



## Disclosure Documents: A Guide for CTAs

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**February 2020 Revisions:** The Disclosure Documents Guide was previously serving both our CPO and CTA Members. In an effort to address the specific needs of each Member, NFA has created a separate guide tailored specifically to only CTAs. Along with the new guide, NFA updated the contents to incorporate the adoption of the Interpretive Notice regarding disclosure requirements for NFA Members engaging in virtual currency activities and updates to the Rule and Interpretive Notice regarding CTA performance reporting and disclosures.

February 2020

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## Who Must Prepare a Disclosure Document?

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Commodity trading advisors (CTA) must deliver a disclosure document (Document) for the offered program to a prospective client prior to or when it delivers the advisory agreement to the client. (See [Filing Disclosure Documents and the Review Process](#) for filing procedures.)

CTAs must obtain from prospective clients an acknowledgement signed and dated by the client stating that they received a Document. When the Document is delivered by electronic means, the CTA may accept an electronic signature.

**Exception.** A Document is not required to be delivered where the CTA is directing the account of a Qualified Eligible Person (QEP) as defined by Commodity Futures Trading Commission (CFTC Regulation 4.7 and the required exemption notice has been filed with NFA.

## Disclosure Document Requirements for CTAs

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### **Documents for CTAs must include the following information:**

#### Cover Page

The cover page of the Document must prominently include the Cautionary Statement below. Prominently means displayed in CAPITAL letters and in **boldface** type.

**THE COMMODITY FUTURES TRADING COMMISSION HAS NOT PASSED UPON THE MERITS OF PARTICIPATING IN THIS TRADING PROGRAM NOR HAS THE COMMISSION PASSED ON THE ADEQUACY OR ACCURACY OF THIS DISCLOSURE DOCUMENT.**

#### Risk Disclosure Statement

The following Risk Disclosure Statement must be prominently displayed immediately after the cover page of the Document.

#### **RISK DISCLOSURE STATEMENT**

**THE RISK OF LOSS IN TRADING COMMODITY INTERESTS CAN BE SUBSTANTIAL. YOU SHOULD THEREFORE CAREFULLY CONSIDER WHETHER SUCH TRADING IS SUITABLE FOR YOU IN LIGHT OF YOUR FINANCIAL CONDITION. IN CONSIDERING WHETHER TO TRADE OR TO AUTHORIZE SOMEONE ELSE TO TRADE FOR YOU, YOU SHOULD BE AWARE OF THE FOLLOWING:**

**IF YOU PURCHASE A COMMODITY OPTION YOU MAY SUSTAIN A TOTAL LOSS OF THE PREMIUM AND OF ALL TRANSACTION COSTS.**

**IF YOU PURCHASE OR SELL A COMMODITY FUTURES CONTRACT OR SELL A COMMODITY OPTION OR ENGAGE IN OFF-EXCHANGE FOREIGN CURRENCY TRADING YOU MAY SUSTAIN A TOTAL LOSS OF THE INITIAL MARGIN FUNDS OR SECURITY DEPOSIT AND ANY ADDITIONAL FUNDS THAT YOU DEPOSIT WITH YOUR BROKER TO ESTABLISH OR MAINTAIN YOUR POSITION. IF THE MARKET MOVES AGAINST YOUR POSITION, YOU MAY BE CALLED UPON BY YOUR BROKER TO DEPOSIT A SUBSTANTIAL AMOUNT OF ADDITIONAL MARGIN FUNDS, ON SHORT NOTICE, IN ORDER TO MAINTAIN YOUR POSITION. IF YOU DO NOT PROVIDE THE REQUESTED FUNDS WITHIN THE PRESCRIBED TIME, YOUR POSITION MAY BE LIQUIDATED AT A LOSS, AND YOU WILL BE LIABLE FOR ANY RESULTING DEFICIT IN YOUR ACCOUNT.**

**UNDER CERTAIN MARKET CONDITIONS, YOU MAY FIND IT DIFFICULT OR IMPOSSIBLE TO LIQUIDATE A POSITION. THIS CAN OCCUR, FOR EXAMPLE, WHEN THE MARKET MAKES A "LIMIT MOVE."**

**THE PLACEMENT OF CONTINGENT ORDERS BY YOU OR YOUR TRADING ADVISOR, SUCH AS A "STOP-LOSS"**

**OR “STOP-LIMIT” ORDER, WILL NOT NECESSARILY LIMIT YOUR LOSSES TO THE INTENDED AMOUNTS, SINCE MARKET CONDITIONS MAY MAKE IT IMPOSSIBLE TO EXECUTE SUCH ORDERS.**

**A “SPREAD” POSITION MAY NOT BE LESS RISKY THAN A SIMPLE “LONG” OR “SHORT” POSITION.**

**THE HIGH DEGREE OF LEVERAGE THAT IS OFTEN OBTAINABLE IN COMMODITY INTEREST TRADING CAN WORK AGAINST YOU AS WELL AS FOR YOU. THE USE OF LEVERAGE CAN LEAD TO LARGE LOSSES AS WELL AS GAINS.**

**IN SOME CASES, MANAGED COMMODITY ACCOUNTS ARE SUBJECT TO SUBSTANTIAL CHARGES FOR MANAGEMENT AND ADVISORY FEES. IT MAY BE NECESSARY FOR THOSE ACCOUNTS THAT ARE SUBJECT TO THESE CHARGES TO MAKE SUBSTANTIAL TRADING PROFITS TO AVOID DEPLETION OR EXHAUSTION OF THEIR ASSETS. THIS DISCLOSURE DOCUMENT CONTAINS, AT PAGE (insert page number), A COMPLETE DESCRIPTION OF EACH FEE TO BE CHARGED TO YOUR ACCOUNT BY THE COMMODITY TRADING ADVISOR.**

**THIS BRIEF STATEMENT CANNOT DISCLOSE ALL THE RISKS AND OTHER SIGNIFICANT ASPECTS OF THE COMMODITY INTEREST MARKETS. YOU SHOULD THEREFORE CAREFULLY STUDY THIS DISCLOSURE DOCUMENT AND COMMODITY INTEREST TRADING BEFORE YOU TRADE, INCLUDING THE DESCRIPTION OF THE PRINCIPAL RISK FACTORS OF THIS INVESTMENT, AT PAGE (insert page number).**

If the CTA may trade foreign futures or options contracts on foreign exchanges in the offered trading program(s), the Risk Disclosure Statement must further state:

**YOU SHOULD ALSO BE AWARE THAT THIS COMMODITY TRADING ADVISOR MAY ENGAGE IN TRADING FOREIGN FUTURES OR OPTIONS CONTRACTS. TRANSACTIONS ON MARKETS LOCATED OUTSIDE THE UNITED STATES, INCLUDING MARKETS FORMALLY LINKED TO A UNITED STATES MARKET MAY BE SUBJECT TO REGULATIONS WHICH OFFER DIFFERENT OR DIMINISHED PROTECTION. FURTHER, UNITED STATES REGULATORY AUTHORITIES MAY BE UNABLE TO COMPEL THE ENFORCEMENT OF THE RULES OF REGULATORY AUTHORITIES OR MARKETS IN NON-UNITED STATES JURISDICTIONS WHERE YOUR TRANSACTIONS MAY BE EFFECTED. BEFORE YOU TRADE YOU SHOULD INQUIRE ABOUT ANY RULES RELEVANT TO YOUR PARTICULAR CONTEMPLATED TRANSACTIONS AND ASK THE FIRM WITH WHICH YOU INTEND TO TRADE FOR DETAILS ABOUT THE TYPES OF REDRESS AVAILABLE IN BOTH YOUR LOCAL AND OTHER RELEVANT JURISDICTIONS.**

If the CTA may engage in retail forex transactions in the offered trading program(s), the Risk Disclosure Statement must further state:

**YOU SHOULD ALSO BE AWARE THAT THIS COMMODITY TRADING ADVISOR MAY ENGAGE IN OFF-EXCHANGE FOREIGN CURRENCY TRADING. SUCH TRADING IS**

**NOT CONDUCTED IN THE INTERBANK MARKET. THE FUNDS DEPOSITED WITH A COUNTERPARTY FOR SUCH TRANSACTIONS WILL NOT RECEIVE THE SAME PROTECTIONS AS FUNDS USED TO MARGIN OR GUARANTEE EXCHANGE-TRADED FUTURES AND OPTION CONTRACTS. IF THE COUNTERPARTY BECOMES INSOLVENT AND YOU HAVE A CLAIM FOR AMOUNTS DEPOSITED OR PROFITS EARNED ON TRANSACTIONS WITH THE COUNTERPARTY, YOUR CLAIM MAY NOT BE TREATED AS A COMMODITY CUSTOMER CLAIM FOR PURPOSES OF SUBCHAPTER IV OF CHAPTER 7 OF THE BANKRUPTCY CODE AND REGULATIONS THEREUNDER. YOU MAY BE A GENERAL CREDITOR AND YOUR CLAIM MAY BE PAID, ALONG WITH THE CLAIMS OF OTHER GENERAL CREDITORS, FROM ANY MONIES STILL AVAILABLE AFTER PRIORITY CLAIMS ARE PAID. EVEN FUNDS THAT THE COUNTERPARTY KEEPS SEPARATE FROM ITS OWN FUNDS MAY NOT BE SAFE FROM THE CLAIMS OF PRIORITY AND OTHER GENERAL CREDITORS.**

**FURTHER, YOU SHOULD CAREFULLY REVIEW THE INFORMATION CONTAINED IN THE RISK DISCLOSURE STATEMENT OF THE FUTURES COMMISSION MERCHANT OR RETAIL FOREIGN EXCHANGE DEALER THAT YOU SELECT TO CARRY YOUR ACCOUNT.**

If the CTA may engage in swaps in the offered trading program(s), the Risk Disclosure Statement must further state:

**SWAPS TRANSACTIONS, LIKE OTHER FINANCIAL TRANSACTIONS, INVOLVE A VARIETY OF SIGNIFICANT RISKS. THE SPECIFIC RISKS PRESENTED BY A PARTICULAR SWAP TRANSACTION NECESSARILY DEPEND UPON THE TERMS OF THE TRANSACTION AND YOUR CIRCUMSTANCES. IN GENERAL, HOWEVER, ALL SWAPS TRANSACTIONS INVOLVE SOME COMBINATION OF MARKET RISK, CREDIT RISK, FUNDING RISK, AND OPERATIONAL RISK.**

**HIGHLY CUSTOMIZED SWAPS TRANSACTIONS IN PARTICULAR MAY INCREASE LIQUIDITY RISK, WHICH MAY RESULT IN YOUR ABILITY TO WITHDRAW YOUR FUNDS BEING LIMITED. HIGHLY LEVERAGED TRANSACTIONS MAY EXPERIENCE SUBSTANTIAL GAINS OR LOSSES IN VALUE AS A RESULT OF RELATIVELY SMALL CHANGES IN THE VALUE OR LEVEL OF AN UNDERLYING OR RELATED MARKET FACTOR.**

**IN EVALUATING THE RISKS AND CONTRACTUAL OBLIGATIONS ASSOCIATED WITH A PARTICULAR SWAP TRANSACTION, IT IS IMPORTANT TO CONSIDER THAT A SWAP TRANSACTION MAY BE MODIFIED OR TERMINATED ONLY BY MUTUAL CONSENT OF THE ORIGINAL PARTIES AND SUBJECT TO AGREEMENT ON INDIVIDUALLY NEGOTIATED TERMS. THEREFORE, IT MAY NOT BE POSSIBLE TO MODIFY, TERMINATE, OR OFFSET YOUR OBLIGATIONS OR YOUR EXPOSURE TO THE RISKS ASSOCIATED WITH A TRANSACTION PRIOR TO ITS SCHEDULED TERMINATION DATE.**

If the CTA is not also a registered futures commission merchant (FCM), or a registered retail foreign exchange dealer (RFED), the following additional statement must appear as the last paragraph of the Risk Disclosure Statement:

**THIS COMMODITY TRADING ADVISOR IS PROHIBITED BY LAW FROM ACCEPTING FUNDS IN THE TRADING ADVISOR'S NAME FROM A CLIENT FOR TRADING COMMODITY INTERESTS. YOU MUST PLACE ALL FUNDS FOR TRADING IN THIS TRADING PROGRAM DIRECTLY WITH A FUTURES COMMISSION MERCHANT OR RETAIL FOREIGN EXCHANGE DEALER, AS APPLICABLE.**

## Table of Contents

The Document must contain a table of contents showing, by subject matter, the location of the disclosures made in the Document. The table of contents must appear immediately following the Risk Disclosure Statement.

## Introduction

The forepart of the Document must include the full name, address of the main business office, main business telephone number and form of organization of the CTA. If the mailing address of the main business office is a post office box number or is not within the United States, its territories or possessions, the Document must state where the CTA's books and records will be kept and made available for inspection.

The date (month, day, and year) the CTA first intends to use the Document must also be included in the forepart. A CTA may not use a Document more than 12 months after the date of the Document.

For purposes of the Document, the forepart is considered to be the first few pages following the table of contents.

## Principals

The Document must identify, by name, each principal of the CTA. The Document must also clearly identify which principal(s) participate in making trading decisions for the account of a client or who supervise or select persons so engaged.

## Business Background

The Document must disclose the business background of the CTA and any principal of the CTA who will participate in making trading or operational decisions, or who supervises persons so engaged, for the five years preceding the date of the Document. Officers and directors are included among the principals whose business background is required.

The business background of the CTA should include the effective date of its NFA membership and CFTC registration(s). If the CTA was organized within the last five years, then its business background should include the date it organized. This section should also include a reference to the location in the Document where any of the required past performance disclosures for the CTA are presented. If the CTA has been previously registered under any other name, this information must also be included.

The business background for each required principal should include the full name and main business of each employer (employer's CFTC registration may be used, if applicable), the period of each employment (i.e., in month and year format), the principal's functions while so employed, and the principal's active CFTC registration and principal listing dates (month, day, and year). All gaps in employment must be explained. This section should also include a reference to the location in the Document where any of the required past performance disclosures for the principal is presented.

**Additional NFA References:**

- [NFA Notice to Members: I-10-12](#): NFA provides guidance for disclosure of business background information by commodity pool operators and commodity trading advisors

**The Futures Commission Merchant and/or Retail Foreign Exchange Dealer**

If the CTA requires clients to maintain their accounts at a specific FCM and/or RFED, the CTA must disclose the name of that FCM/RFED in the Document. Otherwise, the Document must state that clients are free to choose the FCM and/or RFED with which they will maintain their accounts. If certain conditions must be met before the CTA will approve a client's choice in FCM and/or RFED, then the criteria for such approval must be clearly disclosed.

**The Introducing Broker**

If the CTA requires clients to have their accounts introduced by a specific introducing broker (IB), the name of the IB must be disclosed. Otherwise, the Document must state that clients are free to choose an IB, if an IB will be used. If the CTA does not want clients using any IB, this must be clearly stated. If a required IB or affiliated IB is guaranteed by a particular FCM and/or RFED, the guaranteeing FCM/RFED is in fact a required FCM/RFED (see CFTC Regulation 1.57(a)(1)) and all appropriate disclosures must be made for that FCM/RFED as well as the IB. If certain conditions must be met before the CTA will approve a client's choice in an IB, then the criteria for such approval must be clearly disclosed.

**Other Forex Counterparties**

If the CTA requires clients to maintain their account at a specific counterparty not registered as an FCM or RFED, the CTA must disclose the name of that counterparty in the Document. Other eligible counterparties are specified under Section 2(c)(2)(B)(i)(II) of the CEA and include U.S. financial institutions, certain FCM affiliates, and financial holding companies as defined under the Bank Holding Company Act of 1956. If certain conditions must be met before the CTA will approve a client's choice in forex counterparty, then the criteria for such approval must be clearly disclosed.

**Litigation**

The Document must disclose any material administrative, civil or criminal action, whether *pending* or *concluded*, within five years preceding the date of the Document, against any of the following

persons (a concluded action that resulted in an adjudication on the merits in favor of such person need not be disclosed):

- The CTA or any of its principals;
- Any FCM or RFED with which the client will be required to maintain its commodity interest account; and
- Any IB through which the client will be required to introduce its account to an FCM and/or RFED.

With respect to an FCM, RFED or IB, an action is material if:

- The action would be required to be disclosed in the notes to the FCM's, RFED's or IB's financial statements prepared pursuant to generally accepted accounting principles;
- The action was brought by the CFTC (unless the action was concluded, did not result in civil monetary penalties exceeding \$50,000 and did not involve allegations of fraud or other willful misconduct); or
- The action was brought by any other federal or state regulatory agency, a non-United States regulatory agency or a self-regulatory organization and involved allegations of fraud or other willful misconduct.

Where a matter is material, its description must include a recital of the nature of the action, the parties involved, the allegations or findings, the status of the action and the size of any fine or settlement.

### The Trading Program

The Document must include a description of the trading program. The description must include the types of commodity interests and other interests that the CTA intends to trade and any restrictions (e.g., minimum account size) or limitations on such trading established by the CTA or otherwise.

In addition, if the CTA has chosen a method for how FCMs and/or RFEDs carrying accounts it manages treat offsetting positions other than to close out all offsetting positions or to close out offsetting positions on an other than a first-in, first-out basis, then the description of the trading program must disclose the method.

### Principal Risk Factors

The Document must include a discussion of the principal risk factors of the trading program. The discussion must include, without limitation, the risks relating to volatility, leverage, liquidity, and counterparty creditworthiness, as applicable to the trading program and types of transactions and investment activity expected to be engaged in pursuant to the trading program (including retail forex transactions, if any). The CTA should examine all aspects of the trading program that may require disclosure of additional risk factors such as day trading, electronic trading issues, concentration risk, the use of options, the use of stops, foreign exchange risk, SFPs, forwards,

EFPs, forex, swaps, underlying or spot virtual currency, virtual currency derivatives, etc.

### ***Additional Disclosures for Virtual Currency***

#### **Virtual Currency Disclosure Requirements for Trading Programs that engage in Virtual Currency Derivatives**

NFA does not prescribe standardized disclosure language for CTAs engaging in virtual currency derivatives (i.e., futures, options and cleared swaps) transactions. However, the Document must address the number of unique features of virtual currency derivatives which may include:

- Virtual currency derivatives may experience significant price volatility and the initial margin for virtual currency derivatives may be set as a percentage of the value of a particular contract, which means that margin requirements for long positions can increase if the price of the contract rises;
- Some FCMs may pose restrictions on customer trading activity in virtual currency derivatives, such as requiring additional margin, imposing position limits, prohibiting naked shorting or prohibiting give-in transactions; and
- The rules of certain designated contract markets impose trading halts that may restrict a market participant's ability to exit a position during a period of high volatility.

The risks associated with the unique features of engaging in virtual currency derivatives should be disclosed and the impact these risks may have on the trading program's performance should be explained.

#### **Virtual Currency Disclosure Requirements for Trading Programs that engage in Underlying or Spot Virtual Currency Transactions**

NFA does not prescribe standardized disclosure language for CTAs engaging in underlying or spot virtual currency transactions. However, the Document must address any of the following areas that are applicable to its offered program(s):

- Unique Features of Virtual Currencies
- Price Volatility
- Valuation and Liquidity
- Cybersecurity
- Opaque Spot Market
- Virtual Currency Exchanges, Intermediaries and Custodians
- Regulatory Landscape
- Technology
- Transaction Fees

In addition, the Document must prominently display the following language:

**[NAME OF NFA MEMBER] IS A MEMBER OF NFA AND IS SUBJECT TO NFA'S REGULATORY OVERSIGHT AND EXAMINATIONS. [NAME OF NFA MEMBER] HAS ENGAGED OR MAY ENGAGE IN UNDERLYING OR SPOT VIRTUAL CURRENCY TRANSACTIONS IN A MANAGED ACCOUNT PROGRAM. ALTHOUGH NFA HAS JURISDICTION OVER [NAME OF NFA MEMBER] AND ITS MANAGED ACCOUNT PROGRAM, YOU SHOULD BE AWARE THAT NFA DOES NOT HAVE REGULATORY OVERSIGHT AUTHORITY FOR UNDERLYING OR SPOT MARKET VIRTUAL CURRENCY PRODUCTS OR TRANSACTIONS OR VIRTUAL CURRENCY EXCHANGES, CUSTODIANS OR MARKETS. YOU SHOULD ALSO BE AWARE THAT GIVEN CERTAIN MATERIAL CHARACTERISTICS OF THESE PRODUCTS, INCLUDING LACK OF A CENTRALIZED PRICING SOURCE AND THE OPAQUE NATURE OF THE VIRTUAL CURRENCY MARKET, THERE CURRENTLY IS NO SOUND OR ACCEPTABLE PRACTICE FOR NFA TO ADEQUATELY VERIFY THE OWNERSHIP AND CONTROL OF A VIRTUAL CURRENCY OR THE VALUATION ATTRIBUTED TO A VIRTUAL CURRENCY BY [NAME OF NFA MEMBER].**

**Additional NFA References:**

- [NFA Interpretive Notice 9073](#): Disclosure Requirements for NFA Members Engaging in Virtual Currency Activities

**Fees**

The Document must include a complete description of each fee the CTA will charge.

- Wherever possible, the Document must specify the dollar amount of each fee. If fees may be negotiated on a case by case basis, the Document should provide a range of the highest and lowest fees that may be charged.
- Wherever any portion of the commission paid to the FCM/RFED or IB is paid to the CTA or its principals, the amount that is to be paid (either a dollar figure or a percentage of the commission) must be disclosed.
- Wherever any portion of the spread on forex transactions paid to the FCM/RFED is paid to the CTA or its principals, the amount that is to be paid (either a dollar figure or pips of the spread) must be disclosed.
- Where any fee is determined by reference to a base amount including, but not limited to, "net assets," "gross profits," "net profits," "net gains," "pips," "bid-asked spread," "account value," or "net liquidating value," the Document must explain how such base amount will be calculated.
- Where any fee is based on the difference between bid and asked prices on retail forex or swap transactions, the Document must explain how such fee will be calculated.
- Where any fee is based on an increase in the value of the client's commodity interest account including, but not limited to, "gross profits," "net new profits" or "net gains," the

Document must specify how that increase is calculated, the period of time during which the increase is calculated, the fee to be charged at the end of that period and the value of the account at which payment of the fee commences. The description must discuss whether both realized and unrealized profits are included and whether interest of funds held in T-bills and other liquid investments will be included, if applicable.

### ***Fees Based on Nominal Account Size***

The nominal account size (Nominal Account Size) is the total account size established by the customer and the CTA upon which the CTA will base its trading decisions. The Nominal Account Size may be different than the actual funds on deposit in the client's account. When the Nominal Account Size is different than the actual funds on deposit in the client's account, the account is considered to be notionally funded. Notional Funds represent the difference between Nominal Account Size and actual funds in a client's account.

CTAs who assess fees based on the Nominal Account Size must fully describe how the fee will be calculated. Additionally, the CTA must disclose the fee as a percentage of the actual funds on deposit. For example, the CTA should disclose that a 2% fee is equivalent to 4% of actual funds on an account that is 50% funded. The CTA may choose to reflect this information using the following formula:

$$(\text{Nominal Account Size}/\text{actual funds}) * n = a$$

where "n" is the percentage fee based on the Nominal Account Size and "a" is the percentage based on actual funds.

### ***Additional Disclosures for Partially-Funded***

CTAs must provide the following information to non-QEP clients with partially-funded accounts:

1. A statement that partial funding increases leverage and may result in more frequent and larger margin calls;
2. A statement that partial funding increases the fees and commissions as a percentage of actual funds but does not increase the dollar amount of those fees; and
3. A description, example or formula of the effect of partial funding on rate of return and drawdown percentages.

A CTA may provide the effect of partial funding on rate of return and drawdown percentages by example using a simple matrix showing the effect of partial funding at different funding levels as illustrated by the following matrix:

## Rates of Return Based On Various Funding Levels

Actual Rate of Return	Level of Funding			
	100.00%	75.00%	66.67%	50.00%
-40.00%	-40.00%	-53.33%	-60.00%	-80.00%
-30.00%	-30.00%	-40.00%	-45.00%	-60.00%
-20.00%	-20.00%	-26.67%	-30.00%	-40.00%
-10.00%	-10.00%	-13.33%	-15.00%	-20.00%
0.00%	0.00%	0.00%	0.00%	0.00%
10.00%	10.00%	13.33%	15.00%	20.00%
20.00%	20.00%	26.67%	30.00%	40.00%
30.00%	30.00%	40.00%	45.00%	60.00%
40.00%	40.00%	53.33%	60.00%	80.00%

In the alternative, the CTA may provide the client with the following formula, which converts rates of return percentages based on the Nominal Account Size to rates of return percentages based on the partial funding level:

$$(\text{Nominal Account Size} / \text{actual funds}) * n = a$$

*where n is the rates of return percentage based on the Nominal Account Size and a is the rates of return percentage based on actual funds*

The disclosures regarding partially-funded accounts may be included as part of the CTA's Document or client agreement. The CTA may also choose to provide this information to a client in a separate document provided that the client receives this information prior to the first trade being placed in the client's account.

### **Additional NFA References:**

- [NFA Interpretive Notice 9054](#): Compliance Rule 2-34: CTA Performance Reporting and Disclosures

### Trading for Its Own Account

If the CTA or any of its principals trades or intends to trade commodity interests for its own account, the Document must disclose whether clients will be permitted to inspect the records of such person's trades and any written policies related to such trading.

### Conflicts of Interest

The Document must include a full description of any actual or potential conflicts of interest regarding any aspect of the trading program on the part of:

- The CTA;
- Any FCM and/or RFED with which the client will be required to maintain its commodity interest account;

- Any IB through which the client will be required to introduce its account to an FCM and/or RFED;
- Any principal of the above; and
- Any other material conflict involving any aspect of the trading program.

This includes a discussion of the conflicts of interest arising from typical incentive fee arrangements and from the trading of proprietary accounts. If a CTA charges a fee that is based on a percentage of profits, then the Document must disclose that this fee may encourage a CTA to take excessive risks to earn an outsized incentive fee and that such risk-taking may place the interests of the CTA in conflict with the interests of its clients. If the CTA or any of its principals trades or intends to trade commodity interests for its own account, then the Document must include a discussion of the specific conflicts of interest that arise from the trading of proprietary accounts. Specifically, the discussion should disclose that there is an incentive to give preferential treatment to proprietary accounts and to trade proprietary accounts ahead of or against client accounts.

The description of such conflicts must include any arrangement whereby the CTA or any principal may benefit, directly or indirectly, from the maintenance of the client's account with an FCM and/or RFED, and/or from the maintenance of the client's swap positions with a swap dealer, or from the introduction of such account through an IB (such as payment for order flow or soft dollar arrangements). Some common conflicts include:

1. If the CTA (or principal thereof) receives per-trade compensation, the Document must disclose that the CTA has an incentive to overtrade the account to increase his compensation. This statement is required even if the CTA or its principal receives commission rebates in their capacity as an IB or AP.
2. If the CTA (or a principal thereof) is an AP of the FCM/RFED that clients are required to use, the Document must disclose that the CTA has an incentive to trade the account actively to increase the compensation that his employer will receive.
3. If the CTA (or a principal thereof) receives office space or other soft dollar benefits from an FCM, RFED, or IB (e.g. charts, analysis software, etc.), the Document must disclose that this arrangement may dispose the CTA to trade more actively.

**Additional NFA References:**

- [NFA Notice to Members: I-07-25](#): Disclosure of Conflicts of Interest by CPOs and CTAs
- [NFA Notice to Members: I-11-01](#): NFA provides guidance for disclosure of conflicts of interests arising from Typical Incentive Fee Arrangements by commodity pool operators and commodity trading advisors

**Required Performance Disclosures**

With the exception of proprietary trading results, the CTA must disclose the actual performance

of all accounts directed by the CTA and by each of its trading principals. Trading principals are any principals of the CTA who participate in making trading decisions for the CTA's clients or who supervise or select persons so engaged.

**Note:** If the CTA or trading principal had power of attorney (POA), even if the client had input into the trading or the POA was not exercised, the performance must be disclosed.

All performance information presented in the Document must be current as of a date not more than three months preceding the date of the Document. All required performance information must be presented for the most recent five calendar years and year-to-date, or for the life of the trading program or account if in existence less than five years. If the CTA or its trading principals previously have not directed any accounts, the CTA must prominently disclose this fact with one of the following statements, as applicable:

1. **THIS TRADING ADVISOR PREVIOUSLY HAS NOT DIRECTED ANY ACCOUNTS;** or
2. **NONE OF THE TRADING PRINCIPALS OF THIS TRADING ADVISOR HAS PREVIOUSLY DIRECTED ANY ACCOUNTS;** or
3. **NEITHER THIS TRADING ADVISOR NOR ANY OF ITS TRADING PRINCIPALS HAVE PREVIOUSLY DIRECTED ANY ACCOUNTS.**

If the CTA is a sole proprietorship, reference to its trading principals need not be included in the prescribed statement.

### ***Performance of the CTA and its Trading Principal(s)***

The Document must include the past performance information for all accounts directed by the CTA and its trading principals for the last five calendar years and the current year-to-date. The disclosure of past performance must include the following information:

- The name of the CTA or other person trading the account;
- The name of the trading program;
- The date (month, day, and year) on which the CTA or other person trading the account began trading client accounts;
- The date (month, day, and year) when client funds began being traded pursuant to the trading program;
- The number of accounts directed by the CTA or other person trading the account pursuant to the trading program, as of the date of the Document;
- The total assets under the management of the CTA or other person trading the account, as of the date of the Document;
- The total assets traded pursuant to the trading program specified, as of the date of the Document;
- The largest monthly draw-down experienced by the trading program during the most recent five calendar years and year-to-date expressed as a percentage, as well as the month and year of the draw-down;

- The worst peak-to-valley draw-down experienced by the trading program during the most recent five calendar years and year-to-date, as well as the period the draw-down occurred;
  - The period begins with the peak month and year and ends with the valley month and year.
- A definition of the term draw-down must be included in the capsule that is consistent with [CFTC Regulation 4.10\(k\)](#); and
- Each page that includes past performance presentation must include the following statement, prominently displayed: **PAST PERFORMANCE IS NOT NECESSARILY INDICATIVE OF FUTURE RESULTS.**

Unless such presentation would be misleading, the performance of accounts traded pursuant to the same trading program should generally have the same pattern of trading, have materially the same rates of return (ROR) and be presented in the same composite. All material differences among accounts included in the composite must be disclosed. This may include, but is not limited to, commission rates charged and differences in management and incentive fees. Accounts that differ materially with respect to ROR may not be presented in the same composite. Accounts that have similar RORs but are traded differently are not considered to be in the same trading program and may not be included in the same composite performance capsule.

All performance information must be supported by the following amounts, calculated on an accrual basis of accounting in accordance with generally accepted accounting principles:

- The Nominal Account Size is the beginning net asset value (BNAV) for the period, which shall represent the previous period's ending net asset value (ENAV), plus Notional Funds;
- All additions, whether voluntary or involuntary, during the period;
- All withdrawals and redemptions, whether voluntary or involuntary, during the period;
- The net performance for the period, which shall represent the change in the net asset value net of additions, withdrawals, redemptions, fees and expenses;
- The ENAV for the period, which shall represent the BNAV plus or minus additions, withdrawals and redemptions, and net performance; and
- The ROR for the period, computed on a compounded monthly basis.
  - **Note:** See the [Exception to Compounded Returns](#) section below.

### ***Performance of the Offered Trading Program***

The performance of the offered trading program must be identified as such and separately presented first.

The past performance of the offered trading program must include monthly rates of return (ROR) for the five most recent calendar years and year-to-date, either in a numerical table or in a bar graph, and annual and year-to-date RORs for the same time period. The disclosure of the past performance of the offered trading program must also include the following additional information:

- The number of accounts traded pursuant to the offered trading program that were opened and closed during the period with positive net lifetime performance as of the date the accounts were closed.
- The range of returns experienced by these accounts.
- The number of accounts traded pursuant to the offered trading program that were opened and closed during the period with negative net lifetime performance as of the date the accounts were closed.
- The range of returns experienced by these accounts.

**Note:** The net lifetime rate of return for accounts that were opened and closed during the period shall be calculated as the compounded product of the monthly rates of return for each month the account is open. See the [Exception to Compounded Returns](#) section below.

### ***Computing Rate of Return***

ROR is the net performance for a period divided by the Nominal Account Size for that period. Using this method, however, can sometimes result in distortions in computed ROR under certain circumstances. For example, distortions can result when additions and/or withdrawals are large and are made early in the reporting period. In those instances when using the above method would result in RORs that are inaccurate, the following alternate methods are acceptable provided that the resultant RORs are not misleading.

***Time-weighting.*** In the time-weighting method, the Nominal Account Size is adjusted upward by time-weighted additions and downward by time-weighted withdrawals. For additions, the time-weighting represents the percentage of the month for which funds were available, while for withdrawals the time-weighting represents the percentage of the month for which funds were unavailable. For example, if the actual Nominal Account Size was \$1,000,000 and an additional \$1,200,000 was deposited on the 10th of the month, and \$600,000 was withdrawn on the 20th of the month, the Nominal Account Size would be adjusted upward by \$800,000 (because the \$1,200,000 added was available for two-thirds of the month) and downward by \$200,000 (because the \$600,000 withdrawn was unavailable for one-third of the month). Therefore, the adjusted Nominal Account Size would be \$1,600,000, a 60% increase over the actual Nominal Account Size. Thus, if the net performance for the month equaled \$100,000, the ROR would be 6.25% instead of the 10% that would have been implied using the actual Nominal Account Size.

***Compounded ROR.*** In this method, the ROR is calculated for each subperiod between additions/withdrawals (as if each such subperiod were itself an entire month). As the name implies, the compounded ROR for the entire month would be equal to the compounded return for the subperiod. For example, assume a \$1,000,000 starting equity and the following subperiod returns and additions/withdrawals:

	Subperiod Starting Equity	Subperiod Percent Return	Subperiod Profit/Loss	Addition/Withdrawal
Month Start	1,000,000	+ 8.0	80,000	+200,000
After first addition/withdrawal	1,280,000	+12.0	153,600	+400,000
After second addition/withdrawal	1,833,600	- 10.0	-183,360	- 600,000
After third addition/withdrawal	1,050,240	+20.0	210,048	0
Month end	1,260,288			

In this example, the compounded ROR would be equal to  $(1.08 \times 1.12 \times 0.9 \times 1.2) - 1 = 0.3064 = 30.64\%$

The compounded ROR method will precisely reflect the return realized by accounts that did not experience any additions or withdrawals during the month, given the following set of assumptions: (1) in actual trading, the CTA adjusts the trading leverage daily to account for changes in equity, and (2) the subperiods in the compounded ROR calculation are days.

**Only Accounts Traded.** The only accounts traded (OAT) method calculates the monthly ROR in the conventional manner of dividing the net performance by the Nominal Account Size, except that accounts that traded for only part of the month or witnessed “material” additions/withdrawals during the months would be excluded from the calculations. By excluding these accounts, the calculated figure will reflect the ROR that would have been realized by an investor with an account that was active at the start of the month and held until the end of the month without any additions or withdrawals. In effect, by removing the influence of intramonth additions/withdrawals, the OAT method yields an undistorted actual return figure.

Each of the above methods of computing ROR is acceptable if the resultant RORs are not misleading. The registrant is responsible for the accuracy of any method chosen to address the impact of additions and withdrawals upon ROR. Whichever method is selected must be consistently applied from period to period. The registrant may not depart from the chosen method unless performance would otherwise not be properly represented. The method selected for computing ROR must be disclosed in the notes to the performance capsule. See NFA Interpretive Notice 9054 referenced below for the conditions that must be met in order for the OAT method to be used.

### **Computing ROR for Notionally-Funded Accounts**

When the Nominal Account Size is different than the actual funds on deposit in the client’s account, the account is considered to be notionally funded. Nominal Account Size is the actual funds on deposit plus notional funds. CTAs must calculate ROR using the Nominal Account Size. If the actual funds in the account differ from the Nominal Account Size, the CTA must maintain written confirmation of the Nominal Account Size agreed to by the client and the CTA. The written confirmation must also include an explanation of how cash additions, cash withdrawals, and net performance will affect the Nominal Account Size.

**Additional NFA References:**

- [NFA Interpretive Notice 9054](#): Compliance Rule 2-34: CTA Performance Reporting and Disclosures

**Annual and Year-to-Date Rates of Return**

Annual RORs should be calculated on a compounded monthly basis. This can be done using the value added monthly index (VAMI) method.

The VAMI method generally assumes an initial investment of \$1,000 and shows how such an investment would have fared over a certain period of time. In order to calculate annual ROR using VAMI, you must first calculate the value of the \$1,000 investment at the end of each subperiod or month based upon the monthly RORs computed in accordance with the above mentioned methods. The calculation would be as follows:

***In the first month of the period:***

VAMI for month =  $(1 + \text{ROR for month}) \times 1000$

***For all subsequent months:***

VAMI for month =  $(1 + \text{ROR for month}) \times \text{VAMI for prior month}$

***Annual ROR would then be calculated as follows:***

Annual ROR =  $(\text{year-end VAMI} - \$1,000) \text{ divided by } \$1,000$ .

When calculating the annual RORs for subsequent years, the value of the initial investment should be the prior year-end VAMI.

**Note:** See the [Exception to Compounded Returns](#) section below.

**Computing Monthly and Peak-to-Valley Draw-Downs**

Draw-down means losses experienced by a trading program over a specified period.

Worst monthly draw-down is simply the trading program's worst monthly percentage ROR.

Worst peak-to-valley draw-down is the greatest cumulative percentage decline in month-end net asset value (NAV) due to losses sustained by the accounts during any period in which the initial month-end NAV is not equaled or exceeded by a subsequent month-end NAV. In order to calculate this amount, the firm should calculate a continuous VAMI for the time period presented. Using this method the firm should determine the first month in which the VAMI is not followed by a VAMI that is greater than or equal to that month's VAMI. This would be the first peak. The next peak would be the next month in which the VAMI is greater than the previous peak's VAMI and is followed by a lower VAMI. Once all the peaks have been identified, determine all the months that have the lowest VAMIs during a period between two peaks. These would be the valleys. Then determine the percentage change between each peak and valley using the following calculation:

$$(\text{Valley VAMI} - \text{Peak VAMI}) / \text{Peak VAMI}$$

The worst peak-to-valley draw-down will be the largest percentage change from a peak to a valley.

The peak month and the valley month should be reported in the capsule. A peak-to-valley draw-down that began prior to the beginning of the most recent five calendar years is deemed to have occurred during such five calendar year period.

**Note:** See the [Exception to Compounded Returns](#) section below

***Exception to Compounded Returns***

CFTC Regulation 4.35 requires that the annual ROR, the peak-to-valley draw-down percentage, and the net lifetime ROR be computed on a compounded monthly basis. However, for programs where net performance does not affect the Nominal Account Size, and therefore profits are not reinvested, the CTA must sum the monthly performance returns instead of compounding them when calculating the annual return, the peak-to-valley draw-down percentage, and the net lifetime ROR.

## Sample Performance Capsule

Below is a sample performance capsule for managed accounts or trading programs:

Name of CTA (or person trading the account):	Sample CTA
Name of Trading Program:	Offered Trading Program
Inception of Trading by CTA (or person trading the account):	January 1, 2011
Inception of Trading in Offered Program:	February 1, 2012
# of accounts currently traded pursuant to the program:	145
Total nominal assets under management:	\$30,673,000
Total nominal assets traded pursuant to the program:	\$21,746,000
Largest monthly draw-down:	-16.87% / December 2015
Worst peak-to-valley draw-down:	-31.60% / May2015 – April 2016
Number of profitable accounts that have opened and closed:	35
Range of returns experienced by profitable accounts:	1.12% – 20.33%
Number of losing accounts that have opened and closed:	23
Range of returns experienced by unprofitable accounts:	-0.43% – -24.57

### PAST PERFORMANCE IS NOT NECESSARILY INDICATIVE OF FUTURE RESULTS

Month	Rate of Return					
	2019	2018	2017	2016	2015	2014
January	3.08%	2.43%	1.54%	-0.67%	-4.45%	0.69%
February	-0.36%	3.11%	-0.89%	-3.98%	0.71%	-0.82%
March	-1.54%	-0.23%	1.15%	1.82%	-0.64%	0.55%
April	-0.19%	1.16%	0.97%	-10.58%	1.03%	1.06%
May	3.60%	1.54%	1.21%	3.82%	6.05%	0.90%
June	-6.72%	0.32%	0.51%	-0.23%	-2.51%	1.12%
July	4.79%	1.28%	0.11%	1.16%	0.32%	1.01%
August	-3.20%	1.12%	-0.14%	1.54%	0.75%	0.93%
September	-1.28%	2.09%	0.56%	0.33%	-1.25%	0.99%
October	3.67%	1.34%	0.23%	5.61%	-4.65%	1.01%
November	-2.91%	1.57%	1.11%	1.22%	2.12%	1.19%
December		1.04%	0.32%	-1.87%	-16.87%	1.14%
Year	-1.69%	18.07%	6.86%	-2.76%	-19.31%	10.20%

Draw-down: Losses experienced by the trading program over a specified period.

(A bar chart may be substituted for the numerical table. The bar chart, if used, must show percentage rate of return on the vertical axis and one-month increments on the horizontal axis. It must be scaled in such a way as to clearly show month-to-month differences in rate of return and must separately display numerical percentage annual rates of return for the period covered by the bar graph.)

## Material Information

A CTA is obligated to disclose all material information to existing or prospective clients even if such information is not specifically required to be disclosed pursuant to CFTC or NFA rules.

## Supplemental Information

If any information, other than that required by CFTC regulations, the antifraud provisions of the Commodity Exchange Act (the Act), other federal or state laws or regulations, rules of a self-regulatory agency or laws of a non-United States jurisdiction, is provided, the information:

- May not be misleading in content or presentation or inconsistent with required disclosures;
- Is subject to the antifraud provisions of the Act, CFTC rules and NFA rules regarding the use of promotional material;
- May include supplemental non-performance information relating to a required disclosure with the related required disclosure, provided that it is included after the related required disclosure; and
- May include any other supplemental non-performance information as long as this information is presented after all required disclosures.

## ***Proprietary Trading Results***

Proprietary trading results means the performance of any pool or account in which 50% or more of the beneficial interest is owned or controlled by: (1) the CTA or any principal thereof, (2) an affiliate or family member of the CTA, or (3) any person providing services to the account.

Proprietary trading results may not be included in a Document unless it is ***clearly labeled*** as "Proprietary" and set forth separately after all required and non-required disclosures, together with a discussion of any differences between such performance and the performance of the offered trading program, including, but not limited to, differences in costs, leverage and trading methodology.

Pro-forma adjustments must be made for fees and commissions and prepared on a conservative basis. Notes to the table should include complete information on the adjustments made and the performance must be ***clearly labeled*** as "Pro-Forma".

## ***Hypothetical Results***

Hypothetical performance results are any performance results derived with the benefit of hindsight. NFA generally discourages the use of hypothetical performance results. However, NFA also recognizes that in certain circumstances the presentation of these results may have some limited utility. Hypothetical or simulated results may not be shown for any program for which the CTA has three months of actual trading results trading, whether for customer or proprietary accounts. In situations where a CTA elects to present hypothetical performance results for a trading program which has less than three months of actual performance, the CTA must adhere to the following requirements in order to prevent the over-emphasis of the hypothetical performance results:

- Hypothetical trading results must be **clearly labeled** as "Hypothetical".
- The hypothetical trading results must appear as the last disclosure in the Document.
- If the CTA has less than one year of experience in directing customer accounts, past performance results must be shown for any proprietary trading over the last five years or over the entire performance history if less than five years.
- Any hypothetical results must include a description of all material assumptions that were made in preparing the hypothetical results. At a minimum, this description must cover points such as initial investment amount, reinvestment or distribution of profits, commission charges, management and incentive fees, and a general discussion of how performance was calculated (e.g., based on settlement prices, real time pricing). Any disclosure which is necessary to place the hypothetical results in their proper context must be made. This may go well beyond the prescribed disclaimer.
- The following disclaimer must be prominently displayed. If the person for whom the hypothetical results are being shown has less than 12 months of actual results, then the disclaimer must immediately precede the hypothetical results, otherwise it may be displayed immediately following the results. If several pages of hypothetical results are shown, the disclaimer may need to be included more than once.

**HYPOTHETICAL PERFORMANCE RESULTS HAVE MANY INHERENT LIMITATIONS, SOME OF WHICH ARE DESCRIBED BELOW. NO REPRESENTATION IS BEING MADE THAT ANY ACCOUNT WILL OR IS LIKELY TO ACHIEVE PROFITS OR LOSSES SIMILAR TO THOSE SHOWN. IN FACT, THERE ARE FREQUENTLY SHARP DIFFERENCES BETWEEN HYPOTHETICAL PERFORMANCE RESULTS AND THE ACTUAL RESULTS SUBSEQUENTLY ACHIEVED BY ANY PARTICULAR TRADING PROGRAM.**

**ONE OF THE LIMITATIONS OF HYPOTHETICAL PERFORMANCE RESULTS IS THAT THEY ARE GENERALLY PREPARED WITH THE BENEFIT OF HINDSIGHT. IN ADDITION, HYPOTHETICAL TRADING DOES NOT INVOLVE FINANCIAL RISK, AND NO HYPOTHETICAL TRADING RECORD CAN COMPLETELY ACCOUNT FOR THE IMPACT OF FINANCIAL RISK IN ACTUAL TRADING. FOR EXAMPLE, THE ABILITY TO WITHSTAND LOSSES OR TO ADHERE TO A PARTICULAR TRADING PROGRAM IN SPITE OF TRADING LOSSES ARE MATERIAL POINTS WHICH CAN ALSO ADVERSELY AFFECT ACTUAL TRADING RESULTS. THERE ARE NUMEROUS OTHER FACTORS RELATED TO THE MARKETS IN GENERAL OR TO THE IMPLEMENTATION OF ANY SPECIFIC TRADING PROGRAM WHICH CANNOT BE FULLY ACCOUNTED FOR IN THE PREPARATION OF HYPOTHETICAL PERFORMANCE RESULTS AND ALL OF WHICH CAN ADVERSELY AFFECT ACTUAL TRADING RESULTS.**

- If the CTA for whom the hypothetical results are shown has either less than one year of experience in directing customer accounts or trading proprietary accounts, then the disclaimer must also contain the following statement:

**(THE CTA) HAS HAD LITTLE OR NO EXPERIENCE IN TRADING ACTUAL**

**ACCOUNTS FOR ITSELF OR FOR CUSTOMERS. BECAUSE THERE ARE NO ACTUAL TRADING RESULTS TO COMPARE TO THE HYPOTHETICAL PERFORMANCE RESULTS, CUSTOMERS SHOULD BE PARTICULARLY WARY OF PLACING UNDUE RELIANCE ON THESE HYPOTHETICAL PERFORMANCE RESULTS.**

- If a CTA includes or makes reference to a hypothetical composite performance record showing what a multi-advisor account portfolio or pool could have achieved in the past if assets had been allocated among particular trading advisors, the Document must include the following disclaimer:

**THIS COMPOSITE PERFORMANCE RECORD IS HYPOTHETICAL AND THESE TRADING ADVISORS HAVE NOT TRADED TOGETHER IN THE MANNER SHOWN IN THE COMPOSITE. HYPOTHETICAL PERFORMANCE RESULTS HAVE MANY INHERENT LIMITATIONS, SOME OF WHICH ARE DESCRIBED BELOW. NO REPRESENTATION IS BEING MADE THAT ANY MULTI-ADVISOR MANAGED ACCOUNT OR POOL WILL OR IS LIKELY TO ACHIEVE A COMPOSITE PERFORMANCE RECORD SIMILAR TO THAT SHOWN. IN FACT, THERE ARE FREQUENTLY SHARP DIFFERENCES BETWEEN A HYPOTHETICAL COMPOSITE PERFORMANCE RECORD AND THE ACTUAL RECORD SUBSEQUENTLY ACHIEVED.**

**ONE OF THE LIMITATIONS OF A HYPOTHETICAL COMPOSITE PERFORMANCE RECORD IS THAT DECISIONS RELATING TO THE SELECTION OF TRADING ADVISORS AND THE ALLOCATION OF ASSETS AMONG THOSE TRADING ADVISORS WERE MADE WITH THE BENEFIT OF HINDSIGHT BASED UPON THE HISTORICAL RATES OF RETURN OF THE SELECTED TRADING ADVISORS. THEREFORE, COMPOSITE PERFORMANCE RECORDS INVARIABLY SHOW POSITIVE RATES OF RETURN. ANOTHER INHERENT LIMITATION ON THESE RESULTS IS THAT THE ALLOCATION DECISIONS REFLECTED IN THE PERFORMANCE RECORD WERE NOT MADE UNDER ACTUAL MARKET CONDITIONS AND, THEREFORE, CANNOT COMPLETELY ACCOUNT FOR THE IMPACT OF FINANCIAL RISK IN ACTUAL TRADING. FURTHERMORE, THE COMPOSITE PERFORMANCE RECORD MAY BE DISTORTED BECAUSE THE ALLOCATION OF ASSETS CHANGES FROM TIME TO TIME AND THESE ADJUSTMENTS ARE NOT REFLECTED IN THE COMPOSITE.**

- If the CTA for whom the hypothetical results are shown has less than one year of experience allocating assets among particular trading advisors, then the disclaimer must also contain the following statement:

**(THE CTA) HAS HAD LITTLE OR NO EXPERIENCE ALLOCATING ASSETS AMONG PARTICULAR TRADING ADVISORS. BECAUSE THERE ARE NO ACTUAL ALLOCATIONS TO COMPARE TO THE PERFORMANCE RESULTS FROM THE HYPOTHETICAL ALLOCATIONS, CUSTOMERS SHOULD BE PARTICULARLY WARY OF PLACING UNDUE RELIANCE ON THESE RESULTS.**

**Additional NFA References:**

- [NFA Interpretive Notice 9025](#): Compliance Rule 2-29: Use of Promotional Material Containing Hypothetical Performance Results
- [NFA Interpretive Notice 9043](#): Compliance Rule 2-29: Use of Past or Projected Performance; Disclosing Conflicts of Interest for Security Futures Products

***Extracted Performance***

Extracted performance is when a CTA chooses only one component of its overall past trading results to highlight to customers. The use of extracted performance results is permitted only when a CTA's previous disclosure document designated the percentage of assets that would be committed toward that particular component of the overall trading program. For example, if the previous disclosure document stated that 25% of assets would be dedicated to trading financial futures contracts, and 25% were in fact dedicated to trading financial futures contracts, the CTA would be allowed to present the extracted performance of its financial futures trading based on the net asset values equal to 25% of the total net asset value. Extracted results must be ***clearly labeled*** as "Extracted" and must disclose in an equally prominent fashion the overall actual trading results.

**Additional NFA References:**

- [NFA Interpretive Notice 9025](#): Compliance Rule 2-29: Use of Promotional Material Containing Hypothetical Performance Results

## Filing Disclosure Documents and the Review Process

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NFA is responsible for reviewing all Documents, including for CTAs, privately offered commodity pools, and certain public commodity pools (i.e., those that are required to register their securities under the Securities Act of 1933). Prior to using a Document, a CTA must submit the Document to NFA and receive an acceptance letter from NFA confirming that the Document can be used to solicit.

All Documents must be filed through [NFA's Electronic Disclosure Document Filing System](#). NFA will not accept any Documents filed through any other mode (i.e., email, fax, or regular mail). Through this system, firms may track the status of their submissions online, in real-time, and have instantaneous access to NFA's comment and acceptance letters. Additionally, the system archives all correspondence, including filed Documents and NFA's comment or acceptance letters, creating an electronic document repository that is easily accessible to the CTA at any time. Firms will receive confirmation of receipt upon filing. Copies of all subsequent amendments or updated Documents must be submitted to NFA using the same procedures.

NFA's goal is to complete its initial review of a Document within 14 days of receipt. Once the review is complete, NFA will inform the CTA that the Document is accepted or deficient. If the Document is deemed deficient, the CTA is required to correct the deficiencies and re-submit the Document to NFA for review before it will be accepted. NFA's review is designed to ensure that Documents contain all required information and that such information is consistent with information on record with NFA. However, NFA's review process does not attempt to verify the accuracy of the information contained in the Document. The CTA is responsible for ensuring it does not use a Document that it knows to be materially inaccurate or incomplete. During the course of an NFA examination, a CTA's Document may be reviewed again, with the objective of ensuring consistency between the firm's business operations and the information included in the Document. As a result, the receipt of an acceptance letter upon filing a Document with NFA may not prevent NFA or the CFTC from raising issues with regard to the Document in the future.

A staff member will be assigned to review a Document within 24 hours after receipt. Contact NFA's Information Center at (312) 781-1410 or (800) 621-3570 to speak with a member of NFA's Disclosure Document Team concerning Document preparation and other issues relating to CPOs and CTAs.

### Subsequent Filings

A CTA who resubmits a previously reviewed or accepted Document must submit two copies: a "clean" copy and a "marked" copy of the Document that identifies all deletions and additions that have been made to the Document previously filed with NFA. This may be done, for example, by striking through deletions and underlining additions. A "clean" copy is the same Document, except without the deletions and additions highlighted. NFA will refuse to review and accept any subsequent filings that fail to include with it a copy of the Document identifying the additions and deletions.

## Instant Filings

Once a CTA has filed a Document with NFA that has been accepted, subsequent Documents may be eligible for instant filing, which results in an expedited review process. Instant filing is available for Documents that do not contain material changes from a previous filing that NFA has accepted.

To qualify for instant filing relief, the CTA must check the appropriate responses during the filing process by requesting instant filing treatment of the Document and indicating that there are no material changes from a previous filing that NFA has accepted. Furthermore, the CTA must highlight any changes from the previous filing in the body of the Document. NFA usually reviews Documents that qualify for instant filing within three business days. In those cases, NFA relies on the CTA firm's representation of the changes made to the Document and generally limits its review to only those changes the firm identifies.