

size and the amount deposited, maintained or made accessible to the futures commission merchant, the greater the likelihood and frequency of margin calls, and the greater the size of margin calls as a percentage of the amount of actual funds committed to the commodity trading advisor's program; and

(4) A description of the factors considered by the commodity trading advisor in determining the level of trading for a given nominal account size in the offered trading program and an explanation of how those factors are applied.

6. Section 4.35 is proposed to be amended by revising paragraphs (a)(1)(iv) through (a)(1)(ix), (a)(2)(iv), (a)(6)(i)(A) through (F), and (a)(6)(ii) to read as follows:

§ 4.35 Performance disclosures.

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(a) General principles.—(1) * * * (iv)(A) 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; (B) 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 client accounts to determine the aggregate of actual funds for the specified trading program, a statement of that fact.

(v) 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;

(vi) 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;

(vii) Subject to § 4.35(a)(2) for the offered trading program, the annual and year-to-date rate-of-return for the program specified for each of the five most recent calendar years and year-to-date, computed on a compounded monthly basis; and

(viii) In the case of the offered trading program:

(A)(1) The number of accounts traded pursuant to the offered trading program

that were opened and closed during the period specified in § 4.35(a)(5) with a positive net lifetime rate of return as of the date the account was closed; and

(2) The range of rates of return for accounts that were both opened and closed during the period specified in § 4.35(a)(5) and closed with positive net lifetime rates of return; and

(B)(1) The number of accounts traded pursuant to the offered trading program that were opened and closed during the period specified in § 4.35(a)(5) with negative net lifetime rates of return as of the date the account was closed; and

(2) The range of rates of return for accounts that were both opened and closed during the period specified in § 4.35(a)(5) and closed with negative net lifetime rates of return.

(C) The net lifetime rate of return shall be calculated as the compounded product of the monthly rates of return for each month the account is open.

(ix) In addition to the information specified in § 4.35(a)(1)(i)–(viii), where the commodity trading advisor accepts partially-funded accounts, the performance capsule must include:

(A) A statement that rates of return are based on nominal account size.

(B) In a column adjacent to the presentation of data based on nominal account size, the draw-down information required by § 4.35(a)(1)(v) and (vi), divided by the percentage of actual funds committed to the commodity trading advisor's program by the client with the lowest ratio of actual funds to nominal account size in the trading program.

(1) If the commodity trading advisor does not have sufficient information regarding the funding level of its client accounts to determine the lowest ratio, or if the lowest ratio is zero, present this information at a funding level of 20 percent.

(2) The percentage basis of the computation, *i.e.*, the actual funds ratio or the optional 20 percent, must be disclosed in the heading of the column.

(C) If the commodity trading advisor elects to include the aggregate of the nominal account sizes of the client accounts in the trading program specified, this information must be placed adjacent to the disclosure of actual funds under management by the commodity trading advisor as required by § 4.35(a)(1)(iv).

(2) Additional requirements with respect to the offered trading program.

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(iv) The commodity trading advisor must make available to prospective and existing clients upon request a table showing the information required to be

calculated pursuant to § 4.35(a)(6). This table must be updated at least quarterly.

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(6) Calculation of, and recordkeeping concerning, performance information.

(i) * * *

(A) The nominal account size at the beginning of the period, defined as the previous period's ending nominal account size;

(B)(1) The net performance for the period, which is defined as the total of:

(i) The realized gain or loss on positions closed during the period, plus

(ii) The change during the period in unrealized gain or loss, plus

(iii) 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

(iv) Other income earned on positions held as part of the CTA's program, minus

(v) Fees and expenses.

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

(C) The nominal rate of return for the period, which must be compounded no less frequently than monthly and which shall be calculated by one of the following three methods, consistently applied:

(1) Computing the net performance divided by the beginning nominal account size for each trading day in the period and compounding each daily rate of return to determine the rate of return for the period;

(2) Dividing the net performance by the arithmetic mean of the nominal account sizes for each trading day during the period; or,

(3) Dividing the net performance by the nominal account size at the beginning of the period.

(D) Changes to the nominal account size during the period, pursuant to the terms of the commodity trading advisor's agreement with the client in accordance with § 4.33(c)(4). The records should clearly delineate the source of each change (additions or withdrawals of actual funds, profits or losses, or otherwise).

(E) Changes to the nominal account size pursuant to the terms of the commodity trading advisor's agreement with the client in accordance with § 4.33(c)(1). The records should clearly delineate the source of each change (the opening or closing of accounts during the period or changes to nominal account size specifically directed by a client in writing). If a client and the advisor agree that a nominal account