

SUPPORTING STATEMENT FOR NEW AND REVISED INFORMATION COLLECTIONS

OMB CONTROL NUMBER 3038-0005

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 require commodity pool operators (CPOs) and commodity trading advisors (CTAs) to maintain books and records and to file reports as required by the Commission. 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 current reporting requirements for CPOs in Part 4 of the Commission’s regulations.

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 has re-evaluated its prior decision not to require reporting by CTAs and has concluded that additional information regarding CTAs’ activities is needed to provide the Commission with a more complete understanding of such activities’ effects on commodities and derivatives markets. Additionally, the Commission does not want its registration and reporting regime for pooled investment vehicles and their operators and/or advisors to be incongruent with the registration and reporting regimes of other regulators, such as that of the SEC for investment advisers under the Dodd-Frank Act.

Under this collection, the estimated average time per response has not been altered; however, adjustments have been made to the collection to account for current information received from the National Futures Association (NFA) concerns the number of CPOs and CTAs registered or claiming relief under the Part 4 regulation and the new burden expected under the proposed new data collection.

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 disclosure, filing, and recordkeeping requirements within Part 4 of the Commission's regulations were established to assist customers, to facilitate the Commission and NFA in monitoring compliance with the Part 4 rules, and to enable the Commission to better monitor the markets risks posed by the Commission's registrants. Failure to require the information in this collection would severely hamper these efforts. These records also provide the Commission with its source of independent aggregated financial information concerning the commodity pool industry, which informs the Commission's policy decision making.

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.

In March 2009, the Commission adopted requirements for electronic filing of CTA and CPO disclosure documents with NFA. In 2006, the Commission adopted a requirement that commodity pool annual reports be filed electronically, and in 2007, the Commission adopted requirements that exemption notices under Part 4 be submitted electronically. The Commission and NFA permit electronic filings to minimize the burden on registrants and to streamline the process of sending, receiving, and reviewing the filings. The Commission is proposing to have the proposed new data filed with NFA electronically.

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.

No other Division within the agency regulates the solicitation and other activities of the respondents, and duplication in-house is therefore avoided. Some of the respondents, however, are also registered with the Securities and Exchange Commission (SEC), which has its own requirements. The regulations include provisions designed, in part, to coordinate the Commission's regulations with those of the SEC applicable to public offerings, exempt offerings set forth in SEC Regulation D, and the reporting of investment advisers to private funds.

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

The Commission has established certain definitions of "small entities" to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the RFA. The Commission determined that registered CPOs are not small entities for the purpose of the RFA. With respect to CPOs exempt from registration, the Commission has previously determined that a CPO is a small entity if it meets the criteria for exemption from registration under current Rule 4.13(a)(2). Such CPOs will continue to qualify for either exemption or exclusion from registration and therefore will not be required to report on proposed Form CPO-PQR; however, they will have an annual notice filing obligation confirming their eligibility for exemption or exclusion from registration and reporting. The Commission estimates that the time required to complete this new requirement is not a significant time expenditure and will not create a significant economic impact on a substantial number of small entities.

With respect to CTAs, the Commission has stated that it would evaluate within the context of a particular rule whether all or some affected CTAs would be considered small entities and, if so, the economic impact on them of any rule. The proposed rules alter the requirements of Part 4 to the extent that notices of claims of exemptions are proposed to be required to be reaffirmed electronically on an annual basis. In addition to the minimal additional burden imposed by the annual electronic reaffirmance of claim of exemption, Schedule A of proposed Form CTA-PR is proposed to be required of all registered CTAs, which necessarily includes entities that would be considered small. The majority of the information requested on Schedule A is information that is readily available to the CTA or readily calculable by the CTA, regardless of size. The Commission has determined that proposed Schedule A will not create a significant economic impact on a substantial number of small entities due to the minimal amount of information requested. With respect to Schedule B of proposed Form CTA-PR, only CTAs directing pool assets equal to or in excess of \$150 million will be obligated to file Schedule B. The Commission has determined that for purposes of this rulemaking that CTAs directing pool assets equal to or in excess of \$150 million are not small entities for RFA purposes.

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.

Failure to require Part 4's disclosures, filings, and recordkeeping could expose the investing public to greater opportunities for fraud and mismanagement by entities in these two categories and would make monitoring of these entities by the Commission and NFA less effective.

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 rules in question do not require the respondent to report any information to the Commission more often than quarterly.

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

Respondents are not required to prepare any written responses because all responses will be submitted electronically.

- 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;

Respondents must maintain certain records in order to demonstrate compliance with the Part 4 regulations. For enforcement purposes, Commission Rule 1.31 requires that:

All books and records required to be kept by the [Commodity Exchange] 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 two years of the five 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 rules do not involve a statistical survey.

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

The rules 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 rules do not involve a pledge of confidentiality that is not supported by authority established in statute or regulation.

- 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 rules involve submission of proprietary trade secrets to the Commission with respect to the information requested on proposed Forms CPO-PQR and CTA-PR regarding position information, trading strategy, and stress testing. The Commission is proposing to amend its regulation governing nonpublic records under Part 145 of the Commission's regulations to include the proprietary information on proposed Forms CPO-PQR and CTA-PR.

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 C.F.R. 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 3038-0005 to reflect the obligations associated with the compliance obligations as imposed or modified by the final Rule. The public comments received in response to these changes are summarized below.

The Commission proposed two amendments to § 4.7. The first proposed to amend §§ 4.7(a)(3)(ix) and (a)(3)(x) to incorporate the "accredited investor" definition from the Securities and Exchange Commission's Regulation D by reference. This incorporation was supported by a commenter, who expressed support for a unified standard, which would facilitate consistency between the two agencies.

The second proposed amendment to § 4.7 would rescind the relief provided in § 4.7(b)(3) from the certification requirement of § 4.22(c) for financial statements contained in commodity pool annual reports. Comments were generally supportive, though one recommended an exception in limited circumstances. The Commission believes that although granting such an exception at this date is not appropriate, continued monitoring may warrant reanalysis of the suitability of an exception at a future date. Therefore, the Commission is adopting the amendments to § 4.7 as proposed.

The Commission received numerous comments in response to proposed § 4.27, which requires CPOs and CTAs to report certain information to the Commission on Forms CPO-PQR and CTA-PR, respectively. Several commenters questioned whether the data collection was necessary for the Commission's oversight of its registrants. Others asserted that certain groups, such as registered investment companies or family offices, should be exempted from completing the data collection. The Commission received a comment estimating that the compliance burden of 4.27 would range from \$150,000 to \$250,000 per year.⁵ In multiple meetings with industry representatives and affected constituents, Commission staff requested data regarding the costs and hour burden and the number of affected entities to better tailor the Commission's PRA estimates. The Commission did not receive any specific data regarding the costs and hour burden, or the number of affected entities.

Although the Commission recognizes that the cost of compliance with § 4.27 is non-trivial, compliance with the provisions of § 4.27 is essential to the Commission's market-risk mitigation mandate and to enable it to better determine regulatory policy in the future.

Further, in an effort to mitigate the costs of compliance, the Commission will not require very large dual registrants to file anything more than the general identifying information required on schedule A on an annual basis, and neither § 4.27 nor the forms require dual registrants to file schedules B or C if they are filing form PF. Similarly, the Commission is not adopting schedule B from form CTA-PR, and therefore, will be limiting the information collected from registered CTAs to demographic data and the names of the pools advised by the CTA.

Commenters also supplied responses regarding the additional risk disclosure requirements. Sections 4.24 and 4.34 implement additional risk disclosure requirements regarding swaps for CPOs and CTAs, respectively. Most commenters believed that additional mandatory risk disclosures were unnecessary and not necessarily suitable to the broad spectrum of risks posed by exposure to swaps. The Commission noted, however, that the additional risk disclosure statements functioned as a minimum amount of disclosure, which must be supplemented with individually tailored information by each CPO or CTA according to their relevant swap positions.

The Rule also requires the annual reaffirmance of exemption or exclusion from registration as a CPO or CTA. Commenters suggested that there may be operational difficulties complying with the reaffirmations as proposed, particularly with regard to when they must file,

and how long they had to do so. In response to these comments, the Commission changed the time for filing to the calendar year end and extended the time period for filing.

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.

The Commission has consulted with staff from the Securities and Exchange Commission (SEC), the Federal Reserve Board, and the Department of the Treasury in connection with the joint rulemaking with the SEC, the results of which the Commission has incorporated into its proposed Forms CPO-PQR and CTA-PR. The proposed rules were published in the Federal Register and the Commission sought comment on this and other collections associated with the revised rules.

Consultation with representatives of those from whom information is to be obtained or those who must compile records should occur at least once every three 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.

As part of this rule, the Commission is amending its Freedom of Information Act and Sunshine Act regulations, 17 C.F.R. Parts 145 and 147, to provide for confidential treatment of certain proprietary information. Specifically, certain parts of Form CPO-PQR are designated as nonpublic documents under the amended Part 145 and Part 147 regulations.

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 sensitive or private information, as the 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 hours 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 costs 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.

The primary costs for reviewing and analyzing documents under this collection are the salaries and benefits of existing staff, including auditors and attorneys.

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

The disclosure, filing, and recordkeeping requirements within Part 4 of the Commission's regulations were established to assist customers and to facilitate the Commission and NFA in monitoring compliance with the Part 4 rules. Failure to require the information in this collection would severely hamper these efforts. These records also provide the Commission with its source of independent aggregated financial information concerning the commodity pool industry, which informs the Commission's policy decision making.

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.

No exceptions exist.

Attachment A

3038-0005 - Rules Relating to the Operations and Activities of Commodity Pool Operators and Commodity Trading Advisors and to Monthly Reporting by Futures Commission Merchants

ESTIMATED # OF RESPONDENT S OR RECORD	POOLS BY EACH RESPONDENT	REPORTS ANNUALLY BY EACH POOL OR	TOTAL ANNUAL RESPONSES	ESTIMATED AVERAGE NUMBER OF HOURS	ESTIMATED TOTAL NUMBER OF HOURS
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	KEEPERS PER YEAR		RESPONDENT, AS APPLICABLE		PER RESPONSE	OF ANNUAL BURDEN IN FISCAL YEAR
REPORTING 4.12(b) (Exemption from Certain CPO Requirements)	10		1	10	0.5	5.00
4.14(a)(8) (Notice of Exemption from CTA Registration)	300		1	300	0.5	150.00
4.5 (Notice of Exclusion from CPO Definition)	7,890.00		1	7,890.00	0.5	3,945.00
4.7 (Notice of Claim for Exemption for Pool Offered to QEPs)	3,000.00	1	1	3,000.00	0.5	1,500.00
4.7(b)(2) (QEP Pool Periodic Reports)	3,900.00	3	4	15,600.00	2	31,200.00
4.7(b)(3) (QEP Pool Annual Report)	3,900.00	3	1	3,900.00	9.58	37,362.00
4.13(a)(5) (Disclosures- Exempt CPOs) ¹	1,180.00	1	1	1,180.00	0.5	590.00
4.13(c)(3) (Reporting- Exempt CPOs) ²	1,180.00	1	12	2,360.00	0.1	236.00
4.21, 4.26 (CPO Disclosure Documents)	160		3	480	3.25	1,560.00
4.22(a) (Pool	180	1.5	9	2,430.00	3.85	9,355.50

¹ Rule 4.13(b)(1) in previous collection.

² Rule 4.13(b)(2) in previous collection.

Account Statements)							
4.22(c) (Pool Annual Reports)	180	1.5	1	270.00	9.58	2,586.60	
4.22(f) (Extension for Pool Annual Report)	962		1	962	0.5	481.00	
4.31, 4.36 (CTA Disclosure Documents)	450		1	450	1.85	832.50	
1.33(d) (FCM Reports)	100		12	1,200.00	6	7,200.00	
4.27 Schedule A-Form CPO-PQR	4,060.00		4	16,240.00	8	129,920.00	
Schedule B-Form CPO-PQR	920.00		4	3,680.00	4	14,720.00	
Schedule C-Form CPO-PQR	260.00		4	1,040.00	18	18,720.00	
Schedule A-Form CTA-PR	450.00		4	1,800.00	0.5	900.00	
Schedule B-Form CTA-PR	150.00		4	600.00	7	4,200.00	
SUBTOTAL REPORTING	25,632.00			63,392.00		265,463.60	
RECORDKEEPING							
4.7(b)(4) (CPOs)	3,900.00		1	3,900.00	42	37,800.00	
4.13(b)(2)(ii) (Exempt CPOs)	1,180.00		1	1,180.00	13	15,340.00	
4.23 (CPOs)	160		1	160	52	8,320.00	
4.33 (CTAs)	450		1	450	18	8,100.00	
SUBTOTAL RECORDKEEPING	5,690.00			5,690.00		69,560.00	
GRAND TOTAL	31,322.00			69,082.00		272,419.6	