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COMMENT

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

Re: **Comment on CFTC Concept Release: Performance Data and Disclosure for Commodity Trading Advisors and Commodity Pools.**

Dear Ms. Webb,

Since I believe that both the NFA proposal and Commission Rules 4.25 and 4.35 are fundamentally flawed, I will not comment on the specifics of either but will address my comments to what I believe are the fundamental problems that exist with regard to disclosure of performance data for CTAs and commodity pools.

I. Disclosure:

The Commission's stated aim is to ensure that clients of CTAs and commodity pools are provided with accurate, complete, and understandable information so that clients may make risk and return comparisons among investment alternatives. The NFA maintains that its aim is to ensure that solicitations present a balanced view of the risks and benefits of such trading and that the solicitations disclose all material information. In my view, neither the current method of disclosure nor the proposed method of disclosure accomplish these goals. The current method is informationally opaque and confusing. The proposed method is duplicitous. These problems are due to several factors chief among them the definition of nominal account size and the computation of rate-of-return.

II. Nominal Account Size

The term, *nominal account size*, is at best misleading. These are hypothetical amounts and a much better term for this would be *hypothetical account size*. Of course, CTAs and commodity pools are not allowed to report returns based on hypothetical amounts, hence the term "nominal." Given this semantic reality, the term should be changed to something like *trading account size.* This term would be a more accurate description since the purpose of this number is "to determine the level of trading for the client relative to other accounts in the CTA's program, regardless of the level of actual funds." [1] Because of their hypothetical nature, "nominal" account sizes should NOT be used to determine rates-of-return for CTAs and Commodity Pools.

III. Rate-of-Return

The concept of a rate-of-return is not very complicated and as the Commission concept release notes "in all areas outside of commodities trading, the divisor used in the calculation of ROI represents an actual 'investment' of tangible assets of the clients." If the Commission wants the client to be provided with information that is understandable, accurate, and complete, then the Commission should require CTAs and commodity pools to provide information to their clients that is consistent with the commonly accepted definition, i.e., ROR should be calculated based on the actual funds put at risk by the customer, not on some completely fictitious "notional", or "partially-funded" amount.

This should not be difficult. One assumes that CTAs and commodity pools know the actual level of funding that is supporting the positions they are putting on for these clients. These are the funds that have been put at risk and these are the funds that should be used to calculate ROR. Arguments that commodity trading is different from all other kinds of financial trading and that the actual funds put at risk are not a measure of a client's investment are specious.

The client puts X funds on deposit with the CTA and/or the FCM. The CTA trades those funds using whichever *trading account* the client has chosen. The CTA charges the client management fees, commissions and/or transaction fees. At the end of any arbitrary period of time every client has profits (P), losses (L), and fees (F). The client's ROR for that period is (P-L-F)/ X.

Means, standard deviations, and ranges are simple statistical measures that are easily understood by investors. The mean gives a measure of the central tendency of a distribution while the standard deviation and range provide a measure of the dispersion of a distribution. To report easily understood ROR information for any of the CTA's trading levels, the CTA could report the mean, standard deviation and range for the rates of return in that trading level. The data that is necessary to make these elementary calculations should be readily available to the CTA.

The Commission may take the position that such calculations would present too positive a picture of a CTA's trading practices. Conversly, the NFA may maintain that such calculations would present an unduly negative view. However, calculations based on actual funds put at risk, actual fees and commissions charged, actual profits, and actual losses would not be too positive or too negative, they would simply be the facts.

IV. Drawdowns and Fees

In addition to the problems of defining account sizes and reporting ROR, the request for comment also addresses the issue of reporting fees and drawdowns. This should be straightforward.

Clients should be presented with the mininum and maximum drawdown as well as the average and standard deviation for the drawdowns for each trading level over each of the time intervals in question.

Clients should be provided with the mininum and maximum fees and commissions charged as well as the average and standard deviation for the fees and commissions charged for each trading level over each of the time intervals in question.

[1] CFTC Concept Release: Performance Data and Disclosure for Commodity Trading Advisors and Commodity Pools, pg. 2.

V. Conclusion

The current method of disclosure for CTAs and commodity pools is informationally opaque and confusing. The proposed method is duplicitous. Clients of CTAs and commodity pools would be better served if the Commission and the NFA could agree on a simple, factual method of reporting meaningful statistics that are universally understood across all types of investments. In the meantime, the current method of disclosure should remain in place.

Sincerely,

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