

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 Commission has determined to codify the exemptive relief that its staff has been granting on a case-by-case basis to registered commodity pool operators (CPOs) that operate commodity pools whose units of participation are listed for trading on a national securities exchange (Commodity ETFs). The Commission is proposing to add a new provision to Regulation 4.12 (17 CFR §4.12 (2010)) to enable such CPOs to claim relief from the Disclosure Document delivery and receipt requirements of Regulation 4.21 (17 CFR §4.21 (2010)), the Account Statement distribution requirement of Regulation 4.22 (17 CFR §4.22 (2010)), and the requirement of Regulation 4.23 (17 CFR §4.23 (2010)), to keep the CPO's books and records at its main business office. These CPOs are already subject to similar requirements under the Federal securities laws covering offerings of securities that are listed on a national securities exchange. The proposed amendments, if adopted, would reduce the regulatory burden applicable to the CPOs of Commodity ETFs by permitting substitution of compliance with the corresponding securities law requirements for specific compliance with the Commission regulations cited above. CPOs taking advantage of the proposed exemption would be starting new pools, and the overall paperwork burden of this collection will be incrementally increased, as ordinarily occurs with each new pool whose operator is subject to Regulations 4.21, 4.22 and 4.23. A simple notice filing would be required under the proposed amendments in order for the CPO to claim the relief. The Commission is amending the collection to account for these changes.

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 and to facilitate the Commission and NFA in monitoring compliance with the Part 4 regulations. 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. The notice filing by which a CPO would claim the relief provided by the proposed

amendments will enable the Commission and NFA to ensure that persons who are not eligible to claim the proposed relief are complying with the normal requirements of Regulations 4.21, 4.22 and 4.23.

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. 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.

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.

The proposed amendments dramatically reduce duplication of requirements applicable to the CPOs of Commodity ETFs by permitting substituted compliance with Federal securities law requirements in lieu of specific compliance with certain requirements of Commission regulations. For example, the CPO is permitted to use the prospectus required under securities law requirements in lieu of the Disclosure Document required under Commission Regulation 4.21 so long as the prospectus contains the information required by the Commission's regulations. Any increased burdens would correlate primarily to additional registrants availing themselves of the proposed notice procedure.

5. If the collection of information involves small business or other small entities (Item 5 of OMB Form 83-1), 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.

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. Failure to require a filing by the CPO seeking to claim the relief that the proposed amendments would make available would result in confusion as to which CPOs are subject to the full requirements of Part 4 of the Commission's regulations, and could hamper the efforts of NFA and Commission staff to audit and oversee the CPOs of Commodity ETFs and other registered CPOs.

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 monthly.

- 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.

- 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 rule does not involve a statistical survey.

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

The rule does not involve 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 rule does 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 rule does not involve submission of proprietary trade secrets or other information to the Commission.

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 75 Fed. Reg. 54794 (Sep. 9, 2010) and the final rules were published at 76 FR 28641 (May 18, 2011).

A commenter asked that the CPO of a Commodity ETF claiming relief under proposed Regulation 4.12(c) be permitted to satisfy the Annual Report requirement under Regulation 4.22(c) by providing the Commodity ETF's Form 10-K on the same Web site where the CPO makes available the Commodity ETF's Disclosure Document and monthly Account Statements. The Commission did not include such an amendment to Regulation 4.22 in the Proposing Release, and it is not including one in the Amendments. This is because the Commission believes that the benefits to Commodity ETF participants of a familiar, standardized, certified, annual report of the Commodity ETF's financial condition outweigh the burden of, for example, ascertaining the names and addresses of participants at year-end and preparing and delivering the Annual Report (all of which the CPO has 90 days to accomplish). Accordingly, the CPO of a Commodity ETF claiming exemption under Regulation 4.12(c) remains subject to the Annual Report requirements of Regulation 4.22(c).

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.

This question does not apply at this time. The proposed rules will be published in the Federal register and the Commission will seek comment on this and other collections associated with the new 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 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.

No such circumstances occur.

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, regulation, or agency policy.

The Commission has provided no assurance of confidentiality above that provided by the agency's Freedom of Information Act regulations, 17 C.F.R. Part 145. Outside of the Freedom of Information Act, there is no basis for confidential treatment of any of the information governed by these rules.

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 question 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 difference 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. Depending on the technical expertise of the filer or recordkeeper, the cost to the public of the hour burdens varies between \$10 to \$25 per hour.

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 (few 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 report in Items 13 or 14 of the OMB Form 83-I.

As discussed above in the response to Question 2,

16. For collections 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

Collection 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 RESPONDENTS OR RECORDKEEPERS PER YEAR	POOLS BY EACH RESPONDENT	REPORTS ANNUALLY BY EACH POOL OR RESPONDENT, AS APPLICABLE	TOTAL ANNUAL RESPONSES	ESTIMATED AVERAGE NUMBER OF HOURS PER RESPONSE	ESTIMATED TOTAL NUMBER OF HOURS OF ANNUAL BURDEN IN FISCAL YEAR
REPORTING						
4.12(b) (Exemption from Certain CPO Requirements)	35		1	35	0.5	17.50
4.14(a)(8) (Notice of Exemption from CTA Registration)	210		1	210	0.5	105.00
4.5 (Notice of Exclusion from CPO Definition)	1080		1	1,080	0.5	540.00
4.7 (Notice of Claim for Exemption for Pool Offered to QEPs)	609	1	1	609	0.5	304.50
4.7(b)(2) (QEP Pool Periodic Reports)	701	3	4	8,412	2	16,824.00
4.7(b)(3) (QEP Pool Annual Report)	701	3	1	2,103	7.58	15,940.74
4.13(a)(5) (Disclosures-Exempt CPOs) ¹	1506	1	1	1,506	0.5	753.00
4.13(c)(3) (Reporting-Exempt CPOs) ²	331	1	12	3,972	0.1	397.20
4.21, 4.26 (CPO Disclosure Documents)	169		3	507	3.25	1,647.75
4.22(a) (Pool Account Statements)	519	3	9	14,013	3.85	53,950.05
4.22(c) (Pool Annual Reports)	509		3	1,527	9.58	14,628.66
4.22(f) (Extension for Pool Annual Report)	276		1	276	0.5	138.00
4.31, 4.36 (CTA Disclosure Documents)	604		1	604	1.85	1,117.40
1.33(d) (FCM Reports)	100		12	1,200	6	7,200.00
SUBTOTAL REPORTING	7,350.0			36,054.0		113,563.80
RECORDKEEPING						
4.7(b)(4) (CPOs)	701		1	701	42	29,442.00
4.13(b)(2)(ii) (Exempt CPOs)	331		1	331	13	4,303.00

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

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

4.23 (CPOs)	516	1	516	52	26,832.00
4.33 (CTAs)	618	1	618	18	11,124.00
SUBTOTAL RECORDKEEPING	2166		2166	31.25	71,701.00
GRAND TOTAL	9516		38,220		185,264.80