

Commission invites public comment on its application of the cost-benefit provision. Commenters also are invited to submit any data that they may have quantifying the costs and benefits of the proposal with their comment letters.

List of Subjects in 17 CFR Part 4

Advertising, Commodity futures, Consumer protection, Reporting and recordkeeping requirements.

For the reasons presented above, the Commission hereby proposes to amend Chapter I of Title 17 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, 6b, 6c, 6(c), 6l, 6m, 6n, 6o, 12a and 23.

2. Section 4.5 is proposed to be amended by:

- a. deleting paragraph (c)(2)(i);
- b. redesignating paragraph (c)(2)(ii) as paragraph (c)(2)(i);
- c. deleting paragraph (c)(2)(iii); and
- d. redesignating paragraph (c)(2)(iv) as paragraph (c)(2)(ii).

3. Section 4.7 is proposed to be amended by revising paragraph (d)(1)(vii) to read as follows:

§ 4.7 Exemption from certain part 4 requirements for commodity pool operators with respect to offerings to qualified eligible persons and for commodity trading advisors with respect to advising qualified eligible clients.

* * * * *

(d) * * *

(1) * * *

(vii) Be manually signed by a duly authorized representative of the commodity pool operator or commodity trading advisor;

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4. Section 4.12 is proposed to be amended by revising paragraph (b)(3)(vi) to read as follows:

§ 4.12 Exemption from provisions of part 4.

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(b) * * *

(3) * * *

(vi) Be manually signed by a duly authorized representative of the pool operator; and

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5. Section 4.13 is proposed to be amended by:

- a. adding introductory text;
- b. deleting the “or” at the end of paragraph (a)(1)(iv);
- c. revising paragraph (a)(2);

d. adding new paragraphs (a)(3), (a)(4) and (a)(5);

e. revising paragraph (b);

f. redesignating paragraphs (c) and (d) as paragraphs (d) and (e) and revising the redesignated paragraphs; and

g. adding a new paragraph (c), to read as follows:

§ 4.13 Exemption from registration as a commodity pool operator.

This section is organized as follows: Paragraph (a) specifies the criteria that must be met to qualify for exemption from registration under this section; paragraph (b) governs the notice that must be filed to claim exemption from registration; paragraph (c) sets forth the continuing obligations of a person who has claimed exemption under this section; paragraph (d) specifies information certain persons must provide if they subsequently register; and paragraph (e) specifies the effect of registration on a person who has claimed an exemption from registration under this section.

(a) * * *

(2)(i) None of the pools operated by it has more than 15 participants at any time; and

(ii) The total gross capital contributions it receives for units of participation in all of the pools it operates or that it intends to operate do not in the aggregate exceed \$400,000.

(iii) For the purpose of determining eligibility for exemption under paragraph (a)(2) of this section, the person may exclude the following participants and their contributions:

(A) The pool's operator, commodity trading advisor, and the principals thereof;

(B) A child, sibling or parent of any of these persons;

(C) The spouse of any person specified in paragraph (a)(2)(iii)(A) or (B) of this section; and

(D) Any relative of a person specified in paragraph (a)(2)(iii)(A), (B) or (C) of this section, its spouse or a relative of its spouse, who has the same principal residence as such person;

(3)(i) At any time, each pool for which the operator claims exemption from registration under this paragraph (a)(3) meets either of the following tests with respect to its commodity interest positions, whether entered into for *bona fide* hedging purposes or otherwise:

(A) The aggregate initial margin and premiums required to establish such positions, determined at the time the most recent position was established, will not exceed two percent of the liquidation value of the pool's portfolio,

after taking into account unrealized profits and unrealized losses on any such positions it has entered into; *Provided*, That in the case of an option that is in-the-money at the time of purchase, the in-the-money amount as defined in § 190.01(x) of this chapter may be excluded in computing such two percent; or

(B) The aggregate net notional value of such positions, determined at the time the most recent position was established, does not exceed fifty percent of the liquidation value of the pool's portfolio, after taking into account unrealized profits and unrealized losses on any such positions it has entered into. For the purpose of this paragraph, the term “notional value” shall be calculated for each such futures position by multiplying the number of contracts by the size of the contract, in contract units (taking into account any multiplier specified in the contract), by the current market price per unit, and for each such option position by multiplying the number of contracts by the size of the contract, in contract units (taking into account any multiplier specified in the contract), by the strike price per unit;

(ii) It reasonably believes, at the time of investment (or, in the case of an existing pool, at the time of conversion to a pool meeting the criteria of paragraph (a)(3) of this section), that each person who participates in the pool is an “accredited investor,” as that term is defined in § 230.501 of this title; *Provided*, That nothing in paragraph (a)(3) of this section will prohibit the person from claiming an exemption under this section if it additionally operates one or more pools for which it meets the criteria of paragraph (a)(4) of this section; and

(iii) It does not market participations in the pool as or in a vehicle for trading in the commodity futures or commodity options markets; or

(4) For each pool for which the operator claims exemption from registration under this paragraph (a)(4):

(i) Interests in the pool are exempt from registration under the Securities Act of 1933, and such interests are offered and sold without marketing to the public in the United States;

(ii) It reasonably believes, at the time of investment (or, in the case of an existing pool, at the time of conversion to a pool meeting the criteria of paragraph (a)(4) of this section), that:

(A) Each natural person participant (including the person's self-directed employee benefit plan, if any), is a “qualified eligible person,” as that term is defined in § 4.7(a)(2); and