

There are no capital costs or operating and maintenance costs associated with this collection.

This estimate is based on the number of written records maintained in the last three years. Although the burden varies, such records may involve analytical work and analysis, as well as multiple levels of review.

Dated: May 12, 2011.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2011-12185 Filed 5-17-11; 8:45 am]

BILLING CODE 6351-01-P

COMMODITY FUTURES TRADING COMMISSION

Performance of Certain Functions by National Futures Association With Respect to Commodity Pool Operators

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and Order.

SUMMARY: The Commodity Futures Trading Commission (Commission) is authorizing the National Futures Association (NFA) to process: (1) Claims of exemption from certain Part 4 requirements for commodity pool operators (CPOs) with respect to pools whose units are listed and traded on a national securities exchange (Commodity ETFs); and (2) notices of exemption from registration as a CPO filed by independent directors or trustees of Commodity ETFs. Further, the Commission is authorizing NFA to maintain and serve as the official custodian of certain Commission records.

DATES: *Effective Date:* June 17, 2011.

FOR FURTHER INFORMATION CONTACT: Christopher W. Cummings, Special Counsel, Division of Clearing and Intermediary Oversight, or Barbara S. Gold, Associate Director, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, *telephone number:* (202) 418-5450; *facsimile number:* (202) 418-5528; and *electronic mail:* ccummings@cftc.gov, or bgold@cftc.gov, respectively.

I. Authority and Background

In a separate document published elsewhere in today's **Federal Register**, the Commission is announcing adoption of new Regulation 4.12(c), which makes available to the CPOs of Commodity ETFs relief from certain disclosure, reporting and recordkeeping requirements, and new Regulation

4.13(a)(5), which makes available relief from the requirement to register as a CPO for certain independent directors and trustees of Commodity ETFs.¹ Relief under each of the new regulations must be claimed by the filing of specified notices and in the case of Regulation 4.13(a)(5), certain additional statements. These filings are similar to filings currently made with NFA by CPOs seeking to claim relief under other provisions of Regulation 4.13.²

Section 8a(10) of the Commodity Exchange Act³ (Act) provides that the Commission may authorize any person to perform any portion of the registration functions under the Act, notwithstanding any other provision of law, in accordance with rules adopted by such person and submitted to the Commission for approval or, if applicable, for review pursuant to Section 17(j) of the Act⁴ and subject to the provisions of the Act applicable to registrations granted by the Commission. Section 17(o)(1) of the Act⁵ provides that the Commission may require NFA to perform Commission registration functions in accordance with the Act and NFA rules. In this regard, the Commission notes that NFA has confirmed its willingness to perform certain functions that would otherwise be performed by the Commission.⁶

Upon consideration, the Commission has determined to authorize NFA, 90 days following publication of this Notice and Order in the **Federal Register**, to perform the following functions: (1) To process⁷ notices of claim under Regulation 4.12(c) for exemption from certain Part 4 requirements; (2) to process notices of exemption pursuant to Rule 4.13(a)(5) from registration as a CPO; and (3) to maintain and to serve as the official custodian of records for such notices of claim for exemption. As discussed below, these functions involve exemption from certain disclosure, reporting and recordkeeping

requirements for CPOs, and exemption from CPO registration for certain persons. This action is consistent with other action the Commission has taken with respect to delegating to NFA various responsibilities under Part 4 of the Commission's regulations.⁸

A. Exemption From Certain Part 4 Requirements for CPOs of Commodity ETFs

Regulation 4.12(c) makes available an exemption from certain disclosure, reporting and reporting requirements for registered CPOs of Commodity ETFs. To perfect the exemption, Regulation 4.12(d) requires eligible CPOs to file a notice of claim for exemption with NFA. By this Order, NFA is authorized to process claims for exemption filed by CPOs who meet the requirements set forth in Regulation 4.12(c).

B. Exemption From Registration as a CPO for Independent Directors or Trustees

Regulation 4.13(a)(5) makes available an exemption from CPO registration where a person is a director or trustee of a commodity pool solely to comply with the requirements under section 10A of the Securities Exchange Act of 1934, as amended, and any Securities and Exchange Commission rules and exchange listing requirements adopted pursuant thereto, that the pool have an audit committee comprised exclusively of independent directors or trustees. To perfect the exemption, Regulation 4.13(b) requires eligible persons to file a notice of exemption with NFA. By this Order, NFA is authorized to process claims for exemption filed by persons who meet the requirements set forth in Regulation 4.13(a)(5).

C. Recordkeeping Requirements

By prior orders, the Commission has authorized NFA to maintain various other Commission registration records and has certified NFA as the official custodian of such records for this agency.⁹ The Commission has now determined, in accordance with its authority under Section 8a(10) of the Act, to authorize NFA to maintain and to serve as the official custodian of records for the claims required for the exemptions provided by Regulations 4.12(c) and 4.13(a)(5).

In maintaining the Commission's records pursuant to this Order, NFA shall be subject to all other requirements

¹ In the **Federal Register** release proposing new Regulations 4.12(c) and 4.13(a)(5), the Commission explained the origins and use of the term "Commodity ETF". 75 FR 54794, at 54795 (Sep. 9, 2010).

² 17 CFR 4.13 (2010). Commission regulations referred to herein may be accessed through the Commission's Web site at <http://www.cftc.gov>.

³ 7 U.S.C. 12a(10) (2006). The Act also may be accessed through the Commission's Web site.

⁴ 7 U.S.C. 21(j) (2006).

⁵ 7 U.S.C. 21(o)(1) (2006).

⁶ Letter from Robert K. Wilmouth, President of NFA, to Brooksley Born, Chairperson of the Commission, dated June 20, 1997.

⁷ As used in this Notice and Order, the term "process" generally refers to the review of a notice for compliance with applicable requirements and, where necessary, advising the CPO of any deficiency related thereto.

⁸ See, e.g., 62 FR 52088 (Oct. 6, 1997), whereby the Commission delegated to NFA the authority to process various filings made under Part 4.

⁹ See, e.g., 75 FR 55310 (Sep. 10, 2010); 70 FR 2621 (Jan. 14, 2005); and 68 FR 12684 (Mar. 17, 2003).

and obligations imposed upon it by the Commission in existing or future Orders or regulations. In this regard, NFA shall also implement such additional procedures (or modify existing procedures) as are acceptable to the Commission and as are necessary: to ensure the security and integrity of the records in NFA's custody; to facilitate prompt access to those records by the Commission and its staff, particularly as described in other Commission Orders or regulations; to facilitate disclosure of public or nonpublic information in those records when permitted by Commission Orders or regulations and to keep logs as required by the Commission concerning disclosure of nonpublic information; and otherwise to safeguard the confidentiality of the records consistent with Section 8 of the Act and the Commission's regulations issued thereunder.

II. Conclusion and Order

The Commission has determined, in accordance with the provisions of Sections 8a(10) and 17(o)(1) of the Act, to authorize NFA to perform the following functions:

(1) To process notices of claim under Regulation 4.12(c) for exemption from compliance with certain Part 4 requirements, filed under Regulation 4.12(d) by the registered CPOs of Commodity ETFs;

(2) To process notices of exemption pursuant to Regulation 4.13(a)(5) under registration as a CPO, filed under Regulation 4.13(b) by independent directors or trustees of Commodity ETFs; and

(3) To maintain and to serve as the official custodian of records for the notices required by the regulations listed above.

NFA shall perform these functions in accordance with the standards established by the Act and Commission Orders and regulations promulgated thereunder, particularly Part 4 of the regulations and Commission Orders issued thereunder, and shall provide the Commission with such summaries and periodic reports as the Commission may determine are necessary for effective oversight of the functions delegated hereby.

These determinations are based upon the Congressional intent expressed in Sections 8a(10) and 17(o) of the Act that the Commission have the authority to delegate to NFA any portion of the Commission's registration responsibilities under the Act for purposes of carrying out these

responsibilities in the most efficient and cost-effective manner.¹⁰

This Order does not, however, authorize NFA to render "no-action" positions, exemptions or interpretations with respect to applicable CPO disclosure, reporting, recordkeeping and registration requirements.

Nothing in this Order or in Section 8a(10) or 17(o) of the Act shall affect the Commission's authority to review NFA's performance of Commission functions listed in items (1) through (3) of Section II of this Order.

NFA is authorized to perform all functions specified herein until such time as the Commission orders otherwise. Nothing in this Order shall prevent the Commission from exercising the authority delegated herein. NFA may submit to the Commission for decision any specific matters that have been delegated to it, and Commission staff will be available to discuss with NFA staff issues relating to the implementation of this Order. Nothing in this Order affects the applicability of any previous Orders issued by the Commission concerning Part 4.

III. Cost-Benefit Analysis

Section 15(a) of the Act¹¹ requires the Commission to consider the costs and benefits of its actions before promulgating regulations under the Act or issuing certain orders. By its terms, section 15(a) does not require the Commission to quantify the costs and benefits of a regulation or order, or to determine whether the benefits of the regulation or order outweigh its costs; rather, it requires that the Commission "consider" the costs and benefits of its actions. Section 15(a) further specifies that the costs and benefits shall be evaluated in light of five broad areas of market and public concern: (1) Protection of market participants and the public; (2) efficiency, competitiveness and financial integrity of futures markets; (3) price discovery; (4) sound risk management practices; and (5) other public interest considerations. The Commission may in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule is necessary or appropriate to protect the public interest or to

effectuate any of the provisions or accomplish any of the purposes of the Act.

Summary of proposed requirements. The Order would delegate to NFA the responsibility to process notices submitted by persons seeking to claim exemption under new provisions of Regulations 4.12 and 4.13, and to maintain and serve as the official custodian of those notices.

Costs. With respect to costs, the Commission has determined that there will be no costs to members of the public or persons subject to Commission regulation. Any costs to NFA will be insignificant, inasmuch as NFA is already responsible for performing the same processing functions with respect to existing provisions of the same regulations, and it has procedures in place to readily accommodate the notices to be submitted with respect to Regulations 4.12(c) and 4.13(a)(5).

Benefits. With respect to benefits, the Commission has determined that persons claiming exemption under new Regulations 4.12(c) and 4.13(a)(5) will be able to use the same procedure that is currently used for the other exemptive provisions of Part 4, and the Commission will not be required to devote any resources to performing functions that NFA is already performing.

Issued in Washington, DC, on May 5, 2011 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. 2011-11554 Filed 5-17-11; 8:45 am]

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CORPORATION FOR NATIONAL AND COMMUNITY SERVICE

Sunshine Act Meeting Notice

The White House Council for Community Solutions gives notice of their following meeting:

DATE AND TIME: Friday, June 3, 2011, 8:30 a.m.–11:30 a.m. Eastern Daylight Time.

PLACE: The Council will meet in the Eisenhower Executive Office Building. This meeting will be streamed live for public viewing and a link will be available on the council's Web site: <http://www.serve.gov/communitysolutions>.

PUBLIC COMMENT: The public is invited to submit publicly available comments through the Council's Web site. To send statements to the Council, please send written statements to the Council's electronic mailbox at WhiteHouseCouncil@cns.gov. The

¹⁰ See also, Section 125 of the Commodity Futures Modernization Act of 2000, Public Law 106-554, 114 Stat. 2763, enacted December 21, 2000, which directed the Commission to report to Congress identifying, among other things, "the regulatory functions the Commission currently performs that can be delegated to a registered futures association."

¹¹ 7 U.S.C. 19(a) (2006).