

appropriate principal inspector in the FAA Flight Standards Certificate Holding District Office.

(3) AMOCs approved previously in accordance with AD 2002-08-05, are approved as AMOCs for the corresponding provisions of this AD.

#### Related Information

(m) Canadian airworthiness directive CF-2002-13R2, dated May 19, 2005, also addresses the subject of this AD.

Issued in Renton, Washington, on October 3, 2006.

**Kalene C. Yanamura,**

*Acting Manager, Transport Airplane*

*Directorate, Aircraft Certification Service.*

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## COMMODITY FUTURES TRADING COMMISSION

### 17 CFR Part 4

RIN 3038-AC33

### Electronic Filing of Notices of Exemption and Exclusion Under Part 4 of the Commission's Regulations

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Proposed rule.

**SUMMARY:** The Commodity Futures Trading Commission ("Commission" or "CFTC") is proposing to amend Commission regulations to require that notices of exemption or exclusion under Part 4 of the Commission's regulations submitted to National Futures Association ("NFA") be filed electronically.

The Commission previously has authorized NFA to receive and to process notices of exemption or exclusion from certain of the Commission's Part 4 regulations. Currently, these notices are filed in paper form with NFA. The Commission is proposing to amend the regulations that require filing of a notice to require that such notice be filed electronically with NFA. The Commission is further proposing that the submission of a notice through NFA's electronic exemption filing system by a person duly authorized to bind the submitter be permitted in lieu of the manual signature currently required by each of these regulations.

In addition, the Commission also is proposing technical amendments that would remove the procedure for making filings with the Commission required by Part 4, and revise other sections of Part 4 to refer to filings made with NFA rather than the Commission. Amendments to Commission

regulations adopted in 2002 no longer require that any filings under Part 4 be submitted to the Commission; therefore, the regulation specifying the procedure for filing with the Commission is no longer necessary. Further, two sections of Part 4 that refer to filings made with the Commission inadvertently were not amended in 2002 to include corresponding changes indicating that such filings would henceforth be made with NFA.

**DATES:** Comments must be received on or before November 13, 2006.

**ADDRESSES:** You may submit comments, identified by RIN 3038-AC33, by any of the following methods:

- Federal eRulemaking Portal: <http://www.regulations.gov>. Follow the instructions for submitting comments.

- E-mail: [secretary@cftc.gov](mailto:secretary@cftc.gov). Include "Electronic Filing of Part 4 Exemptions" in the subject line of the message.

- Fax: (202) 418-5521.

- Mail: Send to Eileen Donovan, Acting Secretary of the Commission, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington DC 20581.

- Courier: Same as Mail above.

All comments received will be posted without change to <http://www.cftc.gov>, including any personal information provided.

#### FOR FURTHER INFORMATION CONTACT:

Eileen R. Chotiner, Futures Trading Specialist, at (202) 418-5467, or Kevin P. Walek, Assistant Director, at (202) 418-5463, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. Electronic mail: [echotiner@cftc.gov](mailto:echotiner@cftc.gov) or [kwalek@cftc.gov](mailto:kwalek@cftc.gov).

#### SUPPLEMENTARY INFORMATION:

##### I. Background

Part 4 of the Commission's regulations applies to the operation of commodity pool operators ("CPOs") and commodity trading advisors ("CTAs"). Generally, a person who operates a commodity pool must register as a CPO,<sup>1</sup> and a person who manages clients' trading must register as a CTA.<sup>2</sup> Under Commission Regulation 4.5, certain "otherwise regulated persons" are excluded from the CPO definition. These persons

<sup>1</sup> Regulation 4.10(d)(1) defines a pool as "any investment trust, syndicate or similar form of enterprise operated for the purpose of trading commodity interests." Commission regulations cited to herein are found at 17 CFR Ch. I (2006).

<sup>2</sup> The Commodity Exchange Act ("Act") defines a CTA as any person who "for compensation or profit, engages in the business of advising others \* \* \* as to the value of or the advisability of trading in" commodity interests. 7 U.S.C. 1a(6) (2000).

include registered investment companies, banks and trust companies, insurance companies, and fiduciaries of ERISA pension plans. A person who qualifies for the exclusion must file a notice of eligibility with NFA.<sup>3</sup>

Commission regulations also make certain exemptions from CPO and CTA registration available to persons who meet specified criteria. Regulation 4.13 permits exemption from registration for CPOs that limit their activities to small or family pools; or whose participants are highly sophisticated; or whose pools limit participants to SEC "accredited investors"<sup>4</sup> as that term is defined in the regulations promulgated by the Securities and Exchange Commission ("SEC") and limit trading of commodity interests to a minimum amount specified in the regulation. A notice claiming exemption from registration as a CPO must be filed with NFA.

A CTA is exempt from registration if it meets criteria specified in Regulation 4.14, including: it furnishes trading advice solely to commodity pools for which it is the registered CPO or for which it is exempt from CPO registration; it provides advice solely incidental to the conduct of one of certain businesses or professions listed in the Act or the Commission's regulations; it is registered with the Commission in another capacity and its advice is solely in connection with acting in that other capacity; it does not manage client accounts or provide commodity trading advice based on, or tailored to, the financial positions of particular clients; or it is an SEC-registered investment adviser whose futures advice is incidental to providing securities trading advice to the "otherwise regulated" trading vehicles specified in Regulation 4.5, or to CPOs of pools operated pursuant to the exemptions in Regulations 4.13(a)(3) and (4). A notice must be filed to claim the exemption available to registered investment advisers who meet the criteria set forth in Regulation 4.14(a)(8); the other exemptions from CTA registration are self-executing.<sup>5</sup>

Registered CPOs are required to provide a disclosure document to prospective participants that includes disclosure of risks and information such as the business backgrounds of persons

<sup>3</sup> NFA is a registered futures association under the Act. 7 U.S.C. 21 (2000).

<sup>4</sup> 17 CFR 230.501(a) (2006).

<sup>5</sup> A statutory exemption from CTA registration exists in Section 4m(1) of the Act for a person who has not had more than 15 clients during a 12-month period and is not otherwise holding itself out as a CTA. 7 U.S.C. 6m (2000). A person who qualifies for this exemption is not required to file a notice claiming the exemption.

involved with the pool, investment objectives, fees, conflicts, material litigation, and past performance. The CPO must provide unaudited periodic reports and certified annual reports on the pool's financial operations to the pool's participants. Disclosure documents and annual reports also must be filed with NFA. Further, the CPO is required to make and keep specified books and records for a period of five years, and make them available for inspection by the CFTC, NFA, and the United States Department of Justice. Registered CTAs must provide to prospective participants, and file with NFA, disclosure documents containing information about their trading programs, and must also comply with specified recordkeeping requirements.

The Commission has established a simplified regulatory framework for registered CPOs and CTAs who operate or advise pools and accounts whose participants meet the criteria specified in Regulation 4.7. Relief from full compliance with the disclosure, reporting, and recordkeeping requirements is available where, for example, pool participants are CFTC or SEC registrants, "inside employees" of the CPO or CTA, or persons who earn \$200,000 annually and who have assets worth at least \$2 million. A CPO offering a pool whose futures trading is incidental to its securities trading and is limited to 10 percent of the pool's net assets may claim exemption from some disclosure, reporting and recordkeeping requirements pursuant to Regulation 4.12(b). A person claiming exemption under Regulations 4.7 or 4.12(b) must file a notice with NFA.

In a Notice and Order issued in 1997<sup>6</sup> (the "1997 Order"), the Commission authorized NFA to process: (1) Notices of eligibility for exclusion from the definition of CPO for certain otherwise regulated persons, pursuant to Commission Regulation 4.5; (2) notices of claim for exemption from certain Part 4 requirements with respect to commodity pools and CTAs whose participants or clients are qualified eligible persons, pursuant to Commission Regulation 4.7; (3) claims of exemption from certain Part 4 requirements for CPOs with respect to pools that principally trade securities, pursuant to Commission Regulation 4.12(b); (4) statements of exemption from registration as a CPO, pursuant to Commission Regulation 4.13; and (5) notices of exemption from registration as a CTA for certain persons registered as an investment adviser, pursuant to Regulation 4.14(a)(8). The Commission

also made NFA the custodian of those records.<sup>7</sup>

Currently, these notices are filed with NFA in paper form. NFA's processing includes manual entry of data concerning the notice into NFA's database system, optical scanning of the hard copy filing, review of the notice to ensure that it contains all required information, and follow-up on any notices that are not prepared in accordance with the Part 4 requirements. Between November 1, 1997, when NFA was authorized to process these notices, and July 31, 2006, NFA has received approximately 30,000 notices:

Notice type	Number of filings <sup>8</sup>
4.5 .....	5,302
4.7 .....	7,494
4.12(b) .....	401
4.13 .....	15,629
4.14(a)(8) .....	952

## II. Proposed Amendments

By letter dated November 28, 2005, NFA has petitioned the Commission to amend its regulations to require that the notices required under Regulations 4.5, 4.7, 4.12(b), 4.13, and 4.14(a)(8) be filed electronically with NFA, and that submission of a notice by a representative duly authorized to bind the person be permitted in lieu of the manual signature currently specified under each regulation that requires a notice filing. NFA indicated in its petition that although the existing procedures have worked fairly well, mandatory electronic filing will result in a more efficient process for persons claiming an exemption and ensure that NFA's database of such exemption information, which is available to Commission staff, remains accurate and updated and requires less manual resources of NFA staff.

Firms that are registered with the Commission in any capacity and non-registrants will both access the electronic filing system through the use of a designated user ID and password. Registered firms will establish access for appropriate staff using the security

<sup>7</sup> At the time NFA was authorized to process these notices, Commission regulations required that copies of the notices also be filed with the Commission. In December 2002, the Commission revised its regulations to require that such notices be filed solely with NFA. 67 FR 77409 (December 18, 2002).

<sup>8</sup> These figures represent the number of notices filed with NFA and recorded in its database system. Some of these notices are duplicate filings or were made for entities that may be no longer operating; therefore, these totals are not representative of the number of entities actually operating according to the various exemptions.

manager process in place for their existing Online Registration System ("ORS") accounts, the process that is currently used for registration and other electronic filings with NFA. In order to enable non-registrants, who are not required to have ORS accounts, to file exemption notices, NFA has established a new process that contains similar safeguards regarding the identity of the filers and provides the non-registrant with the ability to establish one or more system users. For both registrants and non-registrants, the person who submits a notice must be a representative duly authorized to bind the submitter.

The electronic filing system will allow filers to select the applicable exemption type and complete a form that will provide the information required for the exemption filing. Each form contains a statement by the representative submitting the form that the information contained therein is accurate and complete, to the best of his or her knowledge, and that the submitter is duly authorized to bind the person making the claim. Submission of the electronic form will record the data regarding the filing in NFA's database system. The system also will allow the filer to create a printer-friendly version of exemption notices for the filer's records. Although internet access is necessary for using NFA's electronic filing system, the Commission anticipates that any exemption filer without private internet access could reasonably be expected to use a public internet site, such as those available in public libraries.<sup>9</sup>

The proposed amendments, if adopted, would no longer require persons filing the notices with NFA to do so in paper form. Therefore, the Commission also has considered the form in which persons claiming exclusion or exemption may satisfy various requirements in these regulations to notify participants "in writing" regarding the claim. The Commission has concluded that electronic transmission of a written notification to participants, such as by electronic mail or facsimile, is consistent with the requirement to provide the information in writing and is proposing to amend each of the regulations with a participant notification requirement, with the

<sup>9</sup> The Commission previously has adopted amendments to its regulations to enable NFA to utilize an online system for registration functions (67 FR 38,869 (June 6, 2002)), and to require electronic filing of financial statements of commodity pools (71 FR 8939 (February 22, 2006)). The Commission is also proposing amendments to its regulations to require electronic filing of financial statements of introducing brokers (71 FR \_\_\_\_).

<sup>6</sup> 62 FR 52088 (October 6, 1997).

exception of Regulation 4.5, to make explicit that notice may be delivered through electronic transmission. In proposing such amendment, the Commission has reasoned that the provision of written notice necessarily requires that the exemption filer establish with the participant a method to deliver the written communication. Should a participant have provided an e-mail address or facsimile number to the exemption filer for the purpose of receiving communications from that person, the participant can reasonably be expected to receive such written communications from the party, including the written notification required under Commission regulations, through such method of electronic transmission.

The Commission is not proposing to revise Regulation 4.5 with respect to disclosure to participants. Regulation 4.5 requires that the qualifying entity disclose in writing to participants that it is operating pursuant to the terms of Regulation 4.5. When it adopted Regulation 4.5, the Commission noted that the qualifying entity may satisfy this requirement by including the information in any document that its other federal or state regulator requires to be furnished routinely to participants. If no such document is furnished routinely, the information may be disclosed in any instrument establishing the entity's investment policies and objectives that the other regulator requires to be made available to the entity's participants.<sup>10</sup> The other regulators to which a 4.5-qualifying entity is subject may or may not permit electronic provision of the information; therefore, the Commission is not proposing to revise Regulation 4.5 in the same manner as the other Part 4 provisions with respect to electronic delivery of notice to participants. Rather, the Commission is proposing to amend Regulation 4.5 to contain the clarification regarding the provision of disclosure according to the requirements of other regulators.

In addition to the electronic filing of exemption notices, NFA also has petitioned the Commission to amend Advisory 18-96, which was issued by the Commission's former Division of Trading and Markets, now the Division of Clearing and Intermediary Oversight.<sup>11</sup> Advisory 18-96 makes available exemptions from disclosure and reporting requirements under

Regulations 4.21 and 4.22, and specified recordkeeping requirements under Regulation 4.23, to registered CPOs of commodity pools organized and operated outside the United States and offered solely to non-United States persons.<sup>12</sup> In considering NFA's petition, the Commission has reexamined Advisory 18-96 and concluded that additional exemptions from CPO registration adopted in 2003 have essentially superseded the provisions of Advisory 18-96.

Specifically, Regulation 4.13(a)(4) permits a CPO to claim exemption from CPO registration where the pool is offered pursuant to an exemption from registration under the Securities Act of 1933 and its participants are limited to natural persons who are qualified eligible persons ("QEPs") under Regulation 4.7(a)(2), and non-natural persons that are either QEPs under Regulation 4.7 or accredited investors under 17 CFR 230.501(a)(1)-(3), (a)(7) and (a)(8). Since non-United States persons are included in the definition of QEP in Regulation 4.7(a)(2), CPOs meeting the criteria of Advisory 18-96 may instead claim the exemption available under Regulation 4.13(a)(4), which offers more extensive relief than that available under Advisory 18-96. Therefore, the Commission is considering whether Advisory 18-96 should be superseded prospectively. The Commission is interested in obtaining comments on this approach, particularly whether there are any conflicts between the criteria and relief in Advisory 18-96 and Regulation 4.13(a)(4), and whether the unavailability of Advisory 18-96 on a prospective basis would result in any adverse consequences for CPOs. CPOs that have previously claimed relief under Advisory 18-96 would be permitted to continue to rely on the terms of Advisory 18-96, or could choose to claim exemption pursuant to Regulation 4.13(a)(4).

In addition, the Commission is proposing to remove and reserve Regulation 4.2, which specifies technical requirements, such as address, for material filed with the Commission under Part 4 of its regulations. Amendments to Commission regulations adopted in 2002<sup>13</sup> no longer require that any filings required under Part 4 be submitted to the Commission and thus the continued existence of Regulation 4.2 is no longer necessary. The sole remaining provision in Part 4 that could possibly result in a filing

with the Commission is Regulation 4.12(a), which permits the Commission to exempt any person or class of persons from any provision of Part 4 if the Commission finds that granting the exemption is not contrary to the public interest or to the purposes of the provisions from which exemption is sought. However, technical requirements as to the filing of such requests for exemption are contained in Regulation 140.99, not Regulation 4.2. Therefore, the Commission proposes that the removal of Regulation 4.2 is advisable.

The 2002 amendments to Part 4 specify that all filings be made with NFA. However, two provisions within Part 4 inadvertently were not amended at that time and continue to include references to filing with the Commission. Accordingly, the Commission is proposing technical amendments to Regulations 4.8 and 4.12(b) to conform these sections to the current filing requirements in the other regulations to which they refer.

### III. Related Matters

#### A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601 *et seq.*, requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The Commission previously 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.<sup>14</sup> 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); however, other registered and exempt CPOs are not small entities for the purpose of the RFA.<sup>15</sup> 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.<sup>16</sup> 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, as the proposed amendments simply alter the mechanism for filing notices of exemption and do not affect the substance of those filings or the nature of the qualifying criteria.

<sup>10</sup> 50 FR 15879 (April 23, 1985).

<sup>11</sup> In 1997, the Commission also authorized NFA to process notices of exemption pursuant to Advisory 18-96. See note 1. Since 1997, NFA has received approximately 500 notices of exemption pursuant to Advisory 18-96.

<sup>12</sup> "Non-United States person" is defined in Regulation 4.7(a)(1)(iv).

<sup>13</sup> See note 2.

<sup>14</sup> 47 FR 18618 (April 30, 1982).

<sup>15</sup> *Id.* at 18619.

<sup>16</sup> *Id.* at 18620.

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.

#### *B. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 ("PRA")<sup>17</sup> imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. The amendment being proposed would, if approved, alter the method of collection of information required under Commission regulations, but would not alter the substance of the filings. Pursuant to the PRA, the Commission has submitted a copy of this section to the Office of Management and Budget ("OMB") 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 proposed amendments to Commission regulations would change only the manner in which notices are filed with NFA, but would not affect the substance of the filings. Accordingly, for purposes of the PRA, the Commission certifies that the proposed rule amendments, if promulgated in final form, would not impact the total annual reporting or recordkeeping burden associated with the above-referenced collection of information, which has been approved previously by OMB. Pursuant to the PRA, the Commission has submitted a copy of this section to the Office of Management and Budget ("OMB") for its review.

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. 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 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 submission of responses.

Organizations and individuals desiring to submit comments on the information collection 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 of the Commodity Futures Commission. 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.

#### *C. Cost-Benefit Analysis*

Section 15(a) of the Act, as amended by Section 119 of the CFMA, requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, Section 15(a) as amended does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the regulation outweigh its costs. Rather, Section 15(a) simply requires the Commission to "consider the costs and benefits" of its action.

Section 15(a) of the Act further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could 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 was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to

accomplish any of the purposes of the Act.

The proposed amendments to Regulations 4.5, 4.7, 4.12, 4.13 and 4.14 would require CPOs to file electronically notices of exemption, which would no longer be required to include a manual signature.

The Commission is considering the costs and benefits of this proposed rule in light of the specific provisions of Section 15(a) of the Act, as follows:

1. *Protection of market participants and the public.* The proposed amendment should not affect the protection of market participants and the public as it provides an alternate method of filing notices of exemption or exclusion from Part 4 of the Commission's regulations, but does not substantively alter the character of such information or the requirement that such information be submitted by a person duly authorized to bind the submitter.

2. *Efficiency and competition.* The Commission anticipates that the proposed amendment will benefit efficiency by permitting NFA to streamline its process for receiving exemption filings. The proposed amendment is considered by the Commission as benefiting efficiency and not impacting competition.

3. *Financial integrity of futures markets and price discovery.* The proposed amendment should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity of futures markets or the price discovery function of such markets.

4. *Sound risk management practices.* The proposed amendment should have no effect, from the standpoint of imposing costs or creating benefits, on sound risk management practices.

5. *Other public interest considerations.* The Commission believes that the proposed rule requiring electronic filing for the submission of notices of exemption or exclusion from Part 4 of the Commission's regulations is beneficial in that it should streamline the timeliness of delivery and electronic accessibility of such notices, and permit NFA to retain such notices in a more streamlined and accessible manner.

After considering these factors, the Commission has determined to propose the amendments discussed above. The 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.

<sup>17</sup> 44 U.S.C. 3507(d).

List of Subjects in 17 CFR Part 4

Advertising, Brokers, Commodity futures, Commodity pool operators, Commodity trading advisors, Consumer Protection, Reporting and recordkeeping requirements.

Accordingly, 17 CFR Chapter I is proposed to be amended 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, 6(c), 6b, 6c, 6l, 6m, 6n, 6o, 12a, and 23.

2. Remove and reserve § 4.2.

3. Revise paragraphs (c) introductory text, (c)(2)(i), (d)(1) and (2), and (f) of § 4.5 to read as follows:

§ 4.5 Exclusion for certain otherwise regulated persons from the definition of the term "commodity pool operator."

\* \* \* \* \*

(c) Any person who desires to claim the exclusion provided by this section shall file electronically a notice of eligibility with the National Futures Association through its electronic exemption filing system; Provided, however, That a plan fiduciary who is not a named fiduciary as described in paragraph (a)(4) of this section may claim the exclusion through the notice filed by the named fiduciary.

\* \* \* \* \*

(2) \* \* \*

(i) Will disclose in writing to each participant, whether existing or prospective, that the qualifying entity is operated by a person who has claimed an exclusion from the definition of the term "commodity pool operator" under the Act and, therefore, who is not subject to registration or regulation as a pool operator under the Act; Provided, that such disclosure is made in accordance with the requirements of any other federal or state regulatory authority to which the qualifying entity is subject. The qualifying entity may make such disclosure by including the information in any document that its other federal or state regulator requires to be furnished routinely to participants or, if no such document is furnished routinely, the information may be disclosed in any instrument establishing the entity's investment policies and objectives that the other regulator requires to be made available to the entity's participants; and

\* \* \* \* \*

(d)(1) Each person who has claimed an exclusion hereunder must, in the event that any of the information

contained or representations made in the notice of eligibility becomes inaccurate or incomplete, amend the notice electronically through National Futures Association's electronic exemption filing system as may be necessary to render the notice of eligibility accurate and complete.

(2) This amendment required by paragraph (d)(1) of this section shall be filed within fifteen business days after the occurrence of such event.

\* \* \* \* \*

(f) Any notice required to be filed hereunder must be filed by a representative duly authorized to bind the person specified in paragraph (a) of this section.

\* \* \* \* \*

4. In § 4.7, revise paragraph (d)(1) 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 persons.

\* \* \* \* \*

(d) Notice of claim for exemption.

(1) A notice of a claim for exemption under this section must:

(i) Provide the name, main business address, main business telephone number and the National Futures Association commodity pool operator or commodity trading advisor identification number of the person claiming the exemption;

(ii)(A) Where the claimant is a commodity pool operator, provide the name(s) of the pool(s) for which the request is made; Provided, That a single notice representing that the pool operator anticipates operating single-investor pools may be filed to claim exemption for single-investor pools and such notice need not name each such pool;

(B) Where the claimant is a commodity trading advisor, contain a representation that the trading advisor anticipates providing commodity interest trading advice to qualified eligible persons;

(iii) Contain representations that:

(A) Neither the commodity pool operator or commodity trading advisor nor any of its principals is subject to any statutory disqualification under section 8a(2) or 8a(3) of the Act unless such disqualification arises from a matter which was previously disclosed in connection with a previous application for registration if such registration was granted or which was disclosed more than thirty days prior to the filing of the notice under this paragraph (d);

(B) The commodity pool operator or commodity trading advisor will comply with the applicable requirements of § 4.7; and

(C) Where the claimant is a commodity pool operator, that the exempt pool will be offered and operated in compliance with the applicable requirements of § 4.7;

(iv) Specify the relief claimed under § 4.7;

(v) Where the claimant is a commodity pool operator, state the closing date of the offering or that the offering will be continuous;

(vi) Be filed by a representative duly authorized to bind the commodity pool operator or commodity trading advisor;

(vii) Be filed electronically with the National Futures Association through its electronic exemption filing system; and

(viii)(A)(1) Where the claimant is a commodity pool operator, except as provided in paragraph (d)(1)(ii)(A) of this section with respect to single-investor pools and in paragraph (d)(1)(viii)(A)(2) of this section, be received by the National Futures Association:

(i) Before the date the pool first enters into a commodity interest transaction, if the relief claimed is limited to that provided under paragraphs (b)(2), (3) and (4) of this section; or

(ii) Prior to any offer or sale of any participation in the exempt pool if the claimed relief includes that provided under paragraph (b)(1) of this section.

(2) Where participations in a pool have been offered or sold in full compliance with Part 4, the notice of a claim for exemption may be filed with the National Futures Association at any time; Provided, That the claim for exemption is otherwise consistent with the duties of the commodity pool operator and the rights of pool participants and that the commodity pool operator notifies the pool participants of his intention, absent objection by the holders of a majority of the units of participation in the pool who are unaffiliated with the commodity pool operator within twenty-one days after the date of the notification, to file a notice of claim for exemption under § 4.7 and such holders have not objected within such period. A commodity pool operator filing a notice under this paragraph (d)(1)(viii)(A)(2) shall either provide disclosure and reporting in accordance with the requirements of Part 4 to those participants objecting to the filing of such notice or allow such participants to redeem their units of participation in the pool within three months of the filing of such notice.

(B) Where the claimant is a commodity trading advisor, be received by the Commission before the date the trading advisor first enters into an agreement to direct or guide the commodity interest account of a qualified eligible person pursuant to § 4.7.

5. In § 4.8, revise (a) and (b) to read as follows:

(a) Notwithstanding paragraph (d) of § 4.26 and subject to the conditions specified herein, the registered commodity pool operator of a pool offered or sold solely to "accredited investors" as defined in 17 CFR 230.501 in an offering exempt from the registration requirements of the Securities Act of 1933 pursuant to Rule 505 or 506 of Regulation D, 17 CFR 230.505 or 230.506, may solicit, accept and receive funds, securities and other property from prospective participants in that pool upon filing with the National Futures Association and providing to such participants the Disclosure Document for the pool.

(b) Notwithstanding paragraph (d) of § 4.26 and subject to the conditions specified herein, the registered commodity pool operator of a pool offered or sold in an offering exempt from the registration requirements of the Securities Act of 1933 pursuant to Rule 505 or 506 of Regulation D, 17 CFR 230.505 or 230.506, that is operated in compliance with, and has filed the notice required by, § 4.12(b) may solicit, accept and receive funds, securities and other property from prospective participants in that pool upon filing with the National Futures Association and providing to such participants the Disclosure Document for the pool.

6. In § 4.12, revise (b)(1)(ii) and (b)(3) and add (b)(5)(i) to read as follows:

**§ 4.12 Exemption from provisions of part 4.**

(b) \* \* \*  
(1) \* \* \*

(ii) Each existing participant and prospective participant in the pool for which it makes such request is informed in writing of the restrictions set forth in paragraph (b)(1)(i) (C) and (D) of this section prior to the date the pool commences trading commodity interests. The pool operator may furnish this information by way of the pool's Disclosure Document, Account Statement, a separate notice or other similar means, including written communication delivered through electronic transmission.

(3) Any registered commodity pool operator who desires to claim the relief available under this § 4.12(b) must file electronically a claim of exemption with National Futures Association through its electronic exemption filing system. Such claim must:

- (i) Provide the name, main business address and main business telephone number of the registered commodity pool operator, or applicant for such registration, making the request;
- (ii) Provide the name of the commodity pool for which the request is being made;
- (iii) Contain representations that the pool will be operated in compliance with § 4.12(b)(1)(i) and the pool operator will comply with the requirements of § 4.12(b)(1)(ii);
- (iv) Specify the relief sought under § 4.12(b)(2); and
- (v) Be filed by a representative duly authorized to bind the pool operator.

(5) \* \* \*  
(i) If a claim of exemption has been made under § 4.12(b)(2)(i), the commodity pool operator must make a statement to that effect on the cover page of each offering memorandum, or amendment thereto, that it is required to file with the National Futures Association pursuant to § 4.26.

7. In § 4.13, revise paragraphs (a)(5), (b)(1) introductory text, (b)(1)(iii), (b)(2) and (b)(4), and revise paragraph (e)(2), to read as follows:

**§ 4.13 Exemption from registration as a commodity pool operator.**

(a)(5)(i) Eligibility for exemption under this section is subject to the person furnishing in written communication physically delivered or delivered through electronic transmission to each prospective participant in the pool:

- (A) A statement that the person is exempt from registration with the Commission as a commodity pool operator and that therefore, unlike a registered commodity pool operator, it is not required to deliver a Disclosure Document and a certified annual report to participants in the pool; and
  - (B) A description of the criteria pursuant to which it qualifies for such exemption from registration.
- (ii) The person must make these disclosures by no later than the time it delivers a subscription agreement for the pool to a prospective participant in the pool.

(b)(1) Any person who desires to claim the relief from registration

provided by this section, must file electronically a notice of exemption from commodity pool operator registration with the National Futures Association through its electronic exemption filing system. The notice must:

- (iii) Be filed by a representative duly authorized to bind the person.
- (2) The person must file the notice by no later than the time it delivers a subscription agreement for the pool to a prospective participant in the pool; *Provided*, That where a person registered with the Commission as a commodity pool operator intends to withdraw from registration in order to claim exemption hereunder, the person must notify its pool's participants in written communication physically delivered or delivered through electronic transmission that it intends to withdraw from registration and claim the exemption, and it must provide each such participant with a right to redeem its interest in the pool prior to the person filing a notice of exemption from registration.

(4) Each person who has filed a notice of exemption from registration under this section must, in the event that any of the information contained or representations made in the notice becomes inaccurate or incomplete, amend the notice through National Futures Association's electronic exemption filing system as may be necessary to render the notice accurate and complete. This amendment must be filed electronically within 15 business days after the pool operator becomes aware of the occurrence of such event.

(e)(2) If a person operates one or more commodity pools described in paragraph (a)(3) or (a)(4) of this section, and one or more commodity pools for which it must be, and is, registered as a commodity pool operator, the person is exempt from the requirements applicable to a registered commodity pool operator with respect to the pool or pools described in paragraph (a)(3) or (a)(4) of this section;

*Provided*, That the person:  
(i) Furnishes in written communication physically delivered or delivered through electronic transmission to each prospective participant in a pool described in paragraph (a)(3) or (a)(4) of this section that it operates:

(A) A statement that it will operate the pool as if the person was exempt from registration as a commodity pool operator;

(B) A description of the criteria pursuant to which it will so operate the pool;

(ii) Complies with paragraph (c) of this section; and

(iii) Provides to each existing participant in a pool that the person elects to operate as described in paragraph (a)(3) or (a)(4) of this section a right to redeem the participant's interest in the pool, and informs each such participant of that right no later than the time the person commences to operate the pool as described in paragraph (a)(3) or (a)(4) of this section.

\* \* \* \* \*

8. In § 4.14, introductory text of paragraph (a) and introductory text of paragraph (a)(8) is republished and paragraph (a)(8)(iii)(A) introductory text and paragraphs (a)(8)(iii)(A)(3), (B) and (D) are revised to read as follows:

**§ 4.14 Exemption from registration as a commodity trading advisor.**

\* \* \* \* \*

(a) A person is not required to register under the Act as a commodity trading advisor if:

\* \* \* \* \*

(8) It is a registered as an investment adviser under the Investment Advisers Act of 1940 or with the applicable securities regulatory agency of any State, or it is exempt from such registration, or it is excluded from the definition of the term "investment adviser" pursuant to the provisions of section 202(a)(2) and 202(a)(11) of the Investment Advisers Act of 1940, *Provided*, That:

\* \* \* \* \*

(iii)(A) A person who desires to claim the relief from registration provided by this § 4.14(a)(8) must file electronically a notice of exemption from commodity trading advisor registration with the National Futures Association through its

electronic exemption filing system. The notice must:

\* \* \* \* \*

(3) Be filed by a representative duly authorized to bind the person.

(B) The person must file the notice by no later than the time it delivers an advisory agreement for the trading program pursuant to which it will offer commodity interest advice to a client; *Provided*, That where the advisor is registered with the Commission as a commodity trading advisor, it must notify its clients in written communication physically delivered or delivered through electronic transmission that it intends to withdraw from registration and claim the exemption and must provide each such client with a right to terminate its advisory agreement prior to the person filing a notice of exemption from registration.

\* \* \* \* \*

(D) Each person who has filed a notice of exemption from registration under this section must, in the event that any of the information contained or representations made in the notice becomes inaccurate or incomplete, amend the notice electronically through National Futures Association's electronic exemption filing system as may be necessary to render the notice accurate and complete. This amendment must be filed within 15 business days after the trading advisor becomes aware of the occurrence of such event.

\* \* \* \* \*

Issued in Washington, DC, on October 6, 2006 by the Commission.

**Eileen A. Donovan,**

*Acting Secretary of the Commission.*

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**DEPARTMENT OF TRANSPORTATION**

**Federal Transit Administration**

**49 CFR Part 604**

[Docket No. FTA-2005-22657]

**RIN 2132-AA85**

**Charter Service Negotiated Rulemaking Advisory Committee**

**AGENCY:** Federal Transit Administration (FTA), DOT.

**ACTION:** Notice of meeting location and time of the meeting.

**SUMMARY:** This notice lists the location and time of the next Charter Bus Negotiated Rulemaking Advisory Committee (CBNRAC) meeting.

**DATES:** *Effective Date:* October 13, 2006.

**FOR FURTHER INFORMATION CONTACT:** Elizabeth Martineau, Attorney-Advisor, Office of the Chief Counsel, Federal Transit Administration, 202-366-1936 (*elizabeth.martineau@dot.gov*). Her mailing address at the Federal Transit Administration is 400 Seventh Street, SW., Room 9316, Washington, DC 20590.

**SUPPLEMENTARY INFORMATION:**

**Meeting Location**

Department of Transportation, 400 Seventh Street, SW., Room 6244, Washington, DC 20590.

**Meeting Time**

October 25th, 9 a.m.-4:30 p.m.  
October 26th, 8:30 a.m.-4 p.m.

Issued this 6th day of October, 2006, in Washington, DC.

**James S. Simpson,**  
*Administrator.*

[FR Doc. E6-16939 Filed 10-12-06; 8:45 am]

**BILLING CODE 4910-13-P**