

the effective date of final rules, no new positions may be entered into in accordance with the no-action relief, but the Commission will, if necessary, provide a reasonable opportunity to liquidate previously-entered positions if a person does not wish to comply with the exemptions provided or register under the Act.

2. Continued Availability of No-Action Relief From Commission Staff

The Commission is aware that there may be persons that do not meet the criteria of the no-action relief under Rule 4.5 for eligible persons or Section 4m(1) of the Act for CPOs and CTAs but that nonetheless, under their particular facts or circumstances, merit relief. The Commission also is aware that, in the past, its staff has provided no-action relief from the criteria of Rule 4.5 and from the registration requirement of Section 4m(1) of the Act on a case-by-case basis. Consistent with that practice, the Commission directs its staff to continue to issue such relief in appropriate cases.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)⁷⁷ 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.⁷⁸ With respect to CPOs, 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).⁷⁹ Therefore, the requirements of the RFA do not apply to CPOs who do not meet those criteria. With respect to CTAs, the Commission has previously 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 the proposal.⁸⁰ The Commission believes that the instant proposed rules will not place any burdens, whether new or additional, on CPOs and CTAs who would be affected hereunder. This is because the instant proposals, if adopted, would provide registration relief for more CPOs and CTAs and, for CPOs and CTAs who are not eligible for that relief, they would

reduce, streamline and simplify existing requirements.

The Commission's definitions of small entities do not address the persons and qualifying entities set forth in Rule 4.5 because, by the very nature of the rule, the operations and activities of such persons and entities generally are regulated by federal and state authorities other than the Commission. Assuming, *arguendo*, that Rule 4.5 eligible persons or qualifying entities would be small entities for purposes of the RFA, the Commission believes that the proposed amendment to Rule 4.5 would not have a significant economic impact on them because it would permit greater operational flexibility for persons currently claiming relief under the rule, and it would make relief under the rule available to more persons (each of whom would only have to file a notice to be relieved from the requirement to register as a CPO and from the disclosure, reporting and recordkeeping requirements applicable to registered CPOs).

Accordingly, the Chairman, on behalf of the Commission, certifies pursuant to Section 605(b) of the RFA⁸¹ that the proposed rules will not have a significant economic impact on a substantial number of small entities. However, the Commission invites the public to comment on this finding.

B. Paperwork Reduction Act

This proposed rulemaking affects information collection requirements. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Commission has submitted a copy of this section to the Office of Management and Budget for its review.

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 expected effect of the proposed amended rules will be to reduce the burden previously approved by OMB for this collection of information by 31,025.97 hours because, while it will result in an increase in the number of filings under Rules 4.5, 4.13 and 4.14, it will result in a larger decrease in the information collection requirements under the disclosure, reporting and recordkeeping rules that otherwise would be applicable.

Specifically:

The burden associated with Commission Rule 4.5 is expected to be increased by 25 hours:

Estimated number of respondents: 325.

Annual responses by each respondent: 2.

Estimated average hours per response: .5.

Annual reporting burden: 325 hours. This annual reporting burden of 325 hours represents an increase of 25 hours as a result of the proposed amendment to Rule 4.5.

The burden associated with Commission Rule 4.13 is expected to be increased by 187.5 hours:

Estimated number of respondents: 600.

Annual responses by each respondent: 1.

Estimated average hours per response: .5.

Annual reporting burden: 300. This annual reporting burden of 300 hours represents an increase of 187.5 hours as a result of the proposed amendments to Rule 4.13.

The burden associated with Commission Rule 4.14 is expected to be increased by 5 hours:

Estimated number of respondents: 60.

Annual responses by each respondent: 1.

Estimated average hours per response: .5.

Annual reporting burden: 30. This annual reporting burden of 30 hours represents an increase of 5 hours as a result of the proposed amendments to Rule 4.14.

The burden associated with Commission Rule 4.21 is expected to be decreased by 1540 hours:

Estimated number of respondents: 100.

Annual responses by each respondent: 2.

Estimated average hours per response: 2.8.

Annual reporting burden: 560. This annual reporting burden of 560 hours represents a decrease of 1,540 hours as a result of the proposed amendments to Rules 4.5, 4.13 and 4.21.

The burden associated with Commission Rule 4.22(a) is expected to be decreased by 7,796.25 hours:

Estimated number of respondents: 100.

Annual responses by each respondent: 9.

Estimated average hours per response: 3.85.

Annual reporting burden: 3,465. This annual reporting burden of 3,465 hours represents a decrease of 7,796.25 hours as a result of the proposed amendments to Rules 4.5, 4.13 and 4.22.

⁷⁷ 5 U.S.C. 601 *et seq.*

⁷⁸ 47 FR 18618 (April 30, 1982).

⁷⁹ *Id.* at 18619-20.

⁸⁰ *Id.* at 18620.

⁸¹ 5 U.S.C. 605(b).