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1999 SEP 22 A

From: Jack Schwager [schwager@vineyard.net]
Sent: Thursday, September 23, 1999 2:57 PM
To: Robert Wasserman; Eileen Chotiner; Secretary CFTC
Subject: Re: Performance Data for CTAs

CFTC Comment to Proposal.rtf

Please see attached file for comment.

COMMENT

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COMMENTS REGARDING PERFORMANCE DATA AND DISCLOSURE FOR COMMODITY TRADING ADVISORS

Two Comments:

1. Need for *Real-time* Verification of Nominal Account Sizes

Although the overwhelming majority of CTAs and CPOs are honest, as in any business, there will be some who will take unfair advantage if they have the opportunity to profit by dishonest means. Under the new approach, it seems it might be possible for unscrupulous CTAs or CPOs to backdate letters of nominal funding to their advantage—increasing the nominal size if they have done poorly and decreasing it if they have done well. The only way to prevent this would be to require written notification (either mail, fax, or email) of the nominal account size for all new accounts *before* they begin trading and for all existing accounts at the time the new rules are implemented. Unless some sort of *real-time* notification is mandated, the ease of altering nominal account sizes will provide a temptation that will encourage cheating by some. This will place honest CTAs at a severe disadvantage.

It is important that this verification be kept as simple as possible in order not to add any reporting burden on CTAs. A **one-time** simple email verification that states the notional and nominal account values when the account is opened should be sufficient. In other words, what is envisioned is a one-time task that could be performed literally in 1 minute or less for each new account opened.

2. Recalculating Historical Track Record Should Be Optional

There are 2 reasons for this:

(A) "Nominal" and "fully funded subset" results should yield essentially similar results. Therefore, except for cases and periods where a "fully funded subset" does not exist, it should not be necessary to make CTAs incur the time and expense expenditures required to recalculate historical track records unless they wish to do so. In other words, recalculating historical results should be optional rather than mandatory.

(B) *Requiring such a revision would change the rules after the fact.* For example, consider the case of a CTA who was offered a portion of an existing commodity pool that had a higher commission cost structure than his other accounts (both existing and new investors). If this account were notionally funded, he could accept the account with the knowledge that the pool's higher commission structure would not adversely impact his track record. If, however, he knew that this account would be included in the return calculation, he might well have declined to accept it, preferring to forgo the additional income in order to avoid the adverse impact of higher commissions on his track record. In this sense, a *retroactive and mandatory* change would seem unfair.

It should be noted that the problem exists even if the month-to-month results of the higher-commission pool are materially the same as those of the other accounts because since the effect of higher commissions is *always in the same direction*, there could be a cumulative impact. For example, in a given month, the higher-commission pool might have a gain of 4.8% versus an average gain of 5.0% for the other accounts. Although these results are materially the same, over a period of years, the cumulative effect could be significant.