information.

- requiring respondents to prepare a written response to a collection of information in fewer than 30 days after receipt of it;

This question does not apply.

- requiring respondents to submit more than an original and two copies of any document;

Respondents are not required to submit more than an original and two copies of any document.

- requiring respondents to retain records other than health, medical, government contract, grant-in-aid, or tax records, for more than three years;

For enforcement purposes, Commission Regulation 1.31 requires that:

All books and records required to be kept by the Act or by these regulations shall be kept for a period of five years from the date thereof and shall be readily accessible during the first 2 years of the 5-year period. All such books and records shall be open to inspection by any representative of the Commission or the U.S. Department of Justice.

- in connection with a statistical survey, that is not designed to produce valid and reliable results that can be generalized to the universe of study;

The regulations covered by this collection do not involve statistical surveys.

- requiring the use of a statistical data classification that has not been reviewed and approved by OMB;

The regulations covered by this collection do not involve the use of statistical data.

- that includes a pledge of confidentiality that is not supported by authority established in statute or regulation, that is not supported by disclosure and data security policies that are consistent with the pledge, or which unnecessarily impedes sharing of data with other agencies for compatible confidential use; or

The regulations covered by this collection do not involve a pledge of confidentiality.

- requiring respondents to submit proprietary trade secrets, or other confidential information unless the agency can demonstrate that it has instituted procedures to protect the information's confidentiality to the extent permitted by law.

The agency has procedures to protect the information's confidentiality. These are set forth in 17 C.F.R. Part 145.

8. If applicable, provide a copy and identify the date and page number of publication in the Federal Register of the agency's notice required by 5 CFR 1320.8(d), soliciting comments on the information collection prior to submission to OMB. Summarize public comments received in response to that notice and describe actions taken by the agency in response to these comments. Specifically address comments received on cost and hour burden.

The proposed rules were published for comment in the Federal Register at 76 Fed. Reg. 7976 (Feb. 11, 2011).

The Commission is amending existing Collection 3038-0023 to reflect the obligations associated with the registration of new entrants that were previously exempt from registration under §§ 4.5 and 4.13(a)(4). The public comments received in response to these changes are summarized below.

Comments regarding amendments to § 4.5 can be broadly categorized according to the provision of that section which is to be amended. Specifically, those provisions are the bona fide hedging exclusion, the trading threshold exclusion, and the marketing restriction.

Comments pertaining to bona fide hedging expressed a general desire for expansion of the definition of "bona fide hedging" to include risk management purposes. The Commission noted in response that "bona fide hedging" has been previously defined, and does not permit for such a broad construction. Further, the Commission noted that the risk management transactions proposed for inclusion in the "bona fide hedging" definition as suggested by the commenters

present a different risk profile than do the asset backed exposures currently included within such a definition.

Comments regarding the trading threshold generally expressed concern that the five percent limit as measured by aggregate initial margin divided by portfolio liquidation value was too low. The Commission asserted its belief, that consistent with previous Commission determinations, five percent is an appropriate threshold to determine whether an entity warrants oversight by the commission. This assertion was supported by several of the commenters.

At least one commenter, however, suggested that alternate metrics should be available to determine this threshold. Specifically, a net notional test was proposed that would allow an alternate calculation consisting of the aggregate net notional value of the positions measured against the net liquidating value of the entity. The Commission is persuaded that this net notional test is a reasonable proxy for entity leverage, and thus the endogenous risk commitments by the entity. As this suggested alternate metric is consistent with the stated goals of the Rule, the Commission has determined to include this provision in response to public comments.

The marketing restriction, as proposed by the Commission, prohibits the marketing of interests in the registered investment company “as a vehicle for trading in (or otherwise seeking investment exposure to) the commodity futures, commodity options, or swaps markets.” The vast majority of comments urged the Commission to remove the clause “or otherwise seeking investment exposure to” as introducing an unacceptable level of ambiguity into the marketing restriction. The Commission agrees with these comments and believes that the removal of this clause is appropriate as the clause does not meaningfully add to the marketing restriction and only creates uncertainty. Thus, the Commission will adopt the marketing restriction without the clause “or otherwise seeking investment exposure to”

In addition to the comments that the Commission received regarding the specific parts of the Proposal rescinding §§ 4.13(a)(3) and (a)(4), the Commission received numerous comments regarding the proposed rescissions generally. Broadly, the comments opposed the rescission of both provisions.

In the Proposal, the Commission proposed rescinding the “de minimis” exemption in § 4.13(a)(3). The Commission received ten comments specifically on this aspect of the Proposal, which consistently urged the Commission to retain a de minimis exemption. After consideration of the comments and the Commission’s stated rationale for proposing to rescind the exemption in § 4.13(a)(3), the Commission has determined to retain the “de minimis” exemption currently set forth in that section without modification.

With respect to § 4.13(a)(4), several commenters suggested that the Commission should consider retaining the exemption in § 4.13(a)(4) for funds that do not directly invest in commodity interests, but do so through a fund of funds structure, and who are advised by an SEC registered investment adviser. The Commission has not developed a comprehensive view regarding the role of funds of funds in the derivatives markets, in part, due to a lack of data regarding their investment activities. The Commission, therefore, believes that it is prudent to

withhold consideration of a fund of funds exemption until the Commission has received data regarding such firms on forms CPO-PQR and/or CTA-PR, as applicable, to enable the Commission to better assess the universe of firms that may be appropriate to include within the exemption, should the Commission decide to adopt one. Therefore, the Commission declined to adopt the commenter's alternative at this time.

Several commenters also suggested that the Commission adopt an exemption for family offices. The Commission determined not to adopt such an exemption at this time because the Commission has not developed a comprehensive view regarding such firms to enable the Commission to better assess the universe of firms that may be appropriate to include within the exemption, should the Commission decide to adopt one. Therefore, the Commission directed staff to look into the possibility of adopting a family offices exemption in the future.

The Commission noted that family offices previously relying on the exemption under Regulation § 4.13(a)(3) will not be affected by the rules adopted herein, as the Commission is not rescinding the § 4.13(a)(3) exemption and it will remain available to entities meeting its criteria. The Commission further noted that family offices continue to be permitted to write in on a firm by firm basis to request interpretative relief from the registration and compliance obligations under the Commission's rules and to rely on those interpretative letters already issued to the extent permissible under the Commission's regulations. Therefore, the Commission did not believe an exemption for family offices is necessary at this time.

Several commenters suggested that if the Commission determines to adopt the proposed rescissions, it should adopt a foreign advisor exemption similar to that set forth in the Dodd-Frank Act under the Investment Adviser Act of 1940. Due to the exemptions previously adopted by the Commission, and the resulting lack of information regarding the activities of CPOs claiming relief thereunder, the Commission does not yet have a comprehensive view of the positions taken and interests held by currently exempt entities. The Commission, therefore, believed that it is prudent to withhold consideration of a foreign advisor exemption until the Commission has received data regarding such firms on Forms CPO-PQR and/or CTA-PR, as applicable, to enable the Commission to better assess the universe of firms that may be appropriate to include within the exemption, should the Commission decide to adopt one. Foreign advisors to pools that meet the criteria of § 4.13(a)(3) will be able to continue to operate pursuant to that exemption, if previously claimed, or file notice of claim of exemption under § 4.13(a)(3). Therefore, the Commission determined not to provide an exemption for foreign advisors at this time.

Describe efforts to consult with persons outside the agency to obtain their views on the availability of data, frequency of collection, the clarity of instructions and recordkeeping disclosure, or reporting format (if any), and on the data elements to be recorded, disclosed, or reported.

In addition to seeking the input from outside sources through the public comment process, in an effort to obtain further information from interested parties, Commission staff held a roundtable discussion, and invited staff from the SEC, the IRS, and members of various trade organizations.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every 3 years - even if the collection of information activity is the same as in prior periods. There may be circumstances that may preclude consultation in a specific situation. These circumstances should be explained.

There are no such circumstances that would preclude the consultation with representatives of those who must compile records pursuant to these rules at this time.

9. Explain any decision to provide any payment or gift to respondents, other than remuneration of contractors or grantees.

This question does not apply.

10. Describe any assurance of confidentiality provided to respondents and the basis for the assurance in statute, regulations, or agency policy.

The Commission has provided no assurance of confidentiality above that provided by the agency's Freedom of Information Act regulations, set forth at 17 C.F.R. Part 145.

11. Provide additional justification for any questions of a sensitive nature, such as sexual behavior and attitudes, religious beliefs, and other matters that are commonly considered private. This justification should include the reasons why the agency considers the questions necessary, the specific uses to be made of the information, the explanation to be given to persons from whom the information is requested, and any steps to be taken to obtain their consent.

The regulations covered by this collection do not require the giving of sensitive information, as that term is used in Question 11.

12. Provide estimates of the hour burden of the collection of information. The Statement should:

- Indicate the number of respondents, frequency of response, annual hour burden and an explanation of how the burden was estimated. Unless directed to do so, agencies should not conduct special surveys to obtain information on which to base hour burden estimates. Consultation with a sample (fewer than ten) of potential respondents is desirable. If the hour burden on respondents is expected to vary widely because of differences in activity, size or complexity, show the range of estimated hour burden, and explain the reasons for the variance. Generally, estimates should not include burden hours for customary and usual business practices.

- If the request for approval covers more than one form, provide separate hour burden estimates for each form and aggregate the hour burdens in Item 13 of OMB Form 83-I.
- Provide estimates of annualized cost to respondents for the hour burdens for collections of information, identifying and using appropriate wage rate categories. The cost of contracting out or paying outside parties for information collection activities should not be included here. Instead, this cost should be included in Item 13.

See Attachment A

13. Provide an estimate of the total annual cost burden to respondents or recordkeepers resulting from the collection of information. (Do not include the cost of any hour burden shown in Items 12 and 14).

- The cost estimate should be split into two components; (a) a total capital and start-up cost component (annualized over its expected useful life) and (b) a total operation and maintenance and purchase of services component. The estimates should take into account costs associated with generating, maintaining, and disclosing or providing the information. Include descriptions of methods used to estimate major cost factors including system and technology acquisition, expected useful life of capital equipment, the discount rate(s), and the time period over which costs will be incurred. Capital and start-up costs include, among other items, preparations for collecting information such as purchasing computers and software, monitoring, sampling, drilling and testing equipment, and record storage facilities.
- If cost estimates are expected to vary widely, agencies should present ranges of cost burdens and explain the reasons for the variance. The cost of purchasing or contracting out information collection services should be a part of this cost burden estimate, agencies may consult with a sample of respondents (fewer than ten), utilize the 60-day pre-OMB submission public comment process and use existing economic or regulatory impact analysis associated with the rulemaking containing the information collection, as appropriate.
- Generally, estimates should not include purchases of equipment or services, or portions thereof, made: (1) prior to October 1, 1995, (2) to achieve regulatory compliance with requirements not associated with the information collection, (3) for reasons other than to provide information or keep records for the government, or (4) as part of customary and usual business or private practices.

See Attachment A

14. Provide estimates of the annualized costs to the Federal Government. Also provide a description of the method used to estimate cost, which should include quantification of

hours, operational expenses (such as equipment, overhead, printing and support staff), and any other expense that would not have been incurred without this collection of information. Agencies may also aggregate cost estimates from Items 12, 13, and 14 in a single table.

As noted above in the response to Question 2, the information on registration applications is used to determine fitness for registration under the Act. This determination is normally made, in the first instance, by the National Futures Association (NFA), an industry-funded self-regulatory organization registered as a futures association under the Act that the Commission has authorized to perform registration functions. The CFTC has oversight responsibilities with regard to NFA's registration program, and the costs associated with this are the salaries and benefits for Commission staff. The proposed renewal should not add to these existing costs, because the information collected is of the same type and amount as the existing collection.

15. Explain the reasons for any program changes or adjustments reported in Items 13 or 14 of the OMB Form 83-I.

Overall, estimated burden hours are increased due to an increase in the number of persons expected to apply for and maintain registration. The total number of registrants has decreased from year to year due to several factors, including, among other things, the adoption by the Commission of regulations that provide additional exemptions from the requirement to register as a commodity pool operator or as a commodity trading advisor, and the industry trend away from open outcry trading to electronic trading. In many cases, existing registrants have withdrawn from registration, claiming exemption under the new regulations. However, the increase in burden hours reflects the Commission's estimate of the number of new registrants.

On Attachment A, the estimated number of respondents or recordkeepers per year does not correspond to the total annual responses because in many cases, a respondent registers with the Commission in more than one capacity. For example, a commodity pool operator may also register as a commodity trading advisor, or a commodity trading advisor may also register as an associated person. See Attachment A.

16. For collection of information whose results are planned to be published for statistical use, outline plans for tabulation, statistical analysis, and publication. Provide the time schedule for the entire project, including beginning and ending dates of the collection of information, completion of report, publication dates, and other actions.

This question does not apply.

17. If seeking approval to not display the expiration date for OMB approval of the information collection, explain the reasons that display would be inappropriate.

This question does not apply.

18. Explain each exception to the certification statement identified in Item 19, "Certification for Paperwork Reduction Act Submissions," of OMB Form 83-I.

This question does not apply.

Attachment A

Collection 3038-0023 – Regulations and Forms for Domestic and Foreign Futures and Options Relating to Registration with the Commission

COLLECTION	ESTIMATED # OF RESPONDENTS OR RECORD KEEPERS PER YEAR	REPORTS ANNUALLY BY EACH RESPONDENT	TOTAL ANNUAL RESPONSES	ESTIMATED AVERAGE NUMBER OF HOURS PER RESPONSE	ESTIMATED TOTAL NUMBER OF HOURS OF ANNUAL BURDEN IN FISCAL YEAR
#0038-0023 (Part 3)	77,857	Periodically	78,109	0.09	7,029.8

The estimated number of respondents or recordkeepers per year does not correspond to the total annual responses because in many cases, a respondent registers with the Commission in more than one capacity. For example, a commodity pool operator may also register as a commodity trading advisor, or a commodity trading advisor may also register as an associated person.