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COMMENT

VIA EMAIL

October 1, 1999

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

RE: Performance Data and Disclosure for Commodity Trading Advisors

Dear Ms. Webb:

We respond to the rules proposed by the Commission with respect to performance data and disclosure for Commodity Trading Advisors ("CTAs"), as follows (references correspond to your original release):

II. The Proposed Rules

We agree with the revision of the rules to require that rate of return ("ROR") be computed based upon nominal account size. Prior to 1987 and the issuance of CFTC Advisory 87-2, it had been our experience that most CTAs at that time traded client accounts and computed their ROR based upon the nominal account size which had been mutually agreed between the CTA and its client.

The issuance of controversial Advisory 87-2 and subsequent other Advisories related to notional funds, (such as 93-13) has resulted in an ongoing contention between the managed funds industry and regulators with respect to which methodologies best represent the rate of return for a CTAs trading program. We believe that the Commission's determination to require that ROR be based upon the nominal account size is a step in the right direction and will result in better disclosure and uniformity in performance presentation.

A. Documentation of Nominal Account Size

We agree with the requirements and methodology for documenting the nominal account size agreed upon between the CTA and its client. We have noted that the futures commission merchant ("FCM") need not be party to this agreement, as was the case in the former "committed funds" letters. We found the prior committed fund letter documentation requirement, which required the FCM's acknowledgment, to be unduly cumbersome as well as to place in the FCM in the awkward position of somehow monitoring the client's committed assets. Our experience has been that certain FCMs, with a view toward avoiding any potential exposure in this arrangement between the client and CTA, have refused to be a party to such committed fund letters, as a matter of policy.

As a CTA is not allowed to transfer the client's cash, positions or securities, and the FCM cannot transfer assets without prior approval of the client, it seems to us that the traditional committed fund letter format served a mostly cosmetic purpose. We believe that the new rules are correct in acknowledging that the determination of nominal account size is a subject best left to the CTA and its client.

B. Changes to Calculations - Rule 4.35(a)(6)(i)(B) and Interest Income

The presenting of performance base upon nominal account size raises some interesting questions with respect to the impact of interest income and comparability of performance among client accounts of a CTA as well as among other CTAs.

Modern CTAs are expected to be investment managers, not simply traders. They are evaluated not only upon the results of gross trading, but also upon their ability to manage cash assets through the maintenance of margin/equity parameters, FCM and counterparty selection, exposure to foreign currency as well as the maximum utilization of interest-bearing instruments for excess funds. The CTA is usually compensated for its success in these areas through larger management fees, and in some cases, incentive fees.

Hedge fund and securities managers typically include interest income in their performance results. As the complexity and diversity of the global investment environment continually expands to include CTAs, it is important that performance results for CTAs be as consistent with other types of investment managers as possible. Elimination of interest earned on client assets in performance records would not only distort the overall return that was earned on client assets, but would also put the CTAs at a competitive disadvantage

The amount of interest income earned by a client account is contingent upon many factors, including: the amount of actual funds relative to nominal account size, the types of marginable securities allowed by the FCM, the amount of "free cash" in excess of margin requirements, the

B. Changes to Calculations - Rule 4.35(a)(6)(i)(B) and Interest Income (continued)

types of financial instruments where such funds may be invested and the negotiated brokerage commission rate verses interest paid on free credit balances.

The utilization of either the FCM or an external cash manager for overnight investments does not preclude the CTAs responsibility in this area, any differently than would be the performance record of a Fund Manager who has hired other CTA managers (i.e. a "Manager of Managers").

The amount of investable cash which is available for investment is largely determined by the margin requirements for the futures positions selected by the CTA. Moreover, CTA's performance has traditionally included the effects of their expertise in other items of cash management, such as the inclusion of gains or losses on conversion for managed trading accounts which are denominated in foreign currencies.

We acknowledge that the inclusion of actual interest income where client accounts are presented based upon nominal account size will present comparability issues among such client accounts. This is a function not only of negotiated cost structure and marginable instruments with the various FCMs utilized by such clients, but also that the amount of actual funds relative to nominal account size may vary significantly among the client accounts.

However, eliminating interest income altogether by reasoning that cash transactions implemented through an FCM or third party cash manager would remove an important element in the measure of a CTA's effectiveness in managing and preserving excess margin capital. As previously noted, the amount of excess margin cash available for investment is contingent upon the trading level and size of futures positions determined by the CTA. Moreover, using this reasoning, one might also excuse the CTA from including the effects of any other cash management activities, including the effects of foreign currency conversion. This would not allow a reader to properly evaluate the CTAs overall effectiveness as an investment manager, would render CTA performance results incompatible with the performance of other investment managers and would ultimately be misleading to a reader.

We believe that CTAs are evaluated as overall investment managers. CTAs are evaluated not only for their trading prowess, but also for their effectiveness as a cash manager. Consequently, all actual interest income earned by customer accounts should be included in a CTAs performance, regardless of the utilization of an FCM or other cash manager for implementation.

With respect to the comparability problem of actual funds relative to nominal account size among the accounts managed, we believe that the disclosure of actual funds verses nominal account size under management, as disclosed in the performance capsule, should provide sufficient indication of this possibility to a reader.

B. Changes to Calculations - Rule 4.35(a)(6)(i)(B) and Interest Income (continued)

Since interest income can only have a positive effect on rate of return, the absence of interest income on the under-funded portion of client accounts results in a comparatively conservative rate of return. We believe this is appropriate as to the extent that actual funds were not available, interest income could not actually have been earned and so should be reflected on an "actual" basis in the performance record. (Footnote disclosure that the un-funded portion of nominal account size does not earn interest income and the overall effect on composite performance may also be useful to a reader.)

The yield on excess funds has been historically low of late and consequently, the comparative distortion has recently not been quite as obvious. However, as interest yields rise and comparability among CTAs becomes more distant due to variations in the ratio of the clients' actual funds to nominal size, the Commission should reconsider allowing for the inclusion of interest on a pro forma basis, provided it accompanies the actual rate of return and that the amount and methodology for calculating the pro forma interest is adequately disclosed.

D. Disclosure Concerning Draw-Downs

We believe that draw-down information should be presented on the same basis as performance rates of return. specifically, that they be presented on a composite basis and based upon nominal account size.

Draw-down information based upon actual funds would be misleading to a reader and would present no useful information. as the nominal account size and the amount which remains un-funded is more typically the decision of the client and not the CTA. The amount of actual funds relative to the nominal account size may vary significantly among client accounts. The client may opt to change the amount of actual funds from time-to-time with no corresponding change in nominal account size. As the amount of the account which is un-funded is determined by the client, we find the inclusion of information for clients with the lowest ratio of actual funds to nominal account size to be meaningless with respect to evaluating the performance of a CTAs trading program. Moreover, the suggested 20% funding level allowance where information is not available or the funding is zero, appears arbitrary and would only add to the distortion in evaluating the CTA's performance and certainly in comparison to other CTAs.

Consequently, the inclusion of draw-down figures computed on the basis of actual funds is inconsistent with how performance rates of return would now be included (based on nominal account size). Since the amount of actual funds relative to nominal account size may vary significantly among the client accounts (and is normally determined by the client and not the CTA), the inclusion of draw-downs based on actual funds would be misleading in describing information about the CTA's trading performance.

D. Disclosure Concerning Draw-Downs (continued)

The amount of actual funds and the date on which a client enters or leaves a CTA's trading program is typically at the discretion of the client. Moreover, the timing of such decisions by the client may result in performance is completely inconsistent with the CTA's actual methodology. Consequently, it appears to be inappropriate to require such information on actual funds.

Further distortion occurs on draw-down information which is based upon individual clients in that client cost structures and dates of entry or release from a CTA's trading program can have a significant effect which is not indicative of the CTAs trading program as a whole. The computation would also result in administrative burdens to maintain data on all client accounts which add significant time to the preparation of performance information with little relevancy. This is especially cumbersome for small CTAs who have no internal staff to prepare such information and are required to hire expensive professional assistance.

Since the intent of the composite performance table is to present the dollar weighted-average of the actual historical experience of all client accounts, we believe that the most relevant draw-down information to a prospective client would be one which is presented based upon the CTA's composite performance results. This would also allow for easy recomputation for persons evaluating the CTAs performance, as well as to be most relevant, since the reader is most likely utilizing the composite performance data in its consideration of a CTA.

E. Disclosure Concerning Range of Rates of Return

Over the years, the industry has strived to improve performance reporting to participants and prospective clients to be "representative" of the CTA's trading program or sometimes more specifically described as presenting what would have happened to a typical client account, had it invested in the trading program during the time period presented.

The date of entry and departure from a trading program may have a significant effect on a particular client account relative to an account which may have been involved during the entire period. For example, it may take a few months for positions to be added into a new account until that account fully participates in a trading program. Also, an account which opts to close may be liquidated at a time when market conditions are at their worst and in which the CTA would not have recommended liquidation.

In most instances, it is the client which chooses the timing for closing or opening its trading account. The Commission had previously recognized that accounts which open or close on days other than the beginning or end of a month could distort overall performance. This is evidenced by allowance of the inclusion of the "Only Accounts Traded" or OAT rate of return method and by excluding such accounts from the fully funded subset. Moreover, the Commission has allowed

E. Disclosure Concerning Range of Rates of Return (continued)

for the exclusion of new account for up to three months and the exclusion of accounts which closed during the month from such computations, due to the distortive, "non-representative" nature of such accounts in the composite performance of a CTA.

As noted above, the date on which a client enters or leaves a CTA's trading program is usually determined by the client and not the CTA. The timing of such decisions by the client may result in performance for that client, which due to forced and untimely liquidations, are completely inconsistent with the CTA's actual methodology and are not comparable to clients which remained in the trading program.

Thus, since the opening and closing of accounts is determined by the client and since it requires the account to be handled differently from an account which had continued participation in the CTA's trading program throughout the month with no change in nominal account size, it would appear that inclusion of such information would misrepresent the results of the CTAs trading program for a "typical account."

F. Disclosure of Monthly Performance

We believe that the decision to include graphics be left solely to the discretion of the CTA and should not be a requirement. Graphic styles and formats are diverse and are constantly changing. The mode in which this should best be presented should be determined by the CTA and directed towards its unique clientele. Persons who cannot understand the already required narrative and numeric disclosures might understand graphics slightly better, but if that were the case, we doubt that a reader of that caliber could understand the complexities of the many other regulatory disclosures required by the Commission.

III. Transitional Provisions

We would request that CTAs be allowed to retroactively adjust performance records to comply with the new rules.

We believe that the new rules will greatly assist in providing uniformity as well as improved information in depicting the CTAs trading programs. As such, it would be helpful to readers if the CTA were allowed to provide a consistent approach throughout its performance record, rather than to have multiple methodologies in different years, which may seriously distort prior performance or render them incomparable in light of the current methodologies.

III. Transitional Provisions

However, in view of the accounting burden, particularly for small CTAs, we would suggest that retroactive adjustment, although allowable, would be at the discretion of the CTA, much the same that the application in changes in accounting principles is allowed by the American Institute of Certified Public Accountants.

We thank you for this opportunity to reply to your proposed changes. We commend the

Commission for taking this action in an effort to improve the uniformity and relevancy of CTA performance disclosures.

Please feel free to contact me at 312/922-6601 if you would like to discuss or if we may be of further assistance.

Very truly yours,

Michael J. Liccar & Co., CPAs

Michael J. Liccar

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cc: Mr. Michael Greenberger, Director, Division of Trading & Markets