

investors as defined in Rule 501 of Regulation D under the Securities Act¹⁹⁵ with a notice of intended offering and term sheet prior to delivery of the Disclosure Document, subject to rules promulgated by a registered futures association pursuant to Section 17(j) of the Act. This provision was intended to facilitate the offering of pools that qualify for relief from registration under the Securities Act as private offerings.

One commenter called the proposed change a worthwhile advance. Most commenters on the proposed provision urged that its coverage be expanded. Two commenters suggested that a CPO should be able to deliver a term sheet to a person who is not an accredited investor, so long as a Disclosure Document was delivered, ultimately or within a "reasonable time." Several commenters urged that CTAs be permitted to use term sheets and notices of intended offerings to solicit accredited investors. Another commenter stated that the proposed amendment to Rule 4.21 would provide no additional relief beyond that already provided by Rule 4.8 and sought both clarification whether a Disclosure Document must still be provided to the recipient of a term sheet and inclusion in the rule itself of the requirement (if any) that the term sheet be filed.

The Commission has determined to adopt Rule 4.21 as proposed. The Commission believes that extending the use of term sheets to non-accredited investors is not appropriate at this time and that such investors should receive the full protection of the disclosure rules to make an informed decision about participating in a pool. The Commission is also declining to permit CTAs to employ a procedure comparable to the use of a notice of intended offering and term sheet. The purpose of allowing the use of this type of short-form solicitation in the case of a pool offering is to permit a simple statement of basic terms to be provided in lieu of an often lengthy pool Disclosure Document. The relative brevity and simplicity of CTA Disclosure Documents do not at this time appear to warrant establishment of a comparable procedure. The Commission confirms that a Disclosure Document must be provided to the recipient of a term sheet and that the term sheet is not required to be filed.

2. Acknowledgment of Disclosure Document

The Commission also sought comment on whether the requirement

that CPOs and CTAs must receive from a prospective investor a signed and dated acknowledgment continues to be necessary. Three commenters proposed that, in the case of pools, the requirement be permitted to be satisfied if an acknowledgment is included in the subscription documents, with one such commenter suggesting that such an acknowledgment need not include the date of the Disclosure Document in order to permit use of the subscription documents throughout the offering, asserting that a blank left for the Disclosure Document date would likely be overlooked. The Commission confirms that an acknowledgment may be included in the subscription documents for a pool, provided that the text of the acknowledgment is prominently captioned and distinguished from the subscription agreement and that there is a separate line for the acknowledgment signature and date thereof. The Commission notes that the required provision of a date imposes a minimal burden, if any at all, protects the interests of both the CPO and the participant and is a critical component of the pool's audit trail.

D. Conforming Changes

The Proposing Release contained a number of changes to conform cross-references in the text of various Commission rules to the new section numbering within part 4, which changes are being adopted. The rules so affected are Rules 4.12, 4.21, 4.23, 4.32 (renumbered as 4.33), 30.6 and 150.3. One commenter pointed out that cross references in Rule 4.7 to former Rules 4.21 and 4.31 required amendment to conform with the reorganization and separate designation of certain provisions of former Rules 4.21 and 4.31. The Commission has revised Rule 4.7 accordingly, and has also revised Rule 4.8 to conform cross-references to the revised rule numbers.

VIII. Related Matters

A. Regulatory Flexibility Act

The Regulatory Flexibility Act ("RFA"), 5 U.S.C. 601-611 (1988), requires that agencies, in proposing rules, consider the impact of those rules on small businesses. The rule amendments discussed herein will 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.¹⁹⁶ The Commission previously has

determined that registered CPOs are not small entities for the purpose of the RFA.¹⁹⁷ 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.¹⁹⁸

The revised rules reduce rather than increase the requirements of former Rule 4.21 for CPOs and the requirements of former Rule 4.31 for CTAs. The revised rules significantly decrease the amount of past performance and other information required to be disclosed by CPOs and CTAs, and Disclosure Documents may be used for nine months rather than six months. The Commission has adopted in the final revised rules further reductions in disclosure requirements from the proposed revisions (e.g., permitting CTAs to use the new capsule format for presenting the past performance of the offered pool).

In certifying pursuant to section 3(a) of the RFA that the proposed revisions to the part 4 CPO and CTA disclosure rules would not have a significant economic impact on a substantial number of small entities, the Commission invited comments from any CPO or CTA who believed that the proposed revisions, if adopted, would have a significant economic impact on their activities. No such comments were received on the proposed revisions.

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

B. Paperwork Reduction Act

The Paperwork Reduction Act of 1980, ("PRA") 44 U.S.C. 3501 *et seq.*, imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. In compliance with the PRA, the Commission has submitted these proposed rule amendments and the associated information collection requirements to the Office of Management and Budget. The burden associated with this entire collection, including these rules, is as follows:

Average burden hours per response.	124.65
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¹⁹⁵ 17 CFR 230.501 (1994).

¹⁹⁶ 47 FR 18618-18621 (April 30, 1982).

¹⁹⁷ 47 FR 18619-18620.

¹⁹⁸ 47 FR 18618-18620.