Advisory: 10-96
Release: March 6, 1996

On July 25, 1995, the Commodity Futures Trading Commission (the "Commission") announced the adoption of substantial revisions to its disclosure rules for commodity pool operators ("CPOs") and commodity trading advisors ("CTAs") contained in Part 4 of the Commission's regulations (the "Revised Rules").[(1)] Pursuant to these revisions, Rule 4.24(v)(3)(i) for CPOs and Rule 4.34(n)(3)(i) for CTAs now require that past performance data for periods other than the five calendar years preceding the date of a Disclosure Document and year-to-date be presented after the required performance data. The Division of Trading and Markets (the "Division") has determined to permit registered CPOs and CTAs to present the required past performance for the offered pool or trading program, as relevant, in a capsule format that includes past performance data for the five calendar years and year-to-date specified in Rules 4.25 (a)(5) for CPOs and 4.35(a)(5) for CTAs (the "Required Period"), as well as performance information for a period in excess of the Required Period, subject to certain restrictions, as discussed below.

In order to simplify past performance presentations and to facilitate comparisons among performance results for various commodity pools or trading programs, the Revised Rules provided that mandatory past performance presentations would be restricted to the Required Period (or the period from inception, if shorter). Performance for additional periods could be presented, but only as supplemental information, following presentation of all required performance data.[(2)] However, since promulgation of the Revised Rules, a number of CPOs and CTAs have requested that they be permitted to combine in a single capsule performance data for the Required Period and the balance of the pool's or trading program's history. In support of this request these registrants claim that such presentations are more readily comprehensible, accessible for reference, and efficient to produce than separate capsules placed in different parts of a Disclosure Document.

In light of these considerations, the Division believes that the capsule format provided in the Revised Rules may be adapted to incorporate performance data for the entire history of the offered pool or trading program. Subject to compliance with this modified format, the Division has determined that, where the performance history of the offered pool in a CPO's Disclosure Document or the offered trading program in a CTA's Disclosure Document exceeds the Required Period, the registrant may present the offered pool's or trading program's performance <u>either</u> for the Required Period <u>or</u> for the entire period from inception of the pool or trading program to date. If the latter option is elected, the required data and the data covering periods in excess of the Required Period must be separately identified, and monthly rates of return are to be presented for the Required Period and annual rates of return (calculated on a compounded monthly basis) are to be presented for the period in excess of the Required Period. In addition to rates of return, where presentation of the entire operating or trading history is provided, the following modifications to required items in the performance capsule must be made: (1) for a pool or trading program the largest monthly draw-down and worst peak-to-valley draw-down or loss information[(3)] must be separately presented for the Required Period and for the period from inception to date; and (2) for a trading program, the number of accounts closed with positive net performance (profits) and the number of accounts closed with negative net performance (losses)[(4)] must also be separately presented for the Required Period and for the period from inception to date.

The Division notes that because presentation of annual rates of return for years prior to the Required Period may fail to reflect periods of material volatility, it may be necessary to expand the required narrative discussion of volatility[(5)] to provide a balanced presentation of past performance to address the period in excess of the Required Period. Moreover, registrants must assess whether presentation of performance information for periods in excess of the Required Period necessitates other additional or expanded disclosures to avoid potentially misleading results.[(6)] The Commission will continue to discuss with the industry how best to present volatility, potentially including benchmarking against standardized measures such as the risk-free rate of return.

The relief granted by this Advisory does not excuse a CPO or CTA from compliance with any otherwise applicable requirements contained in the Commodity Exchange Act (the "Act")[(7)] or the Commission's rules thereunder. For example, CPOs and CTAs remain subject to the antifraud provisions of § 4<u>o</u> of the Act.[(8)]

Attached is an example of performance presentation for a CTA's offered trading program, enlarged in accordance with the relief provided by this Advisory.

Example:

Name of CTA: ABC

Trading Program: XYZ

Inception of Trading by CTA: September 1, 1983

Inception of Trading pursuant to Trading Program: January 1, 1985

Total Assets under CTA Management: $ 5,450,304.75

Total Assets in the Trading Program: $ 1,256,205.50

Largest Monthly Draw-down:

Past Five Years and Year-to-Date: (13.06%) - 7/91

Inception of Trading Program to Date: (23.12%) - 2/86

Worst Peak-to-Valley Draw-down:

Past Five Years and Year-to-Date: (23.16%) - 7/91-9/93

Inception of Trading Program to Date: (38.04%) - 2/86-10/87

Closed Accounts, Positive Net Performance:

Past Five Years and Year-to-Date: 7

Inception of Trading Program to Date: 13

Closed Accounts, Negative Net Performance:

Past Five Years and Year-to-Date: 3

Inception of Trading Program to Date: 9

RATES OF RETURN

PAST PERFORMANCE IS NOT NECESSARILY INDICATIVE OF FUTURE RESULTS

	Year-to-date	**1995**	**1994**	**1993**	**1992**	**1991**
January	2.1	2.0	(6.22)	12.20	15.01	2.21
February		(3.14)	9.33	(5.29)	(0.06)	0.44
March		5.80	(7.83)	8.17	1.51	(0.60)
April		(3.11)	11.07	3.53	4.78	(0.92)
May		3.31	2.73	(6.72)	(2.12)	(2.93)
June		(5.35)	(7.04)	4.32	(2.39)	4.82
July		6.20	3.95	4.35	(3.09)	(13.06)
August		8.17	3.51	5.22	(3.17)	2.28
September		9.12	8.81	10.50	(10.06)	2.95
October		4.36	(4.72)	2.87	7.01	(3.35)
November		2.14	2.33	1.19	(2.87)	(5.19)
December		(1.66)	1.11	9.73	(4.78)	(6.12)
Annual		30.68%	27.68%	46.69%	(13.86)	(20.19)%

RATES OF RETURN FOR PRIOR YEARS

1990	10.73%	1989	65.14%	1988	42.54%	1987	(2.11)%	1986	(26.71)%
1985	33.42%								

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1. See generally 59 Fed. Reg. 38146 (July 25, 1995). These rule revisions became effective August 24, 1995.

2. See Rules 4.24(v) for CPOs and 4.34(n) for CTAs, and 59 Fed. Reg. 38146 at 38166-38167.

3. For CPOs this information is required by Rules 4.25(a)(1)(i)(F) and 4.25(a)(1)(i)(G), respectively. For CTAs it is required by Rules 4.35(a)(1)(v) and 4.35(a)(1)(v)(vi), respectively.

4. This information is required by Rules 4.35(a)(1)(viii)(A) and 4.35(a)(1)(viii)(B), respectively.

5. See Rules 4.24(g) for CPOs and 4.34(g) for CTAs.

6. Commission rules expressly obligate CPOs and CTAs "to disclose all material information to existing or prospective" pool participants or advisory clients, respectively. These obligations are unchanged by this Advisory. See Rules 4.24(w) for CPOs and 4.34(o) for CTAs.

7. 7 U.S.C. § 1 et seq. (1994).

8. 7 U.S.C. § 6o (1994).

Updated February 1, 2001