

³Category 359-C: only HTS numbers 6103.42.2025, 6103.49.8034, 6104.62.1020, 6104.69.8010, 6114.20.0048, 6114.20.0052, 6203.42.2010, 6203.42.2090, 6204.62.2010, 6211.32.0010, 6211.32.0025 and 6211.42.0010; Category 659-C: only HTS numbers 6103.23.0055, 6103.43.2020, 6103.43.2025, 6103.49.2000, 6103.49.8038, 6104.63.1020, 6104.63.1030, 6104.69.1000, 6104.69.8014, 6114.30.3044, 6114.30.3054, 6203.43.2010, 6203.43.2090, 6203.49.1010, 6203.49.1090, 6204.63.1510, 6204.69.1010, 6210.10.9010, 6211.33.0010, 6211.33.0017 and 6211.43.0010.

⁴Category 369-F: only HTS number 6302.91.0045; Category 369-P: only HTS numbers 6302.60.0010 and 6302.91.0005.

⁵Category 369-R: only HTS number 6307.10.2020.

⁶Category 369-S: only HTS number 6307.10.2005.

⁷Category 666-P: only HTS numbers 6302.22.1010, 6302.22.1020, 6302.22.2010, 6302.32.1010, 6302.32.1020, 6302.32.2010 and 6302.32.2020.

⁸Category 666-S: only HTS numbers 6302.22.1030, 6302.22.1040, 6302.22.2020, 6302.32.1030, 6302.32.1040, 6302.32.2030 and 6302.32.2040.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C.553(a)(1).

Sincerely,

Troy H. Cribb,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc.97-26387 Filed 10-3-97; 8:45 am]

BILLING CODE 3510-DR-F

COMMODITY FUTURES TRADING COMMISSION

Performance of Certain Functions by National Futures Association with Respect to Commodity Pool Operators and Commodity Trading Advisors

AGENCY: Commodity Futures Trading Commission.

ACTION: Notice and Order.

SUMMARY:The Commodity Futures Trading Commission (Commission) is authorizing the National Futures Association (NFA) to conduct reviews of disclosure documents required to be filed with the Commission by commodity pool operators (CPOs) and commodity trading advisors (CTAs) pursuant to Rules 4.26(d) and 4.36(d), respectively. In addition, the Commission is authorizing NFA to process the following: (1) Notices of eligibility for exclusion for certain otherwise regulated persons from the definition of CPO, pursuant to Rule 4.5; (2) notices of claim for exemption from certain Part 4 requirements with respect to commodity pools (pools) and CTAs whose participants or clients are qualified eligible participants (QEPs) or qualified eligible clients (QECs),

respectively, pursuant to Rule 4.7; (3) claims of exemption from certain Part 4 requirements for CPOs with respect to pools that principally trade securities, pursuant to Rule 4.12(b); (4) statements of exemption from registration as a CPO, pursuant to Rule 4.13; (5) notices of exemption from registration as a CTA for certain persons registered as an investment adviser, pursuant to Rule 4.14(a)(8); and (6) notices of claim for exemption from provisions of Part 4 for certain registered CPOs operating offshore pools, pursuant to Advisory 18-96. Further, the Commission is authorizing NFA to maintain and serve as the official custodian of certain Commission records.

EFFECTIVE DATE: November 1, 1997.

FOR FURTHER INFORMATION CONTACT:

Until the effective date of November 1, 1997, comments regarding this Notice and Order may be directed to Paul H. Bjarnason, Jr., Deputy Director, or Kevin P. Walek, Senior Special Counsel, Division of Trading and Markets, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, N.W., Washington, DC 20581. Telephone: (202) 418-5430.

United States of America

Before the Commodity Futures Trading Commission Order Authorizing the Performance of Certain Functions With Respect to Commodity Pool Operators and Commodity Trading Advisors

I. Authority and Background

Section 8a(10) of the Commodity Exchange Act¹ (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 Act² and subject to the provisions of the Act applicable to registrations granted by the Commission. Section 17(o)(1) of the Act³ provides that the Commission may require NFA to perform Commission registration functions in accordance with the Act and NFA rules. NFA has confirmed its willingness to perform certain functions now performed by the Commission and has provided the Commission with a detailed proposal setting forth standards and procedures to be followed and reports to be

generated in administering the functions discussed below.⁴

Upon consideration, the Commission has determined to authorize NFA, effective November 1, 1997, to perform the following functions: (1) to conduct reviews of disclosure documents required to be filed with the Commission by CPOs and CTAs pursuant to Rules 4.26(d)⁵ and 4.36(d), respectively; (2) to process⁶ notices of eligibility for exclusion for certain otherwise regulated persons from the definition of CPO, pursuant to Rule 4.5; (3) to process notices of claim for exemption from certain Part 4 requirements with respect to commodity pools and CTAs whose participants or clients are QEPs or QECs, respectively, pursuant to Rule 4.7; (4) to process claims of exemption from certain Part 4 requirements for CPOs with respect to pools that principally trade securities, pursuant to Rule 4.12(b); (5) to process statements of exemption from registration as a CPO, pursuant to Rule 4.13; (6) to process notices of exemption from registration as a CTA for certain persons registered as an investment adviser, pursuant to Rule 4.14(a)(8); (7) to process notices of claim for exemption from provisions of Part 4 for certain registered CPOs operating offshore pools, pursuant to Advisory 18-96;⁷ and (8) to maintain and to serve as the official custodian of records for the filings, notices and claims required by the rules listed above. As discussed below, each of these functions involves disclosure requirements or exemptions from disclosure, reporting, recordkeeping and registration requirements for CPOs and CTAs.

A. CPO and CTA Compliance with Rule 4.26(d) and 4.36(d)

Rule 4.26(d)(1) requires that a CPO file a disclosure document⁸ with the Commission for each pool that it operates or intends to operate not less

⁴ Letter from Robert K. Wilmouth, President of NFA, to Brooksley Born, Chairperson of the Commission, dated June 20, 1997.

⁵ Commission rules referred to herein can be found at 17 CFR Ch. I (1997).

⁶ As used in this Notice and Order, the term "process" generally refers to the review of the filing, notice or claim for compliance with applicable requirements and, as appropriate, provision of notice of any deficiency in the filing, notice or claim.

⁷ Advisory No. 18-96, (1994-1996 Transfer Binder) Comm. Fut. L. Rep. (CCH) ¶26,659 (April 11, 1996).

⁸ Pursuant to Rule 4.21(a), a CPO may not solicit, accept or receive funds, securities or other property from a prospective participant in a pool that it operates or intends to operate unless, on or before the date it engages in that activity, the CPO delivers or causes to be delivered to the prospective participant a Disclosure Document for the pool containing the information set forth in Rule 4.24.

¹ 17 U.S.C. 12a(10)(1994).

² 7 U.S.C. 21(j)(1994).

³ 7 U.S.C. 21(o)(1)(1994).

than 21 calendar days prior to the date the CPO first intends to deliver the document to a prospective participant in the pool.⁹ Similarly, Rule 4.36(d)(1) requires that a CTA file a disclosure document¹⁰ with the Commission for each trading program that it offers or intends to offer not less than 21 calendar days prior to the date the CTA first intends to deliver the document to a prospective client in the trading program. Further, pursuant to Rules 4.26(d)(2) and 4.36(d)(2), CPOs and CTAs, respectively, must file with the Commission all subsequent amendments to their disclosure documents within 21 calendar days of the date upon which the CPO or CTA first knows or has reason to know of the defect requiring the amendment. In addition, CPOs and CTAs may not use their disclosure documents for more than nine months from the effective dates of such documents, in accordance with Rules 4.26(a)(2) and 4.36(b), respectively. The Commission's Division of Trading and Markets reviews disclosure documents filed by CPOs and CTAs, issues comment letters noting any compliance issues, and works with registrants to resolve these issues.¹¹

NFA Compliance Rule 2-13 requires that NFA members file with NFA a copy of any document required to be filed with the Commission pursuant to Part 4 of the regulations. NFA staff review CPO and CTA disclosure documents during the course of on-site audits as well as through a desk review program, as part of its audit priority system. In light of NFA's experience in receiving and reviewing disclosure documents of CPOs and CTAs, the Commission believes that it is appropriate for NFA to undertake the performance of this function. Accordingly, by this Order, NFA is authorized to review all disclosure documents filed by CTAs and all disclosure documents filed by CPOs for privately offered commodity pools¹²

⁹ Rule 4.8 provides an exemption from the 21-day pre-filing requirement of Rule 4.26(d)(1) to CPOs with respect to pools offered or sold solely to "accredited investors" in an offering exempt from registration under the Securities Act of 1933, as well as to CPOs of 4.12(b) pools in an exempt offering under the Securities Act of 1933.

¹⁰ Pursuant to Rule 4.31(a), a CTA may not solicit or enter into an agreement with a prospective client to direct or to guide the client's commodity interest account or trading unless, at or before the time it engages in the solicitation or enters into the agreement (whichever is earlier), the CTA delivers or causes to be delivered to the prospective client a disclosure document for the trading program containing the information set forth in the Rule 4.34.

¹¹ 45 FR 51600, 51603 (August 4, 1980); 46 FR 26004, 26010 (May 8, 1981).

¹² Pursuant to Rule 4.24(d)(3)(i), privately offered commodity pools are those offered pursuant to

and to provide notice of deficiencies. Such review of CTA and CPO disclosure documents will include those documents filed pursuant to the instant filing procedure set forth in Commission Advisory 95-44.¹³

B. Notices of Eligibility for Exclusion From the Definition of CPO

Rule 4.5 provides an exclusion from the definition of commodity pool operator for certain persons who would otherwise be considered commodity pool operators. This exclusion is available for certain otherwise regulated persons, as set forth in Rule 4.5 (a)(1) through (a)(4) in connection with the operation of a qualified entity as described in Rule 4.5(b).¹⁴ Eligible persons claiming exclusion pursuant to Rule 4.5 must file with the Commission and NFA a notice of eligibility containing the information specified in Rule 4.5(c). By this Order, NFA is authorized to process notices of eligibility for exclusion from the definition of the term commodity pool operator pursuant to Rule 4.5.

C. Claims for Exemption From Certain Part 4 Requirements With Respect to Commodity Pools and CTAs Whose Participants or Clients Are QEPs or QECs

Rule 4.7 provides an exemption from certain Part 4 requirements with respect to the operators of commodity pools whose participants are limited to QEPs and with respect to commodity trading advisors whose clients are QECs, as those terms are defined by the Rule. Any registered commodity pool operator meeting the requirements of Rule 4.7(a)(2) may claim relief from certain disclosure, reporting, and recordkeeping requirements by filing with the Commission and NFA a notice of claim for exemption pursuant to Rule 4.7(a)(3). Any registered commodity trading advisor meeting the requirements of Rule 4.7(b)(2) may claim relief from disclosure and recordkeeping requirements with respect to the accounts or qualified eligible clients who have given due consent to their account being an exempt account under Rule 4.7 by filing with the Commission and NFA a notice of claim for exemption pursuant to

section 4(2) of the Securities Act of 1933, as amended (15 U.S.C. 77d(2)), or pursuant to Regulation D thereunder (17 CFR 230.501 *et seq.*).

¹³ CFTC Interpretative Letter No. 95-44, [1994-1996 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 26,385 (April 20, 1995).

¹⁴ Rule 4.5 also excludes certain trading vehicles from the commodity pool definition, and thus, their operators are not required to file any notice or make any specified representations to claim exclusion from the commodity pool operator definition.

paragraph 4.7(b)(3). By this Order, NFA is authorized to process notices of claim for exemption filed by qualifying CPOs and CTAs pursuant to Rule 4.7.

D. Exemption From Certain Part 4 Requirements for CPOs With Respect to Pools That Principally Trade Securities

Rule 4.12(b) provides an exemption from certain disclosure and reporting requirements for registered CPOs of pools which principally trade securities and meet the criteria set forth in Rule 4.12(b)(1). Eligible CPOs must file a claim of exemption with the Commission and NFA pursuant to Rule 4.12(b)(3). By this Order, NFA is authorized to process claims for exemption filed by qualifying CPOs pursuant to Rule 4.12(b).

E. Exemption From Registration as a CPO

Rule 4.13 provides for an exemption from registration as a CPO for persons operating pools which meet the criteria set forth in either Rule 4.13(a)(1) or Rule 4.13(a)(2). Eligible persons must file with the Commission and NFA copies of the statement provided to pool participants setting forth the information specified in Rule 4.13(b)(1). By this Order, NFA is authorized to process statements of exemption from CPO registration filed by qualifying persons pursuant to Rule 4.13.

F. Exemption From Registration as a CTA for Certain Persons Registered as Investment Advisers

Rule 4.14(a)(8) provides exemption from registration as a CTA for registered investment advisers whose commodity advice is directed to Rule 4.5 entities and who meet the other criteria set forth in Rule 4.14(a)(8) (i)-(ii). Persons claiming exemption from CTA registration pursuant to Rule 4.14(a)(8) must file with the Commission and NFA a notice of exemption in accordance with Rule 4.14(a)(8) (iii) and (v). By this Order, NFA is authorized to process notices of exemption from CTA registration filed by qualifying persons pursuant to Rule 4.14(a)(8).

G. Claims for Exemption From Provisions of Part 4 for Certain Registered CPOs Operating Offshore Pools

Commission Advisory 18-96 makes generally available to certain registered CPOs relief from disclosure, reporting and certain recordkeeping requirements in connection with the operation of offshore commodity pools. Registered CPOs who operate offshore commodity pools may claim such relief by filing a notice of a claim for exemption with the

Commission and NFA that sets forth the representations specified in the Advisory. By this Order, NFA is authorized to process notices of claims for exemption filed by qualifying CPOs pursuant to Advisory 18-96.

H. 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.¹⁵ 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 filings, notices and claims required by Rules 4.26(d), 4.36(d), 4.5, 4.7, 4.12(b), 4.13 and 4.14(a)(8) and Commission Advisory 18-96. This determination is based upon NFA's representations regarding the implementation of rules and procedures for maintaining and safeguarding all such records, in connection with NFA's assumption of responsibility for the above-mentioned activities.

In maintaining the Commission's records pursuant to this Order, NFA shall be subject to all other requirements and obligations imposed upon it by the Commission in existing or future orders or regulations. In this regard, NFA shall also implement such additional procedures (or modify existing procedures) as are acceptable to the Commission and as are necessary: to ensure the security and integrity of the records in NFA's custody; to facilitate prompt access to those records by the Commission and its staff, particularly as described in other Commission orders or rules; to facilitate disclosure of public or nonpublic information in those records when permitted by Commission orders or rules and to keep logs as required by the Commission concerning disclosure of nonpublic information; and otherwise to safeguard the confidentiality of the records.

II. Conclusion and Order

The Commission has determined, in accordance with the provisions of Sections 8a(10) and 17(o)(1) of the Act and NFA's letter dated August 27, 1997, to authorize NFA to perform the following functions:

(1) To conduct reviews of disclosure documents required to be filed with the Commission by CPOs and CTAs

pursuant to Rules 4.26(d) and 4.36(d), respectively;

(2) To process notices of eligibility for exclusion for certain otherwise regulated persons from the definition of CPO, pursuant to Rule 4.5;

(3) To process notices of claim for exemption from certain Part 4 requirements with respect to commodity pools and CTAs whose participants or clients are QEPs or QECs, respectively, pursuant to Rule 4.7;

(4) To process claims of exemption from certain Part 4 requirements for CPOs with respect to pools that principally trade securities, pursuant to Rule 4.12(b);

(5) To process statements of exemption from registration as a CPO, pursuant to Rule 4.13;

(6) To process notices of exemption from registration as a CTA for certain persons registered as an investment adviser, pursuant to Rule 4.14(a)(8);

(7) To process notices of claim for exemption from provisions of Part 4 for certain registered CPOs operating offshore pools, pursuant to Advisory 18-96; and

(8) To maintain and to serve as the official custodian of records for the filings, notices and claims required by the rules listed above.

NFA shall perform these functions in accordance with the standards established by the Act and the regulations and orders promulgated thereunder, particularly Part 4 of the regulations and Commission orders issued thereunder, and shall provide the Commission with such summaries and periodic reports as the Commission may determine are necessary for effective oversight of this program.

These determinations are based upon the Congressional intent expressed in Sections 8a(10) and 17(o) of the Act that the Commission have the authority to delegate to NFA any portion of the Commission's registration responsibilities under the Act for purposes of carrying out these responsibilities in the most efficient and cost-effective manner and upon NFA's representations concerning the standards and procedures to be followed and the reports to be generated in administering these functions.

This Order does not, however, authorize NFA to render "no-action" positions, exemptions or interpretations with respect to applicable disclosure, reporting, recordkeeping and registration requirements.

Nothing in this Order or in Sections 8a(10) or 17(o) of the Act shall affect the Commission's authority to review NFA's performance of the Commission

functions listed in paragraphs 1-8 above.

NFA is authorized to perform all functions specified herein until such time as the Commission orders otherwise. Nothing in this Order shall prevent the Commission from exercising the authority delegated herein. NFA may submit to the Commission for decision any specific matters that have been delegated to it, and Commission staff will be available to discuss with NFA staff issues relating to the implementation of this Order. Nothing in this Order affects the applicability of any previous orders issued by the Commission under Part 4.

Issued in Washington, D.C., on September 30, 1997 by the Commission.

Catherine D. Dixon,

Assistant Secretary of the Commission.

[FR Doc. 97-26389 Filed 10-3-97; 8:45 am]

BILLING CODE 6351-01-P

DEPARTMENT OF DEFENSE

Office of the Secretary

TRICARE Formerly Known as the Civilian Health and Medical Program of the Uniformed Services (CHAMPUS); Fiscal Year 1998 Mental Health Rate Updates

AGENCY: Office of the Secretary, DoD.

ACTION: Notice of updated mental health per diem rates.

SUMMARY: This notice provides for the updating of hospital-specific per diem rates for high volume providers and regional per diem rates for low volume providers; the updated cap per diem for high volume providers; the beneficiary per diem cost-share amount for low volume providers for FY 1998 under the TRICARE Mental Health Per Diem Payment System; and the updated per diem rates for both full-day and half-day TRICARE Partial Hospitalization Programs for fiscal year 1998.

EFFECTIVE DATE: The rates contained in this notice are effective for services occurring on or after October 1, 1997.

FOR FURTHER INFORMATION CONTACT: Stan Regensberg, Program Development Branch, TRICARE Support Office, telephone (303) 361-1342.

SUPPLEMENTARY INFORMATION: The final rule published in the **Federal Register** on September 6, 1988, (53 FR 34285) set forth reimbursement changes that were effective for all inpatient hospital admissions in psychiatric hospitals and exempt psychiatric units occurring on or after January 1, 1989. The final rule published in the **Federal Register** on

¹⁵ 49 FR 39593 (October 9, 1984); 50 FR 34885 (August 28, 1985); 51 FR 25929 (July 17, 1986); 54 FR 19594 (May 8, 1989); 54 FR 41133 (October 5, 1989); 58 FR 19657 (April 15, 1993).