

COMMODITY FUTURES TRADING COMMISSION**17 CFR Part 4****Electronic Filing of Disclosure Documents With the Commission**

AGENCY: Commodity Futures Trading Commission.

ACTION: Final rule.

SUMMARY: The Commodity Futures Trading Commission ("Commission") is announcing the adoption of an optional, permanent program for commodity pool operators ("CPOs") and commodity trading advisors ("CTAs") electronically to file Disclosure Documents with the Commission. This permanent filing program is the continuation of a substantially similar pilot program, which commenced on October 15, 1996. Additionally, the Commission has adopted a series of technical amendments to Part 4 of its rules to codify the permanent electronic filing program.

EFFECTIVE DATE: April 15, 1997.

FOR FURTHER INFORMATION CONTACT:

Susan C. Ervin, Deputy Director/Chief Counsel, or Gary L. Goldsholle, Attorney/Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, N.W., Washington, D.C. 20581. Telephone Number: (202) 418-5450. Facsimile Number: (202) 418-5536. Electronic Mail: tm@cftc.gov.

SUPPLEMENTARY INFORMATION:

I. Background

On August 8, 1996, the Commission announced an optional, six-month pilot program for electronic filing of CPO and CTA Disclosure Documents with the Commission ("Pilot Program") and invited public comment on issues relevant to the Program.¹ The Pilot Program commenced on October 15, 1996, and has been used by over 100 CPOs and CTAs. Under the Pilot Program, CPOs and CTAs have been permitted to file their Disclosure Documents by sending them to a designated Internet electronic mail address for the Commission. Additionally, any related correspondence between Commission staff and the CPOs and CTAs concerning the Disclosure Documents filed under the Pilot Program also has been conducted by means of electronic mail. Based upon its experience administering the Pilot Program and the comments received, the Commission has determined to adopt a permanent

filing program that is substantially similar to the Pilot Program.

The Commission announced the Pilot Program in its Interpretation Regarding Use of Electronic Media by Commodity Pool Operators and Commodity Trading Advisors ("Release").² In the Release, the Commission set forth the procedures for filing Disclosure Documents under the Pilot Program and invited interested parties to comment on a wide range of issues relevant to the Pilot Program. Specifically, the Commission requested comment concerning: (1) Whether it is preferable to require CPOs and CTAs to file Disclosure Documents electronically instead of in paper form; (2) whether special encryption procedures or other protections against unauthorized interception should be required; (3) whether special graphical capabilities are needed; (4) whether the Commission should establish uniform formatting requirements for electronically filed documents; and (5) whether word processing programs or versions in addition to those specified in the Release should be permitted. The Commission also noted in the Release that it had received an unsolicited proposal from a vendor who had developed a prototype electronic filing system. The Commission requested comment concerning the advisability of establishing a contractual relationship with an independent vendor to facilitate electronic filing and/or to serve as a repository or conduit for public access to documents, and the willingness of registrants to pay a filing fee to cover the potential cost of implementing a third-party filing system. The Commission also published a notice seeking information and indications of interest from other potential third-party vendors in *Commerce Business Daily*.³

II. Analysis of Comments Received and Use of the Pilot Program

Although the Commission received over eighty comments on the issues discussed in the Release, only two commenters addressed issues pertaining to the Pilot Program: the National Futures Association ("NFA") and a CTA.

NFA commended the Commission's decision to initiate the Pilot Program. Indeed, to facilitate the use of the Pilot Program, NFA adopted procedures essentially identical to those established for the Pilot Program, thus allowing CPOs and CTAs to file Disclosure Documents electronically with both the Commission and NFA under the same

basic procedures and protocols.⁴ NFA opposed the use of a private vendor to provide an electronic filing system for the Commission. In particular, NFA was concerned about the costs likely to be associated with the use or implementation of a third-party system, regardless of whether such costs are ultimately born by registrants or the Commission. NFA commented that it was "not aware of any potential regulatory benefits which would justify these additional costs." NFA also expressed concern that a private vendor might have possession of or access to confidential or sensitive information.

The CTA who submitted comments also strongly opposed the suggestion that the Commission might contract with a private vendor to provide an electronic filing service. Like the NFA, this commenter expressed concern regarding the costs of a privately operated system, stating that he was unwilling to bear any additional costs for an electronic filing system. With respect to issues of format, this commenter opposed the creation of uniform formatting requirements and suggested that the Commission expand the list of acceptable word processing programs. This commenter also expressed the view that an encryption requirement would represent "overkill" in the context of filing of Disclosure Documents. The commenter favored a universal requirement that CPOs and CTAs file Disclosure Documents electronically and urged the Commission to make such documents publicly available in a system analogous to the Securities and Exchange Commission's ("SEC's") EDGAR system.⁵

Based upon the comments received and its experience with the Pilot Program, the Commission has determined to make the pilot program for the electronic filing of CPO and CTA Disclosure Documents permanent. In

⁴NFA Rule 2-13 requires that CPOs and CTAs who file a Disclosure Document with the Commission also must file such Disclosure Document with the NFA at its Chicago office.

⁵EDGAR, which is an acronym for Electronic Data Gathering, Analysis and Retrieval, performs automated collection, validation, indexing, acceptance, and forwarding of submissions by companies and others who are required by law to file forms with the SEC. As of May 6, 1996, all public domestic companies were required to make their filings on EDGAR. Among the items filed on EDGAR are annual and quarterly reports, mutual fund prospectuses and proxy statements. Filings under EDGAR must be prepared in accordance with Regulation S-T (17 CFR Part 232 (1996)) and the SEC's EDGAR Filer Manual. EDGAR filings must be made in ASCII format. On October 19, 1996, the SEC released a Request for Proposals soliciting offers for the construction and operation of a new, modernized, privatized EDGAR electronic filing system.

²61 FR 42146.

³Commerce Business Daily, Issue No. PSA-1669, August 29, 1996, at 4.

¹61 FR 42146, 42163-65 (August 14, 1996).

general, the Commission's experience administering the Pilot Program has been favorable. The CPOs and CTAs who have used the program have expressed support for the additional flexibility and efficiency fostered by electronic filing. Since October 15, 1996, over 100 CPOs and CTAs have filed Disclosure Documents under the program.

The permanent electronic filing program will be nearly identical to the Pilot Program. The Commission encourages NFA to make permanent its procedures for electronic filing, incorporating the modifications announced in this release as well as any subsequent modifications, such as those concerning acceptable word processing programs. Given the relatively modest usage of the Pilot Program, the Commission is reluctant at this time to incur the costs necessary to expand the electronic filing system beyond its current structure or to develop a mechanism for passing such costs on to CPOs and CTAs. Although the Commission's notice in *Commerce Business Daily* generated proposals and expressions of interest from more than a dozen firms, in light of the commenters' views that the costs of using a third-party vendor's electronic filing system would likely outweigh the benefits, the Commission will continue to monitor usage of its and NFA's electronic filing program to determine whether development of a more elaborate filing system or solicitation of bids from third-party vendors becomes appropriate in the future.

While the Commission agrees with the CTA commenter that it may be advantageous for certain CPOs and CTAs to be able to file documents in additional word processing programs and operating systems, this benefit must be weighed against the effects on efficiency of access and review that would result if CPOs and CTAs filed Disclosure Documents in myriad formats. Currently, the relevant Commission staff have access only to the word processing formats identified in the Pilot Program, *i.e.*, WordPerfect for DOS and Microsoft Word for Windows. However, the Commission recognizes the rapid pace at which computer software evolves and thus that word processing standards common today may soon become obsolete. Accordingly, the Commission intends the electronic filing program to accommodate additional word processing or electronic formats as technologies evolve. The Commission will maintain a list of acceptable formats for filing Disclosure Documents and amendments on its Internet website

or other publicly accessible source. However, since most word processing programs in use today are able to convert documents into the formats identified in the Pilot Program, the Commission does not believe that it is necessary to expand the list of available formats at the present time. Persons who wish to use the electronic filing program but are unable to use the formats currently permitted may contact the Division of Trading and Markets, Managed Funds Review Branch for assistance.

The Commission also agrees with the CTA commenter that it is not necessary to mandate uniform electronic formatting requirements, other than the specification of acceptable word processing programs.⁶ In addition, based upon the comments received and the Commission's experience in operating the Pilot Program, the Commission does not believe that it is necessary to mandate encryption procedures or standards for use in the electronic filing program as currently designed. Since the use of electronic filing procedures remains entirely voluntary, CTAs or CPOs who are unwilling to assume the risk of having an electronic filing intercepted or altered may continue to rely on hardcopy filings. However, the Commission does not wish to preclude CPOs or CTAs from using encryption procedures they believe to be necessary, and registrants who desire to use their own encryption or other security measures may contact the Managed Funds Review Branch to discuss the feasibility of filing encrypted material. The Commission may revisit this issue as encryption technologies and systems develop.

Finally, the Commission does not believe that, at current usage levels, the electronic filing program would justify the expense of creating an "EDGAR-like" public access system. Currently, such a system would capture only about one percent of public pool documents and CTA Disclosure Documents. Based upon the SEC's experience with EDGAR, substantial costs are associated with operating a public electronic repository.⁷ Moreover, many CPOs and

CTAs may not wish to undertake the procedures necessary for electronic filing. The Commission will continue to monitor the progress of EDGAR and other electronic repositories to determine if implementing such a system for Disclosure Documents becomes feasible and appropriate.⁸

III. Procedures for Filing Disclosure Documents Electronically

In establishing a permanent electronic filing program for Disclosure Documents, the Commission encourages CPOs and CTAs to take advantage of the efficiencies this new medium offers. Because electronic mail transmissions are nearly instantaneous, in the limited context of the Pilot Program, the Commission found that the review process for electronically submitted Disclosure Documents was generally completed more quickly than would be the case for paper-based submissions. The Commission expects that, as increasing numbers of registrants connect to the Internet, use of electronic filing procedures will increase.

Upon the effective date of this release, CPOs and CTAs may file a Disclosure Document, or amendments thereto, with the Commission by taking the following steps.

1. Save the Disclosure Document or amendments as either a WordPerfect for DOS (version 5.1 or earlier) or Microsoft Word for Windows (version 6.0 or earlier) file, or another acceptable format as specified on the Commission's Internet website (www.cftc.gov/tm/efile) or publicly available source of guidance. As noted above, CPOs or CTAs who are unable to file Disclosure Documents using these formats may contact the Division of Trading and Markets.

2. Use the CTA's NFA identification number or CPO's pool identification number as the file name for the saved document, with a successively numbered file extension (DD1, DD2, DD3, * * * D10, D11, * * * D99, EE1, EE2, etc.) for each item of correspondence.⁹ Note that the

Website Overflows," *Financial Times* (USA Edition), February 26, 1997, at 8.

⁸ Of course, the Commission does not intend to preclude a third party from voluntarily compiling Disclosure Documents and making such facilities available to the public.

⁹ For example, XYZ, whose NFA identification number is 99999999, is a CTA with separate Disclosure Documents for two trading programs. XYZ names one Disclosure Document "99999999.DD1" and the other "99999999.DD2." The first amendment to either Disclosure Document would be named "99999999.DD3," and each subsequent submission for either Disclosure Document would follow sequentially, *e.g.*, 99999999.DD4, 99999999.DD5, etc. In the event that a registrant has more than one version of the Disclosure Document for a particular trading

⁶ In the future, the Commission may wish to give guidance concerning voluntary formatting measures that could be taken to facilitate the staff's review of Disclosure Documents.

⁷ The SEC began developing EDGAR in the early 1980s, and the cost of development has exceeded \$111 million, 85% higher than projected. "SEC System Shows Need For Upgrades," *USA Today*, March 6, 1996, at 2B. In addition, EDGAR has been receiving so many filings that the system recently overflowed and the SEC was forced temporarily to purge data from 1994 to accommodate new submissions. Lisa Bransten, "SEC Dumps Data as

requirement for CPOs to use the pool identification number represents a change from the Pilot Program and is necessary to assist Commission staff in distinguishing among multiple pools operated by a CPO. CTAs who file more than one Disclosure Document are requested to indicate in the text of the electronic mail message the name of each trading program for which it is filing a Disclosure Document as an attachment. Other than this minor change in nomenclature, registrants who have filed documents under the Pilot Program should continue numbering their submissions sequentially and should not revert back to DD1 for purposes of the permanent electronic filing program.

3. Add the file as an attachment to an electronic mail message addressed to ddoc-efile@cftc.gov.¹⁰ Persons who file Disclosure Documents electronically must agree to receive comments from Commission staff by electronic mail. Accordingly, the message text should include the electronic mail address to which comments, if any, may be sent. Confirmation of receipt of the filed Disclosure Document will be provided by Commission staff to the electronic mail address supplied by the registrant, and the Disclosure Document will proceed through the normal staff review process. Following review of the filed document, staff comments also will be transmitted to the registrant's electronic mail address.

4. The registrant's response to staff comments, if any, should be sent by electronic mail message directly to the Commission staff reviewer's Internet address provided in the staff comment letter. The message should indicate the date of the staff comment message, and any revised text or pages should be attached in the same manner as the original filing (using the registrant's NFA identification number and the appropriate sequential file extension as described in No. 2, above). For instance, if a Disclosure Document is submitted as 99999999.DD9, then the revised text or pages comprising the next document submitted to the Commission should be numbered 99999999.D10.

For purposes of the electronic filing program, a document of up to one megabyte (approximately 230 pages) can be received as an electronic mail attachment. Registrants who have a Disclosure Document in excess of one

megabyte should contact the Managed Funds Review Branch.

IV. Final Rules

On August 19, 1996, the Commission authorized publication of a series of proposed technical changes to Part 4 of its rules to reflect interpretations set forth in the Release and the proposed establishment of an electronic filing program.¹¹ In connection with the institution of the Pilot Program for electronic filing and the eventual creation of a permanent electronic filing system, the Commission proposed technical amendments to Rules 4.2(a), 4.26(d) and 4.36(d) to accommodate electronic filing with the Commission. The Commission also proposed amendments to Rules 4.1, 4.21 and 4.31, which pertain to the delivery of Disclosure Documents to prospective pool participants and managed account customers and the receipt of electronic acknowledgments of such delivery. Although the Commission requested public comment on the proposed amendments to Rules 4.2(a), 4.26(d) and 4.36(d), no comments were received. The Commission plans to address the proposed amendments to Rules 4.1, 4.21 and 4.31 in a subsequent release.

A. Rule 4.2(a)—Requirements as to Filing

Rule 4.2(a) currently provides a postal address for all material to be filed with the Commission under Part 4. Rule 4.2(a) was proposed to be amended to provide that Disclosure Documents and amendments to Disclosure Documents may be filed at an electronic mail address as specified by the Commission in addition to the designated postal address. In light of the Commission's decision to adopt the permanent electronic Disclosure Document filing program announced in this release, the Commission has determined to amend Rule 4.2(a) as set forth in the rule proposal, with minor modifications to the language more accurately to reflect the Commission's intent.

B. Rules 4.26(d) and 4.36(d)—Use, Amendment and Filing of Disclosure Document

The Commission also proposed several technical modifications of Rules 4.26(d) and 4.36(d), which relate to filing of Disclosure Documents. The proposed amendments would have clarified that persons filing Disclosure Documents electronically are required to file the document only once, rather than in duplicate as is required for paper-based filings. In light of the

Commission's decision to establish the permanent electronic Disclosure Document filing program announced in this release, the Commission has determined to amend Rules 4.26(d) and 4.36(d) as set forth in the rule proposal, with minor modifications to the language more accurately to reflect the Commission's intent.

V. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601–611 (1994), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments discussed herein would affect registered CPOs and CTAs. The Commission has previously 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 The Commission previously determined that registered CPOs are not small entities for the purpose of the RFA.¹³ With respect to CTAs, the Commission 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 any rule.¹⁴

The amendments adopted herein do not impose any new burdens upon CPOs or CTAs. The proposed amendments enable CPOs and CTAs electronically to file Disclosure Documents with the Commission. Consequently, the Commission believes that the adoption of these rule amendments will in many cases reduce the burden of compliance by CPOs and CTAs.

In certifying pursuant to section 3(a) of the RFA that the proposed revisions would not have a significant economic impact on a substantial number of small entities, the Commission invited comments from any CPOs and CTAs who believed that the proposed revisions, if adopted, would have a significant economic impact on their activities. No such comments were received on the revisions adopted herein.

Accordingly, pursuant to Rule 3(a) of the RFA (5 U.S.C. 605(b)), the Chairperson, on behalf of the Commission, certifies that the action taken herein will not have a significant impact on a substantial number of small entities.

program or pool offering, each version would similarly be given a separate file extension.

¹⁰ Persons participating in the pilot program are not required to make duplicate filings under Rules 4.26(d) or 4.36(d), as clarified in rule amendments discussed *infra*.

¹¹ 61 FR 44009 (August 27, 1996).

¹² 47 FR 18618–21 (April 30, 1982).

¹³ 47 FR at 18619–20.

¹⁴ 47 FR at 18620.

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1995, Pub. L. 104-13 (May 13, 1995), imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the Paperwork Reduction Act. While this rule has no burden, the group of rules (3038-0005) of which this is a part has the following burden:

Average Burden Hours per Response: 124.75.

Number of Respondents: 4,654.

Frequency of Response: On occasion.

Copies of the OMB approved information collection package associated with this rule may be obtained from: Desk Officer, CFTC, Office of Management and Budget, Room 10202, NEOB Washington DC 20503, (202) 395-7340.

C. List of Subjects in 17 CFR Part 4

Commodity futures, Reporting and recordkeeping requirements, Filings.

In consideration of the foregoing, and pursuant to the authority contained in the Commodity Exchange Act, and in particular sections 2(a)(1), 4b, 4c, 4l, 4m, 4n, 4o, and 8a, 7 U.S.C. 2, 6b, 6c, 6l, 6m, 6n, 6o, and 12a, 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

Subpart A—General Provisions, Definitions and Exemptions

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. Section 4.2 paragraph (a) is to be revised to read as follows:

§ 4.2 Requirements as to filing.

(a) All material filed with the Commission under this part 4 must be filed with the Commission at its Washington, DC office (Att: Special Counsel, Front Office Audit Unit, Division of Trading and Markets, C.F.T.C., Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581; Provided, however, that Disclosure Documents and amendments thereto may be filed at an electronic mail address for the Commission, as specified by the Commission.

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Subpart B—Commodity Pool Operators

3. Section 4.26 paragraph (d) is to be revised to read as follows:

§ 4.26 Use, amendment and filing of Disclosure Document.

* * * * *

(d) Except as provided by § 4.8:

(1) The commodity pool operator must file with the Commission two copies of the Disclosure 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 the Document to a prospective participant in the pool; Provided, however, that a pool operator electing to file electronically pursuant to § 4.2(a) may file a single copy of the Disclosure Document by that method; and

(2) The commodity pool operator must file with the Commission two copies of the subsequent amendments to the Disclosure 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; Provided, however, that a pool operator electing to file electronically pursuant to § 4.2(a) may file a single copy of each such amendment by that method.

Subpart C—Commodity Trading Advisors

4. Section 4.36 paragraph (d) is to be revised to read as follows:

§ 4.36 Use, amendment and filing of Disclosure Document.

* * * * *

(d) (1) The trading advisor must file with the Commission two copies of the Disclosure Documents 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; Provided, however, that a trading advisor electing to file electronically pursuant to § 4.2(a) may file a single copy of the Disclosure Document by that method.

(2) The commodity trading advisor must file with the Commission two copies of all 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; *Provided, however,* that a trading advisor electing to file

electronically pursuant to § 4.2(a) may file a single copy of each such amendment by that method.

Issued in Washington, DC on April 9, 1997, by the Commission.

Jean A. Webb,

Secretary of the Commission.

[FR Doc. 97-9655 Filed 4-14-97; 8:45 am]

BILLING CODE 6351-01-P

PENSION BENEFIT GUARANTY CORPORATION

29 CFR Part 4044

Allocation of Assets in Single-Employer Plans; Interest Assumptions for Valuing Benefits

AGENCY: Pension Benefit Guaranty Corporation.

ACTION: Final rule.

SUMMARY: The Pension Benefit Guaranty Corporation's regulation on Allocation of Assets in Single-Employer Plans prescribes interest assumptions for valuing benefits under terminating single-employer plans. This final rule amends the regulation to adopt interest assumptions for plans with valuation dates in May 1997.

EFFECTIVE DATE: May 1, 1997.

FOR FURTHER INFORMATION CONTACT: Harold J. Ashner, Assistant General Counsel, Office of the General Counsel, Pension Benefit Guaranty Corporation, 1200 K Street, NW., Washington, DC 20005, 202-326-4024 (202-326-4179 for TTY and TDD).

SUPPLEMENTARY INFORMATION: The PBGC's regulation on Allocation of Assets in Single-Employer Plans (29 CFR part 4044) prescribes actuarial assumptions for valuing plan benefits of terminating single-employer plans covered by title IV of the Employee Retirement Income Security Act of 1974.

Among the actuarial assumptions prescribed in part 4044 are interest assumptions. These interest assumptions are intended to reflect current conditions in the financial and annuity markets.

Two sets of interest assumptions are prescribed, one set for the valuation of benefits to be paid as annuities and one set for the valuation of benefits to be paid as lump sums. This amendment adds to appendix B to part 4044 the annuity and lump sum interest assumptions for valuing benefits in plans with valuation dates during May 1997.

For annuity benefits, the interest assumptions will be 6.30 percent for the first 25 years following the valuation