

## 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 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.

The disclosure, filing, and recordkeeping requirements within part 4 of the Commission’s regulations were established to assist customers, to facilitate the Commission and the National Futures Association (“NFA”) in monitoring compliance with the part 4 rules, and to enable the Commission to better monitor the market risks posed by the Commission’s registrants. The information collections are necessary to enable the Commission and NFA to accomplish the purposes of the compliance regime set forth in part 4 of the Commission regulations.

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. In 2012, the Commission adopted requirement for electronic filing of Form CPO-PQR and CTA-PR, as well as the annual affirmations of exemptions from registration. 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.

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. In addition to the minimal additional burden imposed by the annual electronic reaffirmance of claim of exemption, Form CTA-PR is 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 Form CTA-PR will not create a significant economic impact on a substantial number of small entities due to the minimal amount of information requested.

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 has procedures to protect the confidentiality of an applicant's or registrant's data. These are set forth in the Commission's regulations at parts 145 and 147 of title 17 of the Code of Federal Regulations.

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.

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 Notice of Intent to Renew Collection 3038-005 was published for comment in the Federal Register at 81 Fed. Reg. 42668 (June 30, 2016). The Commission did not receive any comments on the information collection.

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.

The Commission does not provide respondents with an assurance of confidentiality. The Commission fully complies with section 8(a)(1) of the Commodity Exchange Act, which strictly prohibits the Commission, unless specifically authorized by the Commodity Exchange Act, from making public “data and information that would separately disclose the business transactions or market positions of any person and trade secrets or names of customers.” The Commission has procedures to protect the confidentiality of an applicant’s or registrant’s data. These are set forth in the Commission’s regulations at parts 145 and 147 of title 17 of the Code of Federal 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.

This information collection does not result in any annualized costs to the Federal Government.

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. The burden hours have been adjusted in this information collection resulting in an increase in the burden hours due to the correction of several mathematical errors that occurred when the hours were previously calculated. The current burden calculation presented in this renewal notice is a more accurate estimate of the total burden hours under this information collection.

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

### OMB Control Number 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

#### Reporting Burden<sup>1</sup>

1. Regulation(s)	2. Estimated Number of Respondents	2.a Estimated Number of Pools per Respondent	3. Estimated Number of Reports by Each Respondent	4. Estimated Average Number of Burden Hours per Response	5. Annual Number of Burden Hours per Respondent (3 x 4)	6. Estimated Average Burden Hour Cost	7. Total Average Hour Burden Cost Per Respondent (5 x 6)	8. Total Annual Responses (2 x 3)	9. Total Annual Number of Burden Hours (2 x 5)	10. Total Annual Burden Hour Cost of All Responses (2 x 7)
4.12(b)	10	1	1	.5	.5	\$96	\$48	10	5	\$480

<sup>1</sup> The Commission staff’s estimates concerning the wage rates are based on the 2013 salary information for the securities industry compiled by the Securities Industry and Financial Markets Association (“SIFMA”) in the SIFMA Report on Management and Professional Earnings in the Securities Industry (“SIFMA Report”). The Commission anticipates that compliance with the part 4 provision would require the work of an information technology professional (“programmer (senior)”) (to develop the necessary technological systems); a compliance manager (to prepare financial reporting and maintain records); and an assistant/associate general counsel (to prepare notices of exemption, disclosure documents). The hourly wage rate is rounded to the nearest dollar.

Average salary for a senior programmer is \$111,950 per year according to the SIFMA report. Dividing \$111,950 per year by 80 hours for 26 two-week pay periods yields \$54 per hour.

Average salary for a compliance manager is \$109,600 per year according to the SIFMA report. Dividing \$109,950 per year by 80 hours for 26 two-week pay periods yields \$53 per hour.

Average salary for an associate general counsel is \$200,525 per year according to the SIFMA report. Dividing \$200,525 per year by 80 hours for 26 two-week pay periods yields \$96 per hour.

With respect to specific regulatory provisions where persons in the three employment categories would be required to contribute to compliance, Commission staff calculated the wage rate as a weighted national average of salary for professionals with the following titles (and their relative weight): “programmer (senior)” (30% weight), “compliance manager” (45% weight), and “assistant/associate general counsel” (25% weight). The weighted cost per hour for information requiring the expertise of the three employment categories is \$64 per hour.

With respect to specific regulatory provisions where persons in the employment categories of the compliance manager and senior programmer are necessary for compliance, Commission staff calculated the wage rate as a weighted national average of salary for such professionals as follows: “programmer (senior)” (40% weight) and “compliance manager” (60% weight). The weighted cost per hour for information requiring the expertise of the two employment categories is \$53 per hour.

4.12(d)	418	3	3	2	6	\$96	\$576	1,254	2,508	\$240,768
4.12(c)	368		1	15	15	\$53	\$795	368	5,520	\$292,560
4.14(a)(8)	300		1	.5	.5	\$96	\$48	300	150	\$14,400
4.5	7,890	1	1	.5	.5	\$96	\$48	7,890	3,945	\$378,720
4.7	3,900	1	1	.5	.5	\$96	\$48	3,900	1,950	\$187,200
4.7(b)(2)	3,900	3	12	2	24	\$53	\$1,272	46,800	93,600	\$4,960,800
4.7(b)(3)	3,900	3	3	9.58	28.74	\$53	\$1,523	11,700	112,086	\$5,939,800

4.13(a)(5)	3,612	1	1	.5	.5	\$96	\$48	3,612	1,806	\$173,376
4.13(c)(3)	3,612	1	1	.1	.1	\$96	\$9.6	3,612	361	\$34,675
4.21, 4.26	180		1.8	2.88	5.2	\$96	\$499	324	936	\$89,820
4.22(a)	180	1.5	13.5	3.85	52	\$53	\$2,756	2,430	9,360	\$496,080
4.22(c)	180	1.5	1.5	9.58	14.37	\$53	\$762	270	2,587	\$137,160
4.22(f)	962	1	1	.5	.5	\$96	\$48	962	481	\$46,176
4.31, 4.36	450		1	1.85	1.85	\$96	\$178	450	833	\$80,100

1.33(d)	100		12	6	72	\$53	\$3,816	1,200	7,200	\$381,600
4.27(Schedule A for Non-Large CPOs and Large CPOs filing Form PF)	3,800		1	6	6	\$64	\$384	3,800	22,800	\$1,459,200
4.27 (Schedule A Large CPOs not filing Form PF)	260		4	6	24	\$64	\$1,536	1,040	6,240	\$399,360
4.27(Schedule B-Mid size CPOs)	440		1	4	4	\$64	\$256	440	1,760	\$112,640
4.27 (Schedule B for Large CPOs not filing Form PF)	260		4	4	16	\$64	\$1,024	1,040	4,160	\$266,240
4.27 (Schedule C for Large CPOs not filing Form PF)	260		4	18	72	\$64	\$4,608	1,040	18,720	\$1,198,080
4.27(Form CTA-PR)	450		1	.5	.5	\$64	\$32	450	225	\$14,400

### Recordkeeping Burden

1. Regulation(s)	2. Estimated Number of Respondents	3. Estimated Number of Reports by Each Respondent	4. Estimated Average Number of Burden Hours per Response	5. Annual Number of Burden Hours per Respondent (3 x 4)	6. Estimated Average Burden Hour Cost	7. Total Average Hour Burden Cost Per Respondent (5 x 6)	8. Total Annual Responses (2 x 3)	9. Total Annual Number of Burden Hours (2 x 5)	10. Total Annual Burden Hour Cost of All Responses (2 x 7)
4.7(b)(4)	3,900	1	2	2	\$96	\$192	3,900	7,800	\$748,800
4.7(c)(2)	1,278	4	2	8	\$96	\$768	5,112	10,224	\$981,504
4.13(b)(2) (ii)	3,612	1	11.4	11.4	\$53	\$604	3,612	41,177	\$2,181,648
4.23(CPOs of Registered Investment Companies)	418	1	2	2	\$96	\$192	418	836	\$80,256

<b>4.23</b>	<b>180</b>	<b>1</b>	<b>2</b>	<b>2</b>	<b>\$96</b>	<b>\$192</b>	<b>180</b>	<b>360</b>	<b>\$34,560</b>
<b>4.33</b>	<b>450</b>	<b>1</b>	<b>18</b>	<b>18</b>	<b>\$53</b>	<b>\$954</b>	<b>450</b>	<b>8,100</b>	<b>\$429,300</b>