

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Part 71

[Docket No. FAA-2006-25905; Airspace Docket No. 06-AAL-30]

RIN 2120-AA66

Revocation of Low Altitude Reporting Point; AK

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final rule.

SUMMARY: This action revokes the HERRY as an Alaskan low altitude reporting point. The FAA has determined that this reporting point should be removed from the National Airspace System (NAS), since the HERRY is no longer used as a low altitude reporting point.

DATES: Effective Date: 0901 UTC, March 15, 2007. The Director of Federal Register approves this incorporation by reference action under 1 CFR part 51, subject to the annual revision of FAA Order 7400.9 and publication of conforming amendments.

FOR FURTHER INFORMATION CONTACT: Ken McElroy, Airspace and Rules, Office of System Operations Airspace and Aeronautical Information Management, Federal Aviation Administration, 800 Independence Avenue, SW., Washington, DC 20591; telephone: (202) 267-8783.

SUPPLEMENTARY INFORMATION:

Background

In October 2006, it was determined that the HERRY low altitude reporting point was no longer required to support the NAS and is no longer used by the FAA.

The Rule

This action amends Title 14 Code of Federal Regulations (14 CFR) part 71 by revoking the HERRY low altitude reporting point. Accordingly, since this action only involves a change in the legal description, notice and public procedure under 5 U.S.C. 533(b) are unnecessary.

Alaskan low altitude reporting points are published in paragraph 7004 of FAA Order 7400.9P dated September 1, 2006, and effective September 15, 2006, which is incorporated by reference in 14 CFR 71.1. The low altitude reporting points listed in this document will be removed subsequently in the Order.

The FAA has determined that this regulation only involves an established body of technical regulations for which

frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) Is not a "significant regulatory action" under Executive Order 12866; (2) is not a "significant rule" under Department of Transportation (DOT) Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

Environmental Review

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1E, paragraph 311(a), "Environmental Impacts: Policies and Procedures." This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

List of Subjects in 14 CFR Part 71

Airspace, Incorporation by reference, Navigation (air).

Adoption of the Amendment

In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 71 as follows:

PART 71—DESIGNATION OF CLASS A, B, C, D, AND E AIRSPACE AREAS; AIR TRAFFIC SERVICE ROUTES; AND REPORTING POINTS

1. The authority citation for part 71 continues to read as follows:

Authority: 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959-1963 Comp., p. 389.

§ 71.1 [Amended]

2. The incorporation by reference in 14 CFR 71.1 of FAA Order 7400.9P, Airspace Designations and Reporting Points, dated September 1, 2006, and effective September 15, 2006, is amended as follows:

Paragraph 7004 Alaskan Low Altitude Reporting Points.

* * * * *

Herry, AK [Revoked]

* * * * *

Issued in Washington, DC on January 4, 2007.

Edith V. Parish,

Manager, Airspace and Rules.

[FR Doc. E7-317 Filed 1-12-07; 8:45 am]

BILLING CODE 4910-13-P

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: Final rulemaking.

SUMMARY: The Commodity Futures Trading Commission ("Commission" or "CFTC") is amending 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. Under the regulations the Commission is amending, the submission of a notice through NFA's electronic exemption filing system by a person duly authorized to bind the submitter will be permitted in lieu of the manual signature currently required by each of these regulations.

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

DATES: Effective Date: February 15, 2007.

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 or kwalek@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. Exemptions and Exclusions Under Part 4 of the Commission's Regulations

On October 13, 2006, the Commission published for public comment proposed amendments to Part 4 of its regulations.¹

¹ Commission regulations cited to herein are found at 17 CFR Ch. I (2006).

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 with the Commission as a CPO,² and a person who manages clients' trading must register with the Commission as a CTA.³ Under Commission Regulation 4.5, certain "otherwise regulated persons" are excluded from the CPO definition. These persons 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.⁴

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"⁵ 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 SEC-registered investment advisers who meet the criteria set forth in Regulation 4.14(a)(8); the other exemptions from CTA registration do not require the filing of an exemption notice to be effective.⁶

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 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 also must 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 1997,⁷ 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 with the SEC as an investment adviser, pursuant to Regulation 4.14(a)(8). The Commission also made NFA the custodian of those records.⁸

B. *Electronic Filing of Part 4 Notices*

NFA 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. After considering the comments received, the Commission has determined to amend Regulations 4.5, 4.7, 4.12(b), 4.13, and 4.14(a)(8) as set forth herein to effectuate this purpose.

Firms that are registered with the Commission in any capacity and non-registrants will both access NFA's electronic filing system through the use of a designated user ID and password. Registered firms will establish access for appropriate staff using the security 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.⁹ In order to

⁷ 62 FR 52088 (October 6, 1997).

⁸ 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).

⁹ 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)). The Commission also

² 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."

³ 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).

⁴ NFA is a registered futures association under the Act. 7 U.S.C. 21 (2000). As discussed below, the Commission has delegated to NFA the responsibility for administering the Commission's registration program.

⁵ 17 CFR 230.501(a) (2006).

⁶ 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.

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 person or firm that is making the filing, or on whose behalf the filing is made, is responsible for ensuring that only persons who are duly authorized to bind the filer are granted the ability to submit notices.

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.

The amendments will no longer require persons filing the notices with NFA to do so in paper form. Therefore, 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 amending each of the regulations with a participant notification requirement, with the exception of Regulation 4.5, to make explicit that notice may be delivered through electronic transmission. In adopting 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 email 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

adopted amendments to its regulations to require electronic filing of financial statements of commodity pools (71 FR 8939 (February 22, 2006)) and introducing brokers (71 FR 67462 (November 22, 2006)).

required under Commission regulations, through such method of electronic transmission.

As discussed in the proposal, the Commission is not revising 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.¹⁰ Therefore, the Commission is amending Regulation 4.5 to contain clarification regarding the provision of disclosure according to the requirements of other regulators.

C. Technical Amendments

As proposed, the Commission is removing and reserving 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 2002¹¹ 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. Further, two provisions within Part 4 inadvertently were not amended in 2002 and continue to include references to filing with the Commission. Accordingly, the Commission is adopting 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.

II. Comments

The Commission received two comment letters on the proposed amendments, from NFA and the Committee on Futures Regulation of the New York City Bar Association ("Bar Association"). NFA supported the proposed amendments and stated that electronic filing of Part 4 notices would increase efficiency, reduce staff time currently devoted to processing notices, and eliminate data entry errors because the person claiming the notice will enter the information directly into the system.

¹⁰ 50 FR 15879 (April 23, 1985).

¹¹ See note 2.

Both NFA and the Bar Association commented regarding Advisory 18-96, which is discussed in detail in Section III, below.

III. Advisory 18-96

NFA also 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.¹² 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.¹³ In considering NFA's petition, the Commission 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.

Based on the overlap between the terms of Advisory 18-96 and Regulation 4.13(a)(4), the Commission suggested in the proposing release that it may be appropriate to supersede Advisory 18-96 prospectively, and requested comments on this approach. The Commission asked in particular for comment on 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. The

¹² 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.

¹³ "Non-United States person" is defined in Regulation 4.7(a)(1)(iv).

Commission proposed that 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).

The Bar Association's sole comment related to Advisory 18–96. The letter noted that, while most the provisions of Advisory 18–96 have been superseded, there is still a benefit to retaining Advisory 18–96. Specifically, unlike Regulation 4.13(a)(4), the Advisory does not contain a requirement that a CPO inform participants in writing regarding the CPO's unregistered status and exemption from certain requirements. The Bar Association asserted that practitioners who advise offshore hedge funds believe that it is unnecessary and potentially confusing to the non-U.S. domiciled investors to explain why the sponsor is not registered with a U.S. futures regulator, and recommended that Advisory 18–96 be retained as an option for CPOs.

NFA agreed in its comment letter that section (a) of Advisory 18–96 could be retired without consequence due to the existence of Regulation 4.13(a)(4), but suggested that the Commission consider the consequences of superseding section (b) of the Advisory. Section (b) of Advisory 18–96 provides relief from the requirement that a CPO maintain a pool's books and records at the CPO's main business office inside the U.S. where the main business office of the pool is located outside the U.S., as long as the CPO maintains the pool's original books and records at the pool's main office located outside the U.S., keeps duplicate books and records of the commodity pool at a designated office in the U.S., and makes the original records available within 72 hours upon the request of the Commission, the United States Department of Justice or NFA. NFA noted that pools that qualify for relief under Section (b) of Advisory 18–96 do not necessarily qualify for relief under Regulation 4.13(a)(4); therefore, superseding the Advisory would preclude new offshore pools from taking advantage of this relief.

Based on the comments received, the Commission has determined that it should retain provisions of Advisory 18–96 that continue to be applicable to the activities of U.S. CPOs operating offshore pools. Accordingly, Advisory 18–96 will remain in effect, and relief may continue to be claimed by CPOs by filing a paper notice with NFA. The Commission will further consider whether it would be appropriate to propose future amendments to Part 4 to

codify the relief provided by Advisory 18–96.

IV. Amendments

Regulations 4.5, 4.7, 4.12(b), 4.13, and 4.14(a)(8) require that the notice claiming the exclusion or exemption available pursuant to each such regulation must be filed in paper form. The Commission is amending Regulations 4.5, 4.7, 4.12(b), 4.13, and 4.14(a)(8) Regulation to provide that the notice claiming exclusion or exemption must be filed electronically with NFA through compliance with NFA's electronic filing procedures.

V. 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.¹⁴ The proposed rule amendments 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. The Commission's proposal solicited public comment on this analysis.¹⁵ No comments were received. Accordingly, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that the action it is taking herein will not have a significant economic impact on a substantial number of small entities.

B. Paperwork Reduction Act

This rulemaking alters the method of collection of information required under Commission regulations, but does not alter the substance of the filings. Therefore, the Commission certified in its proposal that the proposed rule amendments, if promulgated in final form, would not impact the total annual reporting or recordkeeping burden associated with the applicable collection of information. As required by the Paperwork Reduction Act of 1995 (44 U.S.C. 3507(d)), the Commission submitted a copy of this section to the Office of Management and Budget ("OMB") for its review. No comments were received in response to the

Commission's invitation in the notice of proposed rulemaking¹⁶ to comment on any change in the potential paperwork burden associated with these rule amendments.

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) 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 regulation 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 Commission's proposal contained an analysis of its consideration of these costs and benefits and solicited public comment thereon.¹⁷ No comments were received with respect to the analysis of the Commission's consideration. Therefore, pursuant to such consideration, the Commission has decided to adopt these amendments as discussed above.

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 amended as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

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

¹⁴ 47 FR 18618 (April 30, 1982).

¹⁵ 71 FR 60454 at 60456 (October 1, 2006).

¹⁶ Id.

¹⁷ 71 FR at 54791–2.

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 paragraphs (a) and (b) to read as follows:

§ 4.8 Exemption from certain requirements of rule 4.26 with respect to pools offered or sold in certain offerings exempt from registration under the Securities Act.

(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 paragraphs (b)(1)(ii), (b)(3) and (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), (a)(8)(iii)(B) and (a)(8)(iii)(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 January 5, 2007 by the Commission.

Eileen A. Donovan,

Acting Secretary of the Commission.

[FR Doc. E7-174 Filed 1-12-07; 8:45 am]

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DEPARTMENT OF COMMERCE

United States Patent and Trademark Office

37 CFR Part 1

[Docket No.: PTO-P-2005-0015]

RIN 0651-AB75

Changes to Implement Priority Document Exchange Between Intellectual Property Offices

AGENCY: United States Patent and Trademark Office, Commerce.

ACTION: Final rule.

SUMMARY: The United States Patent and Trademark Office (Office) has established a 21st Century Strategic Plan to transform the Office into a more quality-focused, highly productive, responsive organization supporting a market-driven intellectual property system. One goal of the 21st Century Strategic Plan is the electronic exchange of information and documents between intellectual property offices. Consistent with this goal, the Office is revising the rules of practice to provide for the electronic transfer of certified copies of applications for which priority is claimed under the Paris Convention (priority applications) from other intellectual property offices with which the Office has negotiated priority document exchange agreements. The Office is also revising the rules of practice to permit applicants to request that the Office permit other participating intellectual property offices to electronically retrieve certified copies of United States patent applications without payment of a fee.

This electronic exchange of copies of priority documents will benefit applicants by reducing the cost of ordering paper certified copies of priority applications for filing in other participating intellectual property offices, and will benefit participating intellectual property offices by reducing the administrative costs associated with handling paper copies of priority documents and scanning them into their electronic image record management systems.

DATES: Effective Date: January 16, 2007.

FOR FURTHER INFORMATION CONTACT: Diana Oleksa, ((571) 272-3291), Legal Advisor for IT Policy, Office of Patent Cooperation Treaty Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, or Robert A. Clarke ((571) 272-7735), Deputy Director, Office of Patent Legal Administration, Office of the Deputy Commissioner for Patent Examination Policy, at PatentEFW.comments@uspto.gov or directly by phone, or by facsimile to (571) 273-7735, marked to the attention of Ms. Oleksa, or by mail addressed to: Mail Stop Comments-Patents, Commissioner for Patents, P.O. Box 1450, Alexandria, VA 22313-1450.

SUPPLEMENTARY INFORMATION: The Office has established a 21st Century Strategic Plan to transform the Office into a more quality-focused, highly productive, responsive organization supporting a market-driven intellectual property system. One goal of the 21st Century Strategic Plan is the electronic exchange of information and documents between intellectual property offices. The Office plans to leverage its image file wrapper (IFW) technology by negotiating agreements with other patent offices to permit the Office to obtain and provide electronic copies of priority documents. See 35 U.S.C. 2(b)(6) (authorizes the Office, subject to certain conditions, to use the services, records, facilities, or personnel of any instrumentality or foreign patent and trademark office or international organization to perform functions on its behalf) and 11 (authorizes the Office to exchange copies of specifications and drawings of United States patents and published applications for patents for those of other NAFTA or WTO member countries). Agreements to obtain and provide such copies have been established with the European Patent Office (EPO) and its member states, and are being considered with the Japan Patent Office (JPO), both of which offices will have the technical ability to provide and retrieve certified electronic copies of priority documents via