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COMMENT

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April 15, 2003

Jean W. Webb
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street
Washington D. C. 20581

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Re: Performance Data and Disclosure for Commodity Trading Advisors

Dear Ms. Webb:

The Committee on Futures Regulation ("Committee") of the Association of the Bar of the City of New York ("Association") is pleased to submit the following comments on the Commodity Futures Trading Commission's (the "Commission") proposed rules, published in the Federal Register at 68 FR 12001 (March 13, 2003), regarding performance data and disclosure for commodity trading advisors.

The Association is an organization of over 22,000 lawyers. Although most of its members practice in the New York City area, the Association has members in 48 states and 51 countries. The Committee consists of attorneys knowledgeable concerning the regulation of futures contracts and other derivative instruments, and has a history of publishing reports analyzing regulatory issues critical to the futures industry and related activities. The Committee appreciates the opportunity to comment on the proposed rules and stands ready to assist the Commission and its staff if further clarification of any of the points raised in this letter would be helpful.

The Committee does not possess the expertise to comment on the technical merits of competing methods for presenting performance information in disclosure documents, but has reviewed the Commission's proposals to address issues that have arisen frequently over the past fifteen years in connection with the preparation of disclosure documents and other types of offering materials for commodity pools and managed account programs by Commission registrants and their counsel.

Proposed Rule 4.35(a) (1): The proposal would require additional disclosures concerning various aspects of the impact on performance of partially funding of accounts. These additional disclosure items are generally described as necessary to explain to

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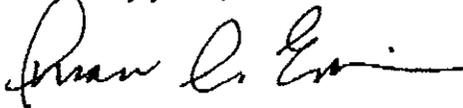
investors how their choices concerning account funding may impact performance, fees, commissions and related items. The Committee believes that such disclosures are appropriate for less sophisticated investors, but unnecessary for sophisticated and institutional investors, who often seek to establish partially funded accounts because they permit more efficient utilization of capital. To acknowledge the differences in investor understanding of the effects of partially funding an account, the Committee recommends that the proposal permit commodity trading advisors to omit such additional disclosures from disclosure documents and other offering materials to investors who qualify as Qualified Eligible Persons under Commission Rule 4.7. That approach is the same as that provided for in National Futures Association Compliance Rule 2.29(c)(6), regarding the use of hypothetical performance presentations; the more protective requirement would not apply to Qualified Eligible Persons, who can evaluate performance based on notional funding.

In the same proposed rule, the Committee notes that an attributed funding level would be required in the case where an advisor is not able to provide specific information about funding levels. The release does not state the source of the 20% level of funding. The Committee suggests that the Commission include in this portion of the proposed rule an explanation of the 20% level of funding that could be included in disclosure materials as an explanation for this level of funding in performance disclosures.

Core principles: The Commission specially requested comment on the possible application of core principles in the area of performance presentations, rather than retaining prescriptive performance presentation rules. The Committee believes that the area of performance presentation in managed futures is an area in which there remains some controversy over the best means of presenting that information to investors, especially to less sophisticated investors. The Committee believes, therefore, that the traditional regulatory approach to these disclosures, along the lines of the Commission's rules that are the subject of these proposals, is the most effective approach to performance presentation and provides the Commission a concrete basis for enforcement actions where registrants fail to make proper performance disclosures.

The Committee stands ready to assist the Commission and its staff with further information or other assistance concerning these issues.

Sincerely yours,



Susan C. Ervin

cc: Daniel Roth, President and Chief Executive Officer, National Futures Association
John G. Gaine, President, Managed Funds Association

Association of the Bar of the City of New York
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Mark Woodall
David Yeres
Edward Zabrocki

** Chair of Subcommittee that drafted this letter of comments.

* Member of Subcommittee that drafted this letter of comments.

Adjunct Member

Cindy Ma

Φ Ms. Steinhauser abstained from participating in the comment letter.