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Webb, Jean A.

From: SECRETARY@COM@WASH
Sent: Wednesday, April 29, 1998 4:33 PM
To: JEAN WEBB@COM@WASH; EDWARD COLBERT@COM@WASH; JOHN WHEELER@COM@WASH
Subject: FYI: Two-Part Documents for Commodity Pools



ADMINC-1.DOC

COMMENT

Comments :
Comment letter in MSWORD97 re two-part pool documents.
-----[Original Message]-----
To : <secretary@cftc.gov>
Cc :
From : ERIC NIELD <enield@kentlaw.edu>
Date : Wednesday, April 29, 1998 at 5:03:00 pm EDT

Attn: Jean A. Webb, Secretary of the CFTC

RE: Attached comments on the Two-part Documents for Commodity Pools.

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Two-Part Documents for Commodity Pools

In an attempt to convey my perspective on the issue, the following is a brief recap of my experiences with CFTC mandated disclosure documents:

For the past nine years I have worked in the futures industry in various capacities. Most relevant to the issue at hand was my experience as Compliance Manager at a large futures commission merchant ("FCM") in Chicago. At this former position I approved all new accounts and therefore I routinely reviewed the disclosure documents of Commodity Pool Operators ("CPO's") and Commodity Trading Advisors ("CTA's"). At a more recent position I was the Customer Service Manager of another FCM and I developed relationships with a number of CPOs and CTAs, often discussing the regulatory requirements they faced. Currently, I am also a third year evening student at the Chicago-Kent College of Law.

Proposed Rule Changes:

1) *Commission Rule 4.24(v) amended to provide that all supplemental information must be contained only in the second part of the two-part document.*

I have no issue with this proposal as it pertains to supplemental non-performance information. However, with regard to supplemental performance information, I feel the only appropriate place for this information is following the required performance information. Supplemental performance information is often closely related to the required performance disclosures and is often based required performance figures. The requirement that the supplemental performance information be placed in the second part of the two-part document will result in duplication of data in the first and second parts of the disclosure document. The CPO will be required to copy the required disclosed data from part one to part two in order for the supplemental performance data to make sense to the reader.

The actual effect of the proposed rule change might be the reduction of the usefulness of supplemental performance information. Depending on ones point of view this is either harmful or beneficial to the consumer. If every relevant piece of information concerning the performance of a CPO is contained in the mandatory performance information, then the placement of supplemental performance information is irrelevant. However, many CPOs believe the vital information concerning their particular trading performance is better summarized in a customized manner. The effect of banishing this

supplemental performance information to part-two of the disclosure document will be to minimize the impact this information will have on the consumer.

2) Commission Rule 4.25(a)(2) would be amended to provide that the monthly rate of return performance of the offered pool may be provided in the second part of the two-part document.

I do not like this proposed change. I feel that monthly performance data is too crucial to the evaluation of a CPO to place the information in the part two of the document, where it may be missed or overlooked. With the two-part proposal, the effect on the user of the document will be to look to part-one for all the material information, and part-two may only be looked at if the user desired additional information about the CPO. Therefore, all material information must be contained in part-one.

I believe that monthly rates of return is material information to the evaluation of a commodity pool and therefore belongs in part-one. The evaluation of a commodity pools performance based only on yearly rates of return is dangerous to the consumer. Reliance on a single yearly rate of

return will allow a CPO to better disguise wildly aberrant performance of the pool.

Admittedly I do not have all the background information concerning the reason why NFA Compliance Rule 2-35 desires to single out monthly rate of return data. I assume it may have to do with trying to "match" NFA Rule 2-35 with the securities registration requirements.

3) *General Comments:*

From the general language of the proposed rule changes I assume that the use of a two-part disclosure document is voluntary with the exception of CPO's who are required to register its securities under the Securities Act of 1933. I support the voluntary nature of the proposed changes.

However, the two specific rule change proposals stated above, use the language "all supplemental information **must** be contained only in the second part of a two-part document." It seems that this language requires placement of supplemental information in part-two only for those CPO's who **choose** to use a two part document. And I support this reading of the proposal. However, if the proposals are intended to impact every CPO, which would have the effect of making the optional two part document mandatory, as most CPO will include supplemental information, I would be

unable to support the proposals. This scenario would require every CPO to re-write their disclosure documents which would impose a substantial burden on the CPOs. As you know most CPO's will expend significant effort in the initial draft of their disclosure document and simply update the document for future required filings. I feel the proposed rule changes are not significant enough to warrant such a large expenditure of time and money to re-write all existing disclosure documents.