

of 2000,³⁹ the Commission is requesting comment on the desirability of implementing a core principle that would replace the current rules, and ameliorate the need for the amendments proposed herein, regarding the manner in which a CTA presents past performance to prospective clients. In particular, the Commission is requesting comments on the following questions:

(1) What form should such core principle take? Commenters are requested to provide specific language for the core principle.

(2) Should certain presentations of past performance be specifically prohibited or limited?

(3) Should the rules proposed herein serve as a safe harbor in the event the Commission determines to adopt a core principle approach, and/or should the Commission develop more general guidance concerning compliance with the core principle?

(4) Would the implementation of a core principle approach lead to more or less meaningful and useful information being provided to prospective clients?

(5) Is the experience of the securities industry with the use of a core principle approach for performance presentation relevant to the use of such an approach in the futures industry?

In offering the above questions, the Commission does not intend to limit the scope of the discussion regarding the alternative of a core principle. These questions are meant only as a starting point and the Commission encourages the submission of comments that address these, as well as any other pertinent questions.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–611 (1994), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission has previously 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.⁴⁰ The Commission previously has determined that registered CPOs are not small entities for the purpose of the RFA.⁴¹ With respect to CTAs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs

would be considered to be small entities and, if so, the economic impact on them of any rule.⁴² In this regard, the Commission notes that the rule revisions adopted herein create some changes to the content of the documentation and disclosure requirements for CTAs, but do not increase such requirements, and, in fact, are expected ultimately to ease the computational and recordkeeping requirements for CTAs who manage partially-funded client accounts. The Commission has previously determined that the disclosure requirements governing this category of registrant will not have a significant economic impact on a substantial number of small entities.⁴³ Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that these regulations will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

These rules [Sections 4.31 and 4.33] contain information collection requirements. As required by the Paperwork Reduction Act of 1995,⁴⁴ the Commission has submitted a copy of this rule to the Office of Management and Budget (OMB) for its review.⁴⁵

Collection of Information

Rules relating to the operations and activities of Commodity Pool Operators and Commodity Trading Advisors and to monthly reporting by Futures Commission Merchants, OMB control number 3038–0005.

The proposed amendments would not affect the paperwork burdens associated with the above collections of information, which have previously been approved by OMB in connection with the Commission's previous submission of the proposed rules.

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581, (202) 418–5160.

Persons wishing to comment on the information collection requirements that would be required by these proposed rules should contact the Office of Information and Regulatory Affairs, Office of Management and Budget, Room 10235, New Executive Office Building, Washington, DC 20503, Attn: Desk Officer for the Commodity Futures Trading Commission.

⁴² 47 FR 18618–18620.

⁴³ See 60 FR 38146, 38181 (July 25, 1995) and 48 FR 35248 (August 3, 1983).

⁴⁴ Pub. L. 104–13 (May 13, 1995).

⁴⁵ 44 U.S.C. 3504(h).

The Commission considers comments by the public on this proposed collection of information in—

Evaluating whether the proposed collection of information is necessary for the proper performance of the functions of the Commission, including whether the information will have a practical use;

Evaluating the accuracy of the Commission's estimate of the burden of the proposed collection of information including the validity of the methodology and assumptions used;

Enhancing the quality, utility, and clarity of the information to be collected; and

Minimizing the burden of the collection of the information on those who are to respond, including through the use of appropriate automated, electronic, mechanical or other technological collection techniques or other forms of information technology, e.g., permitting electronic submissions of responses.

OMB is required to make a decision concerning the collection of information contained in these proposed regulations between 30 and 60 days after publication of this document in the **Federal Register**. Therefore, a comment to OMB is best assured of having its full effect if OMB receives it within 30 days of publication. This does not affect the deadline for the public to comment to the Commission on the proposed regulations.

Copies of the information collection submission to OMB are available from the CFTC Clearance Officer, 1155 21st Street, NW., Washington, DC 20581 (202) 418–5160.

List of Subjects in 17 CFR Part 4

Brokers, Commodity futures, Commodity pool operators, Commodity trading advisors.

In consideration of the foregoing and pursuant to the authority contained in the Commodity Exchange Act and, in particular, sections 1a(4), 4k, 4l, 4m, 4n, 4o and 8a, 7 U.S.C. 1a(4), 6k, 6l, 6m, 6n, 6o, and 12a, the Commission hereby proposes to amend Chapter I of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

1. The authority citation for part 4 continues to read as follows:

Authority : 7 U.S.C. 1a, 2, 4, 6b, 6c, 6l, 6m, 6n, 6o, 12a and 23.

2. Section 4.10 is proposed to be amended by revising paragraph (l) and adding paragraphs (m), (n), (o) and (p) to read as follows:

§ 4.10 Definitions.

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³⁹ Pub. L. No. 106–554, 114 Stat. 2763 (2000) (codified as amended in scattered sections of 7 U.S.C.). See, e.g., section 125 (requiring the Commission to conduct a study of the Act and the Commission's rules and orders governing the conduct of registrants under the Act, identifying, among other things, Commission rules that may be replaced by core principles).

⁴⁰ 47 FR 18618–18621 (April 30, 1982).

⁴¹ 47 FR 18619–18620.