

corresponding provisions of paragraph (g) of this AD.

Material Incorporated by Reference

(l) None.

Issued in Renton, Washington, on February 17, 2009.

Ali Bahrami,

Manager, Transport Airplane Directorate,
Aircraft Certification Service.

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COMMODITY FUTURES TRADING COMMISSION

17 CFR Part 4

RIN 3038-AC 67

Electronic Filing of Disclosure Documents

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission (Commission or CFTC) is amending its regulations applicable to the filing of Disclosure Documents by commodity pool operators (CPOs) and commodity trading advisors (CTAs) with the National Futures Association (NFA). In response to a petition from NFA, the CFTC is requiring that CPOs and CTAs be required to file their Disclosure Documents electronically with NFA (Amendments).

DATES: *Effective Date:* April 6, 2009.

FOR FURTHER INFORMATION CONTACT: Barbara S. Gold, Associate Director, Compliance and Registration Section, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581, telephone number: (202) 418-5450; facsimile number: (202) 418-5528; and electronic mail: bgold@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

A. CPO and CTA Disclosure Documents

Part 4 of the Commission's regulations¹ governs the operations and activities of CPOs and CTAs. Regulations 4.21 and 4.31 respectively require each CPO and CTA registered or required to be registered with the Commission to deliver a Disclosure Document to prospective pool participants and clients. Regulations

4.24 and 4.25 specify the informational content of the CPO Disclosure Document, and Regulations 4.34 and 4.35 specify the informational content for the CTA Disclosure Document. Regulations 4.26 and 4.36 respectively pertain to the use, amendment and filing of CPO and CTA Disclosure Documents. Specifically, under Regulations 4.26(d) and 4.36(d), the CPO or CTA must file one copy of the Disclosure Document, and any supplements and amendments thereto, with NFA.²

B. The Proposing Release

On November 26, 2008, the Commission proposed to amend Regulations 4.26 and 4.36 in order to require that CPOs and CTAs file Disclosure Documents electronically through NFA's electronic Disclosure Document filing system (Proposing Release).³ This action was in response to a petition filed by NFA with the Commission (Petition).⁴

In the Petition, under "Supporting Arguments," NFA explained that although it had developed a new Internet-based Disclosure Document electronic filing system "that will be significantly less resource intensive while also streamlining and enhancing the filing process for registrants,"⁵ absent an electronic filing requirement these proposed benefits would not be realized. In the Proposing Release, the Commission noted also NFA's representations that the system is designed to be easy and secure; it can be accessed through any public internet site; and CPOs and CTAs will access the system "using the same designated login and password that they currently use for NFA's Online Registration System."⁶ The Commission further explained that:

NFA's process for the electronic filing of Disclosure Documents will have two components. One of those components will require CPOs and CTAs to electronically

² NFA is a registered futures association pursuant to Section 17 of the Commodity Exchange Act (Act), 7 U.S.C. 21 (2000). The Act also may be accessed through the CFTC's Web site.

The Commission previously authorized NFA to conduct reviews of Disclosure Documents filed by CPOs and CTAs pursuant to Regulations 4.26(d) and 4.36(d). See 62 FR 52088 (Oct. 6, 1997).

³ 73 FR 71968. The Proposing Release may be accessed through the CFTC's Web site, at <http://www.cftc.gov/stellent/groups/public/@lrfederalregister/documents/file/e8-28177a.pdf>.

⁴ NFA filed the Petition with the Commission on July 21, 2008.

The Commission previously authorized NFA to accept notices of exemptions or exclusions claimed under Part 4 and required that these notices be filed electronically. See 62 FR 52088 and 72 FR 1658 (Jan. 16, 2007), respectively.

⁵ 73 FR at 71968.

⁶ *Id.*

submit their Disclosure Documents, as well as any amendments and supplements thereto. The other of these components will require CPOs and CTAs to enter from their Disclosure Documents certain key information on their operations and activities into a standardized form accessed through NFA's Web site.⁷

In light of the foregoing, the Commission proposed to amend Regulations 4.26(d) and 4.36(d) to require that any documents required to be filed thereunder be filed electronically with NFA, pursuant to NFA's electronic filing procedures. The Commission emphasized, however, that the proposed amendments, if adopted, would not impact the delivery of Disclosure Documents to prospective pool participants and clients, which CPOs and CTAs could continue to provide through hardcopy distribution via postal mail or electronically if the intended recipient consented thereto.⁸

II. Final Action

A. Responses to the Comments

The Commission received one comment letter, from a committee of a bar association whose members consist of attorneys who represent CPOs and CTAs (Committee). The Committee expressed concern that neither the Proposing Release nor the Petition contained detail on the information that would be required to be filed concurrent with the filing of the Disclosure Document or the uses to which that information would be put. In response, the Commission notes that the Petition states "the filing process includes a series of questions that will assist in identifying the type of filing as well as provide important background information to assist NFA staff with the analysis of the document itself"—which, the Commission believes, will be in furtherance of NFA's compliance and enforcement programs. Moreover, as the Commission previously stated in the Proposing Release, CPOs and CTAs will be entering information directly from their Disclosure Documents.⁹ Further,

⁷ The Commission noted that, among other things, this key information concerns identification of contact persons, relationships with futures commission merchants or introducing brokers, and the past performance history and related data for the offered pool or trading program. 73 FR at 71969 n. 6.

⁸ 73 FR at 71969. See Regulations 4.21(b) for CPOs and 4.31(b) for CTAs.

⁹ 73 FR 71969.

In anticipation of the Commission's action today, on January 22, 2009, NFA presented a web seminar on the electronic Disclosure Document filing system—which seminar is now available for "on demand" viewing on NFA's Web site, www.nfa.futures.org. Page 7 on the "on demand" document confirms the Commission's previous statement with the text that:

¹ 17 CFR Part 4 (2008). The Commission's regulations can be accessed through the CFTC's Web site, www.cftc.gov.

the Commission has been advised that NFA staff spoke with NFA's CPO/CTA Advisory Committee in advance of the filing of the Petition, and the Advisory Committee was supportive of the electronic filing system for CPO and CTA Disclosure Documents.

In light of the foregoing, the Commission has determined to adopt the amendments to Regulations 4.26(d) and 4.36(d) as proposed.

B. Other Action

Also in response to the Petition, and in the absence of any comments, the Commission has added the word "each" before the words "trading program" in paragraph (d)(1) of Regulation 4.36 to make that paragraph read parallel to the phrase "each trading program" in paragraph (d)(2) of Regulation 4.36.¹⁰

III. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act (RFA)¹¹ 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.¹² With respect to CPOs, the Commission previously has determined that a registered CPO is not a small entity for the purpose of the RFA.¹³ As for CTAs, the Commission previously has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs would be considered to be small entities and, if so, the economic impact on them of the particular rule.¹⁴ The Commission believes that the Amendments will not place any significant economic burdens, whether new or additional, on CPOs and CTAs who will be affected by them. This is because while the Amendments will require these CPOs and CTAs to have access to and a certain degree of technical knowledge to file Disclosure Documents electronically and to enter the required information, they will access the system using the same designated login and password that they currently use for registration purposes and they will be entering the

Before you start, you should have a copy of the disclosure document you plan to file available since the system will require you to enter certain information (e.g., performance data, business relationships) directly from the document you are filing.

¹⁰ See 73 FR 71968 n. 3.

¹¹ 5 U.S.C. 601 *et seq.*

¹² See 47 FR 18618 (Apr. 30, 1982).

¹³ *Id.* at 18619.

¹⁴ *Id.* at 18620.

information directly from their Disclosure Documents. The Commission did not receive any comments relative to its analysis of the RFA in the Proposing Release.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995 (PRA)¹⁵ imposes certain requirements on federal agencies (including the Commission) in conducting or sponsoring any collection of information as defined by the PRA. The Amendments change the manner in which CPOs and CTAs file Disclosure Documents with NFA; they do not affect the substance or frequency of those filings. The Amendments do, however, authorize the separate collection from CPOs and CTAs of certain information from the Disclosure Documents CPOs and CTAs must now file electronically. Accordingly, pursuant to the PRA, the Commission submitted a copy of the PRA section of the Proposing Release to the Office of Management and Budget (OMB) for its review.¹⁶

The Commission received one comment on its analysis of the PRA in the Proposing Release, from the Committee. For the reasons provided in the Proposing Release and above in this release, the Commission continues to believe that the Amendments change the manner, but not the substance or frequency, of the filing of Disclosure Documents by CPOs and CTAs.

C. Cost-Benefit Analysis

Section 15(a) of the Act¹⁷ 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) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern, enumerated below. 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

¹⁵ 44 U.S.C. 3501 *et seq.*

¹⁶ See 73 FR 71969 for the PRA section of the Proposing Release.

¹⁷ 5 U.S.C. 19(a).

accomplish any of the purposes of the Act.

The Commission did not receive any comments relative to its cost-benefit analysis in the Proposing Release.

List of Subjects in 17 CFR Part 4

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

■ For the reasons presented above, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

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

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

■ 2. Revise paragraphs (d)(1) and (2) of § 4.26 to read as follows:

§ 4.26 Use, amendment and filing of Disclosure Document.

* * * * *

(d) * * *

(1) The commodity pool operator must electronically file with the National Futures Association, pursuant to the electronic filing procedures of the National Futures Association, the Disclosure Document and, where used, profile document for each pool that it operates or that it intends to operate not less than 21 calendar days prior to the date the pool operator first intends to deliver such Document or documents to a prospective participant in the pool; and

(2) The commodity pool operator must electronically file with the National Futures Association, pursuant to the electronic filing procedures of the National Futures Association, the subsequent amendments to the Disclosure Document and, where used, profile document for each pool that it operates or that it intends to operate within 21 calendar days of the date upon which the pool operator first knows or has reason to know of the defect requiring the amendment.

■ 3. Revise paragraph (d) of § 4.36 to read as follows:

§ 4.36 Use, amendment and filing of Disclosure Document.

* * * * *

(d)(1) The commodity trading advisor must electronically file with the National Futures Association, pursuant to the electronic filing procedures of the

National Futures Association, the Disclosure Document for each trading program that it offers or that it intends to offer not less than 21 calendar days prior to the date the trading advisor first intends to deliver the Document to a prospective client in the trading program; and

(2) The commodity trading advisor must electronically file with the National Futures Association, pursuant to the electronic filing procedures of the National Futures Association, the subsequent amendments to the Disclosure Document for each trading program that it offers or that it intends to offer within 21 calendar days of the date upon which the trading advisor first knows or has reason to know of the defect requiring the amendment.

Issued in Washington, DC on February 27, 2009 by the Commission.

David A. Stawick,

Secretary of the Commission.

[FR Doc. E9-4740 Filed 3-4-09; 8:45 am]

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9441]

RIN 1545-BI46

Section 482: Methods To Determine Taxable Income in Connection With a Cost Sharing Arrangement; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correction to final and temporary regulations.

SUMMARY: This document contains corrections to final and temporary regulations (TD9441) that were published in the **Federal Register** on Monday, January 5, 2009 providing further guidance and clarification regarding methods under section 482 to determine taxable income in connection with a cost sharing arrangement in order to address issues that have arisen in administering the current regulations. The temporary regulations affect domestic and foreign entities that enter into cost sharing arrangements described in the temporary regulations.

DATES: This correction is effective March 5, 2009, and is applicable on January 5, 2009.

FOR FURTHER INFORMATION CONTACT: Kenneth P. Christman, (202) 435-5265 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of this document are under sections 367 and 482 of the Internal Revenue Code.

Need for Correction

As published, final and temporary regulations (TD 9441), published Monday, January 5, 2009 (74 FR 340), contains errors that may prove to be misleading and are in need of clarification.

Correction of Publication

PART 1—[CORRECTED]

Accordingly, the publication of the final and temporary regulations (TD 9441), which was the subject of FR Doc. E8-30715, is corrected as follows:

1. On page 346, column 2, in the preamble, under the paragraph heading “4. Acquisition Price and Market Capitalization Methods—Temp. Treas. Reg. § 1.482-7T(g)(5) and (6), third paragraph of the column, line 17, the language “PCT Payor’s, nonroutine contributions” is corrected to read “PCT Payee’s, nonroutine contributions”.

2. On page 347, column 1, in the preamble, the language of the paragraph heading “2. Contingent Payments—Temp. Treas. Reg. § 1.482-7T(h)(2)(iv) and (v)” is corrected to read “2. Contingent Payments—Temp. Treas. Reg. § 1.482-7T(h)(2)(iii) and (iv)”.

3. On page 348, column 2, in the preamble, under the paragraph heading “Special Analyses”, last paragraph of the column, line 13, the language “preamble to the cross-reference notice of” is corrected to read “preamble to the cross-referenced notice of”.

4. On page 348, column 3, in the preamble, under the paragraph heading “Drafting Information”, second paragraph of the column, line 2, the language “proposed regulations is Kenneth P.” is corrected to read “temporary regulations is Kenneth P.”.

LaNita Van Dyke,

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Legal Processing Division, Associate Chief
Counsel, (Procedure and Administration).*

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DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[TD 9441]

RIN 1545-BI46

Section 482: Methods To Determine Taxable Income in Connection With a Cost Sharing Arrangement; Correction

AGENCY: Internal Revenue Service (IRS), Treasury.

ACTION: Correcting amendment.

SUMMARY: This document contains corrections to final and temporary regulations (TD9441) that were published in the **Federal Register** on Monday, January 5, 2009 (74 FR 340) providing further guidance and clarification regarding methods under section 482 to determine taxable income in connection with a cost sharing arrangement in order to address issues that have arisen in administering the current regulations. The temporary regulations affect domestic and foreign entities that enter into cost sharing arrangements described in the temporary regulations.

DATES: This correction is effective March 5, 2009, and is applicable on January 5, 2009.

FOR FURTHER INFORMATION CONTACT: Kenneth P. Christman, (202) 435-5265 (not a toll-free number).

SUPPLEMENTARY INFORMATION:

Background

The final and temporary regulations that are the subject of this document are under sections 367 and 482 of the Internal Revenue Code.

Need for Correction

As published, final and temporary regulations (TD 9441) contains errors that may prove to be misleading and are in need of clarification.

List of Subjects in 26 CFR Part 1

Income taxes, Reporting and recordkeeping requirements.

Correction of Publication

■ Accordingly, 26 CFR part 1 is corrected by making the following correcting amendments:

PART 1—INCOME TAXES

■ **Paragraph 1.** The authority citation for part 1 continues to read in part as follows:

Authority: 26 U.S.C. 7805 * * *