

16 U.S.C 1801 *et seq.*) and its implementing regulations 50 CFR 600.920(a). The ACOE determined that the proposed action would adversely affect EFH for species managed under the Pacific Coast Salmon, Pacific Coast Groundfish, and Coastal Pelagics Fishery Management Plans. NMFS SWRO determined that the proposed action would adversely affect EFH for species managed under the Pacific Coast Salmon, Pacific Coast Groundfish, and Coastal Pelagics Fishery Management Plans. Habitat will be lost during removal of wooden pilings; however, NMFS expected recolonization of the new pilings within a year. NMFS believes the proposed action has been designed to minimize and reduce the magnitude of potential effects during implementation of the proposed action. Therefore, NMFS provides no additional conservation recommendations. In addition, NMFS expects EFH will improve in the vicinity of the pier due to the following:

(1) Removal and replacement of creosote-treated wooden piles with CISS concrete pilings;

(2) A stormwater collection and treatment system where all stormwater will be collected and routed by gravity feed to an upland treatment cell that will provide detention, settling, and active filtering prior to complete infiltration;

(3) Reduced artificial lighting effects; and

(4) The HSU marine lab water intake associated with the pier will be fitted with NMFS-approved screens, minimizing the risk of entrapment of small prey fish species.

#### Proposed Authorization

As a result of these preliminary determinations, NMFS proposes to issue an IHA to the Trinidad Rancheria for the harassment of small numbers (based on populations of the species and stock) of three species of marine mammals incidental to specified activities related to renovation of the Trinidad Pier, provided the previously mentioned mitigation, monitoring, and reporting requirements are incorporated.

#### Information Solicited

NMFS requests interested persons to submit comments and information concerning this proposed project and NMFS' preliminary determination of issuing an IHA (see **ADDRESSES**).

Concurrent with the publication of this notice in the **Federal Register**, NMFS is forwarding copies of this application to the Marine Mammal Commission and its Committee of Scientific Advisors.

Dated: May 11, 2011.

**James H. Lecky,**

*Director, Office of Protected Resources,  
National Marine Fisheries Service.*

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## COMMODITY FUTURES TRADING COMMISSION

### Agency Information Collection Activities: Notice of Intent To Renew Collection 3038-0026, Gross Collection of Exchange-Set Margins for Omnibus Accounts

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice.

**SUMMARY:** The Commodity Futures Trading Commission (CFTC) is announcing an opportunity for public comment on the proposed collection of certain information by the agency. Under the Paperwork Reduction Act of 1995 (PRA), 44 U.S.C. 3501 *et seq.*, Federal agencies are required to publish notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, and to allow 60 days for public comment in response to the notice. This notice solicits comments on requirements relating to gross collection of Exchange-Set margins for Omnibus Accounts.

**DATES:** Comments must be submitted on or before July 18, 2011.

**ADDRESSES:** You may submit comments, identified by OMB Control Number 3038-0026, by any of the following methods:

- *Agency Web site, via its Comments Online process:* <http://comments.cftc.gov>. Follow the instructions for submitting comments through the Web site.

- *Mail:* Mark Bretscher, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 525 W. Monroe, Suite 1100, Chicago, IL 60661.

*Federal eRulemaking Portal:* <http://www.regulations.gov/search/index.jsp>. Follow the instructions for submitting comments.

#### FOR FURTHER INFORMATION CONTACT:

Mark Bretscher, (312) 596-0529; FAX (312) 596-0711; e-mail: [mbretscher@cftc.gov](mailto:mbretscher@cftc.gov).

**SUPPLEMENTARY INFORMATION:** Under the PRA, Federal agencies must obtain approval from the Office of Management and Budget (OMB) for each collection of information they conduct or sponsor.

“Collection of information” is defined in 44 U.S.C. 3502(3) and 5 CFR 1320.3(c) and includes agency requests or requirements that members of the public submit reports, keep records, or provide information to a third party. Section 3506(c)(2)(A) of the PRA, 44 U.S.C. 3506(c)(2)(A), requires Federal agencies to provide a 60-day notice in the **Federal Register** concerning each proposed collection of information, including each proposed extension of an existing collection of information, before submitting the collection to OMB for approval. To comply with this requirement, the CFTC is publishing notice of the proposed collection of information listed below.

With respect to the following collection of information, the CFTC invites comments on:

- 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;
- 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;
- Ways to enhance the quality, usefulness, and clarity of the information to be collected; and
- Ways to minimize the burden of 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.

### Gross Collection of Exchange-Set Margins for Omnibus Accounts, OMB Control Number 3038-0026—Extension

Commission Regulation 1.58 requires that FCMs margin omnibus accounts on a gross, rather than a net, basis. The regulation provides that the carrying FCM need not collect margin for positions traded by a person through an omnibus account in excess of the amount that would be required if the same person, instead of trading through an omnibus account, maintained its own account with the carrying FCM.

The Commission estimates the burden of this collection of information as follows:

- *Estimated number of respondents:* 125.
- *Reports annually by each respondent:* 4.
- *Total annual responses:* 500.
- *Estimated average number of hours per response:* .08.
- *Annual reporting burden:* 40.

There are no capital costs or operating and maintenance costs associated with this collection.

This estimate is based on the number of written records maintained in the last three years. Although the burden varies, such records may involve analytical work and analysis, as well as multiple levels of review.

Dated: May 12, 2011.

**David A. Stawick,**

*Secretary of the Commission.*

[FR Doc. 2011-12185 Filed 5-17-11; 8:45 am]

**BILLING CODE 6351-01-P**

## COMMODITY FUTURES TRADING COMMISSION

### Performance of Certain Functions by National Futures Association With Respect to Commodity Pool Operators

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Notice and Order.

**SUMMARY:** The Commodity Futures Trading Commission (Commission) is authorizing the National Futures Association (NFA) to process: (1) Claims of exemption from certain Part 4 requirements for commodity pool operators (CPOs) with respect to pools whose units are listed and traded on a national securities exchange (Commodity ETFs); and (2) notices of exemption from registration as a CPO filed by independent directors or trustees of Commodity ETFs. Further, the Commission is authorizing NFA to maintain and serve as the official custodian of certain Commission records.

**DATES:** *Effective Date:* June 17, 2011.

**FOR FURTHER INFORMATION CONTACT:** Christopher W. Cummings, Special Counsel, Division of Clearing and Intermediary Oversight, or Barbara S. Gold, Associate Director, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, DC 20581, *telephone number:* (202) 418-5450; *facsimile number:* (202) 418-5528; and *electronic mail:* [ccummings@cftc.gov](mailto:ccummings@cftc.gov), or [bgold@cftc.gov](mailto:bgold@cftc.gov), respectively.

#### I. Authority and Background

In a separate document published elsewhere in today's **Federal Register**, the Commission is announcing adoption of new Regulation 4.12(c), which makes available to the CPOs of Commodity ETFs relief from certain disclosure, reporting and recordkeeping requirements, and new Regulation

4.13(a)(5), which makes available relief from the requirement to register as a CPO for certain independent directors and trustees of Commodity ETFs.<sup>1</sup> Relief under each of the new regulations must be claimed by the filing of specified notices and in the case of Regulation 4.13(a)(5), certain additional statements. These filings are similar to filings currently made with NFA by CPOs seeking to claim relief under other provisions of Regulation 4.13.<sup>2</sup>

Section 8a(10) of the Commodity Exchange Act<sup>3</sup> (Act) provides that the Commission may authorize any person to perform any portion of the registration functions under the Act, notwithstanding any other provision of law, in accordance with rules adopted by such person and submitted to the Commission for approval or, if applicable, for review pursuant to Section 17(j) of the Act<sup>4</sup> and subject to the provisions of the Act applicable to registrations granted by the Commission. Section 17(o)(1) of the Act<sup>5</sup> provides that the Commission may require NFA to perform Commission registration functions in accordance with the Act and NFA rules. In this regard, the Commission notes that NFA has confirmed its willingness to perform certain functions that would otherwise be performed by the Commission.<sup>6</sup>

Upon consideration, the Commission has determined to authorize NFA, 90 days following publication of this Notice and Order in the **Federal Register**, to perform the following functions: (1) To process<sup>7</sup> notices of claim under Regulation 4.12(c) for exemption from certain Part 4 requirements; (2) to process notices of exemption pursuant to Rule 4.13(a)(5) from registration as a CPO; and (3) to maintain and to serve as the official custodian of records for such notices of claim for exemption. As discussed below, these functions involve exemption from certain disclosure, reporting and recordkeeping

<sup>1</sup> In the **Federal Register** release proposing new Regulations 4.12(c) and 4.13(a)(5), the Commission explained the origins and use of the term "Commodity ETF". 75 FR 54794, at 54795 (Sep. 9, 2010).

<sup>2</sup> 17 CFR 4.13 (2010). Commission regulations referred to herein may be accessed through the Commission's Web site at <http://www.cftc.gov>.

<sup>3</sup> 7 U.S.C. 12a(10) (2006). The Act also may be accessed through the Commission's Web site.

<sup>4</sup> 7 U.S.C. 21(j) (2006).

<sup>5</sup> 7 U.S.C. 21(o)(1) (2006).

<sup>6</sup> Letter from Robert K. Wilmouth, President of NFA, to Brooksley Born, Chairperson of the Commission, dated June 20, 1997.

<sup>7</sup> As used in this Notice and Order, the term "process" generally refers to the review of a notice for compliance with applicable requirements and, where necessary, advising the CPO of any deficiency related thereto.

requirements for CPOs, and exemption from CPO registration for certain persons. This action is consistent with other action the Commission has taken with respect to delegating to NFA various responsibilities under Part 4 of the Commission's regulations.<sup>8</sup>

#### A. Exemption From Certain Part 4 Requirements for CPOs of Commodity ETFs

Regulation 4.12(c) makes available an exemption from certain disclosure, reporting and reporting requirements for registered CPOs of Commodity ETFs. To perfect the exemption, Regulation 4.12(d) requires eligible CPOs to file a notice of claim for exemption with NFA. By this Order, NFA is authorized to process claims for exemption filed by CPOs who meet the requirements set forth in Regulation 4.12(c).

#### B. Exemption From Registration as a CPO for Independent Directors or Trustees

Regulation 4.13(a)(5) makes available an exemption from CPO registration where a person is a director or trustee of a commodity pool solely to comply with the requirements under section 10A of the Securities Exchange Act of 1934, as amended, and any Securities and Exchange Commission rules and exchange listing requirements adopted pursuant thereto, that the pool have an audit committee comprised exclusively of independent directors or trustees. To perfect the exemption, Regulation 4.13(b) requires eligible persons to file a notice of exemption with NFA. By this Order, NFA is authorized to process claims for exemption filed by persons who meet the requirements set forth in Regulation 4.13(a)(5).

#### C. Recordkeeping Requirements

By prior orders, the Commission has authorized NFA to maintain various other Commission registration records and has certified NFA as the official custodian of such records for this agency.<sup>9</sup> The Commission has now determined, in accordance with its authority under Section 8a(10) of the Act, to authorize NFA to maintain and to serve as the official custodian of records for the claims required for the exemptions provided by Regulations 4.12(c) and 4.13(a)(5).

In maintaining the Commission's records pursuant to this Order, NFA shall be subject to all other requirements

<sup>8</sup> See, e.g., 62 FR 52088 (Oct. 6, 1997), whereby the Commission delegated to NFA the authority to process various filings made under Part 4.

<sup>9</sup> See, e.g., 75 FR 55310 (Sep. 10, 2010); 70 FR 2621 (Jan. 14, 2005); and 68 FR 12684 (Mar. 17, 2003).