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OFFICE OF THE SECRETARIAT

September 14, 1998

**COMMENT**

Ms. Jean A. Webb  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street N.W.  
Washington, DC 20581

SEP 16 2 01 PM '98  
COMMODITY FUTURES  
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Re: Performance Data and Disclosure for Commodity  
Trading Advisors and Commodity Pools

Dear Ms. Webb:

The Committee on Futures Regulation of this Association (the "Committee") respectfully submits this comment letter to the Commodity Futures Trading Commission (the "Commission") in response to a request for comments concerning its Concept Release on Performance Data and Disclosure for Commodity Trading Advisors and Commodity Pools, which was published in the Federal Register on June 18, 1998 (63 F.R. 33297). The Association is an organization of approximately 21,000 lawyers. Most of its members practice in the New York City area. However, the Association also has members in 48 states and 51 countries. The Committee consists of attorneys knowledgeable in the field of futures regulation and has a history of publishing reports analyzing critical regulatory issues which affect the futures industry and related activities.

The Concept Release combines a discussion of the appropriate way to address the issue of notional funding and its impact on performance rates of return with a number of other issues that

go beyond notional funding. While notional funding has been the subject of discussion and regulatory development over the past 11 years, the other issues raised by the Concept Release have not been examined or discussed by the industry internally or yet with its primary regulator. Consequently, the Committee urges that the notional funding issues, which are the subject of proposed National Futures Association Compliance Rule 2-34 and the related Interpretative Notice, be acted upon independently of the other issues raised by the Concept Release.

With respect to the remainder of the Concept Release, the Committee makes the following observation. The Committee appreciates the importance of performance disclosure by commodity trading advisors ("CTAs") and commodity pool operators ("CPOs") particularly for the purpose of enabling potential investors to evaluate and compare alternative sources of investment advice in the managed futures area, but also to compare a managed futures investment with other available investments. Performance information is also essential in evaluating existing investments. Two concerns arise from this observation.

First, the presentation of performance information by CTAs and CPOs should be assessed in comparison to performance reporting standards for other types of investment managers. This is particularly true when revisions to current performance presentation methods are being considered. As distinctions between instruments and managers' trading strategies become increasingly blurred, it is important that investors have the opportunity to assess performance not only within the managed futures area, but also with other investment managers. The Committee believes that any modifications to existing performance disclosure requirements should be adopted only to the extent that they further this objective. Developing more detailed performance

reporting requirements for managed futures could have the effect of making inter-industry comparisons more difficult. The Committee believes that the portion of the Concept Release dealing with new proposals for performance reporting should be carefully assessed for correspondence with reporting requirements for other industries. Significant differences should generally be avoided; they should be implemented only when there are compelling grounds for adoption.

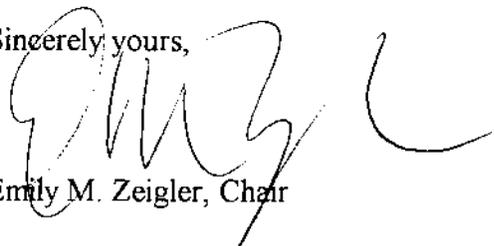
The second concern involves the frequency of modifications of performance reporting. Extensive modifications in presenting performance information became effective three years ago (July 25, 1995, 60 F.R. 38145; effective August 24, 1995) after a lengthy rule-making process that involved extensive discussions about the most appropriate ways for presenting performance information. These discussions resulted in significant modifications of the ways in which performance information is disclosed to investors, including the adoption of a capsule format and presentation of drawdown data. The Committee does not know of any negative experiences with this new disclosure regime and believes that it may be too soon to assess the adequacy of this regime. Consequently, the Committee does not believe that there is a need at this time to introduce possible discontinuities in performance presentation. In any event, if changes are deemed necessary, they should be introduced only on a prospective basis.

Thus, the Committee believes that further discussions within the industry and with staff at the Commission would be useful and should be undertaken before implementation of any broader revisions of performance disclosure requirements.

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The Association appreciates this opportunity to comment on the Concept Release and stands ready to assist the Commission and its staff if further clarification is required on any of the points raised by this letter.

Sincerely yours,

A handwritten signature in black ink, appearing to read 'EMZ', with a large, sweeping flourish extending to the right.

Emily M. Zeigler, Chair

**Association of the Bar the City of New York  
Committee on Futures Regulations  
1997-1998**

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- \*\* Chair of the Subcommittee on CPO/CTA Issues  
\* Member of the Subcommittee on CPO/CTA Issues  
# Mr. Hickson did not participate in this letter.