

(l) *Worst peak-to-valley draw-down* means:

(1) For a commodity pool, the greatest cumulative percentage decline in month-end net asset value due to losses sustained during any period in which the initial month-end net asset value is not equaled or exceeded by a subsequent month-end net asset value. Such decline must be expressed as a percentage of the initial month-end net asset value, together with an indication of the months and year(s) of such decline from the initial month-end net asset value to the lowest month-end net asset value of such decline.

(2) For an account directed by a commodity trading advisor or for a commodity trading advisor's trading program, the greatest negative net performance during any period, beginning at the start of one month, and ending at the conclusion of that month or a subsequent month. The worst peak-to-valley draw-down must be expressed as a percentage of the nominal account size at the beginning of the period, together with an indication of the months and year(s) of such draw-down.

(3)(i) For purposes of paragraph (l)(2) of this section, net performance for a period is defined as the total of:

(A) The realized gain or loss on positions closed during the period; plus

(B) The change during the period in unrealized gain or loss; plus

(C) Interest income on funds on deposit in an account at a futures commission merchant to margin the client account which a commodity trading advisor directs; plus

(D) Other income earned on positions held as part of the commodity trading advisor's program; minus

(E) Fees and expenses.

(ii) No interest or other income may be imputed with respect to nominal account sizes or otherwise computed on a pro-forma basis.

(4) For purposes of §§ 4.25 and 4.35, a peak-to-valley draw-down, which began prior to the beginning of the most recent five calendar years and continues into or ends during the most recent five years, is deemed to have occurred during such five-calendar-year period.

(m) *Nominal account size* means the account size, designated in the written agreement specified in § 4.33(c), that establishes the client's level of trading in a commodity trading advisor's program.

(n) *Actual funds* means the amount of margin-qualifying assets, either:

(1) On deposit in an account at a futures commission merchant to margin the client account which a commodity trading advisor directs; or

(2) In another account, so long as the commodity trading advisor has written evidence demonstrating the following:

(i) The client owns the funds;

(ii) The futures commission merchant carrying the client's account that the commodity trading advisor directs (the "trading account") has the power readily to use all, or a designated portion of, the funds in the other account for the purpose of meeting margin requirements in connection with the trading account, on a routine operational basis and without advance notice to the client; and

(iii) The commodity trading advisor has ready access to information concerning the balance in the other account available to meet margin requirements for the trading account.

(o) *Partially-funded account* means a client participation in the program of a commodity trading advisor in which the amount of actual funds is less than the nominal account size.

(p) For purposes of §§ 4.25 and 4.35, the term most recent five years means:

(1) The time period beginning January 1 of the calendar year five years prior to the date of the Disclosure Document and ending as of the date of the Disclosure Document; or

(2) The life of the trading program, if less than five years.

3. Section 4.25(a)(1)(ii) is proposed to be amended by revising paragraphs (a)(1)(ii)(D)(1) and (2), (a)(1)(ii)(E) and (a)(1)(ii)(F) to read as follows:

§ 4.25 Performance disclosures.

(a) * * *

(1) * * *

(ii) * * *

(D)(1) The aggregate of actual funds for all of the trading programs of the trading advisor or other person trading the account, as of the date of the Disclosure Document or, if the commodity trading advisor does not have sufficient information regarding the funding of its clients' accounts to determine the aggregate of actual funds for its programs, a statement of that fact;

(2) The aggregate of actual funds for the specified trading program of the commodity trading advisor, as of the date of the Disclosure Document or, if the commodity trading advisor does not have sufficient information regarding the funding of its clients' accounts to determine the aggregate of actual funds for the specified trading program, a statement of that fact.

(E) The greatest monthly draw-down during the most recent five years for the trading program specified, expressed as a percentage of aggregate nominal account sizes, and indicating the month and year of the draw-down.

(F) The greatest peak-to-valley draw-down during the most recent five years for the trading program specified, expressed as a percentage of aggregate nominal account sizes at the beginning of the period, and indicating the month(s) and year(s) of the draw-down.

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4. Section 4.33 is proposed to be amended by adding paragraphs (c) and (d) to read as follows:

§ 4.33 Recordkeeping.

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(c) A commodity trading advisor must obtain a written agreement signed by each client which, at a minimum, clearly specifies:

(1) The nominal account size;

(2) The name or description of the trading program in which the client is participating;

(3) The basis for the computation of fees;

(4) How additions or withdrawals of actual funds, profits, and losses will each affect the nominal account size and the computation of fees; and

(5) Whether the client will fully or partially fund the account.

(d) Any changes to nominal account size (other than changes resulting from the factors listed in § 4.33(c)(4) and documented as required by that subsection) must be in writing, must be signed by the client, and must explicitly indicate the current date, the new nominal account size and the effective date of the change.

5. Section 4.34 is proposed to be amended by adding paragraph (p) to read as follows:

§ 4.34 General disclosures required.

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(p) Additional Disclosure by Commodity Trading Advisors Accepting Partially-funded Accounts. A commodity trading advisor that accepts a partially-funded account (as defined in § 4.10(o)) must disclose:

(1) How the management fees will be computed, expressed as a percentage of the nominal account size, and an explanation of the effect of partially funding an account on the management fees as a percentage of actual funds;

(2) An estimated range of the commissions generally charged to an account expressed as a percentage of the nominal account size and an explanation of the effect of partially funding an account on the commissions as a percentage of actual funds;

(3) A statement that partial funding increases leverage, that leverage will magnify both positive and negative rates of return, and that the greater the disparity between the nominal account