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To: Jean A. Webb, Secretary of the ~~Commission~~ Commission
From: George H. Painter, ALJ
Date: September 11, 1998
Re: Comment on Concept Release: Performance Data and Disclosure for Commodity Trading Advisors and Commodity Pools

This comment refers solely to the use of nominal account size in determining rate of return. I am in complete agreement with the Commission's belief that providing more data to clients does not equate to better information. This is particularly so for investors who do not have a cadre of professional money managers at their disposal to process the information. As the claims brought through our Reparations program consistently demonstrate, despite mandated risk disclosure documentation investors often are truly unaware of the real risks inherent in futures trading. That being said, the information that is provided must always aim to be an accurate, and reality-based, reflection of the particular investment.

During the tenure of Chairman Jim Stone, the Commission promulgated rules that required trading advisors and pool operators to disclose their past trading performance, based on actual funds. Registered entities were, and remain, opposed to this disclosure requirement. In 1993 the disclosure rule was modified to provide disclosure of the "fully funded subset" -- accounts which represent, in the aggregate, at least 10% of the nominal account of funds traded. Although this method may be less ideal than its predecessor, the real problem arises for those investors who do not fund their accounts at this level <u>and</u> do not have profession money managers on hand to properly, and easily, interpret the rate of return in light of the client's financial situation.

The present proposal, ostensibly aimed at dealing with the fact that partially funded participation is on the rise, puts forth an even less desirable alternative. The proposal that registered CTAs and CPOs be permitted to use "nominal account size" and "notional value" in deriving a track record substitutes fiction for fact. To be useful, rates of return must be directly representative of actual funding levels -- the nominal account size bears no relation to actual funds.

The NFA argues that the present fully funded method is flawed because a CTA's performance history should reflect the results of the CTA's trading decisions and should not be affected by the client's cash management strategies -- arguing that to use actual funds on deposit overstates both positive and negative returns in accounts. In essence, NFA's "problem" that using actual funds to determine rates of return overstates volatility is not a problem at all -- the actual funds-based percentages, in fact, represent reality. Futures investments, in reality, are extraordinarily volatile -- a fact which remarkably too often escapes investors. Investing in the futures market should not appear to be an "alternative" to investing in securities.

In all honesty, I firmly believe that the NFA proposal would only serve to enable the fraud that is so often perpetrated on investors who do not have access to independent professional money managers. These investors, the investors who truly need protection from "misleading" statements of profit returns with low risk, will be left even more susceptible to unrealistic expectations of futures investing. We cannot lose sight of the fact that a vast majority of non-professional commodity speculators lose money -- often their entire life savings in a matter of minutes. Therefore, I strongly recommend the Commission stay with the actual funds method.

cc: Chairperson Born
Commissioner Holum
Commissioner Tull
Commissioner Spears
Commissioner Newsome