

03-04

RECEIVED
C.F.T.C.

(4)

April 14, 2003

COMMENT

2003 APR 14 PM 2:31

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

OFFICE OF THE SECRETARIAT

**Received CFTC
Records Section
04/14/2003**

Re: Performance Data and Disclosure for Commodity Trading Advisors

Dear Ms. Webb:

John W. Henry & Company, Inc. (JWH) welcomes the opportunity to comment on the Commission's proposal regarding Performance Data and Disclosure for Commodity Trading Advisors, published in the Federal Register on March 13, 2003 (68 F.R. 12001). JWH has been registered as a commodity trading advisor since 1982. JWH currently manages approximately \$1.6 billion in client assets, and is one of the largest commodity trading advisors. JWH therefore has a vital interest in the subject of performance reporting.

JWH commends the Commission for taking up again a series of proposals for resolving the long-standing issues concerning performance reporting for partially funded accounts. JWH has traditionally declined to accept accounts that have been neither fully funded nor the subject of a letter of commitment in compliance with Commission interpretations. Adoption of the proposed rules should encourage the growth of funding mechanisms that are in keeping with changing investment needs. JWH supports the adoption of the proposals included in the release, but suggests several modifications to make their implementation more effective.

Proposed rule 4.33(c) would create the obligation for commodity trading advisors to maintain with each client an agreement that contains specified points. JWH believes that the proposals should include an amendment to the Commission's part 4 rules to make responsibility for appropriate account documentation also the responsibility of commodity pool operators who choose to direct pool advisors to trade at a level in excess of assets actually deposited in the pool's account. A related concern is that the proposed rule would extend to situations where accounts are fully funded. That would require a commodity trading advisor to re-document all existing accounts, and present clients with new agreements containing all of the points contained in the proposed rule. That requirement would be costly and burdensome to both advisors and their clients, and would not provide any additional regulatory protection.

The release appropriately addresses performance disclosure to clients who may not appreciate the impact of notional funding on performance presentation or the resulting depiction of volatility. In many cases, however, notional funding is sought or demanded

by institutional clients, and for those situations, JWH proposes that the proposed additional disclosure requirements [such as 4.35 (a)(1)(v) and (vi), and 4.35(a)(1)(ix), for example] need not be made to clients who qualify as Qualified Eligible Persons under Commission rule 4.7. This would parallel the treatment in NFA compliance rule 2.29(c)(6) of the use of hypothetical performance presentations -- the more protective rule would not apply to performance presentations to QEPs who can evaluate performance results based on notional funding without such additional disclosures.

There should be an explanation given of the source of the 20% attribution rate for lowest funding levels in proposed 4.35(a)(1)(ix). That description could then be used in the explanations used by CTAs of this disclosure, which is likely to confuse investors.

Proposed rule 4.35(a)(1)(viii) would establish a new requirement for the disclosure of ranges of rates of return for closed accounts with net lifetime profits and losses. JWH does not believe that this information provides useful information to investors beyond that already required to be provided.

JWH supports the acknowledgment under "Changes to Definitions" that the quantitative materiality standards of Advisory 93-13 would be available after adoption of the proposed rules as guidance to materiality for the inclusion of accounts in composite performance tables. JWH also supports the confirmation in proposed rules 4.10(1)(3)(C) and 4.35(a)(6)(i)(B)(1)(iii) that interest earned in a client trading account is appropriately treated as an element of the account's net performance.

The Commission specifically requests comment on the possible application of core principles to performance presentations. JWH believes that the value of historical performance continuity and comparability (mentioned as a particular goal of this release) outweighs the flexibility of core principles. The details of this release indicate the many variables that could into play if core principles were the only guidance on performance presentations.

Sincerely yours,

s/ David M. Kozak

David M. Kozak,
Senior Vice President and General Counsel