

Compliance Rules

Part 2 - Rules Governing the Business Conduct of Members Registered with the Commission

RULE 2-29. COMMUNICATIONS WITH THE PUBLIC AND PROMOTIONAL MATERIAL.

[Adopted effective November 19, 1985. Effective date of Amendments: February 1, 1996; August 29, 1996; March 28, 2000; July 24, 2000; December 4, 2000; August 21, 2001; May 1, 2004; February 1, 2010; January 1, 2020 and April 22, 2020.]

(a) General Prohibition.

No FCM, IB, CPO or CTA Member or Associate shall make any communication related to its commodity interest business that:

- (1) operates as a fraud or deceit;
- (2) employs or is part of a high-pressure approach; or
- (3) makes any statement that commodity interest trading is appropriate for all persons.

(b) Content of Promotional Material.

No FCM, IB, CPO or CTA Member or Associate shall use any promotional material that:

- (1) is likely to deceive the public;
- (2) contains any material misstatement of fact or which the Member or Associate knows omits a fact if the omission makes the promotional material misleading;
- (3) mentions the possibility of profit unless accompanied by an equally prominent discussion of the risk of loss;
- (4) includes any reference to actual past trading profits without mentioning that past results are not necessarily indicative of future results;
- (5) includes any specific numerical or statistical information about the past performance of any actual accounts (including rate of return) unless:
 - (i) such information is and can be demonstrated to NFA to be representative of the actual performance for the same time period of all reasonably comparable accounts;
 - (ii) the performance is presented net of all commissions, fees and expenses (see Interpretive Notice 9003 for a limited exception); and
 - (iii) in the case of rate of return figures, such figures are calculated in a manner consistent with CFTC Regulation 4.25 for commodity pools and with CFTC Regulation 4.35, as modified by NFA Compliance Rule 2-34(a), for figures based on separate accounts; or
- (6) includes a testimonial that is not representative of all reasonably comparable accounts, does not prominently state that the testimonial is not indicative of future performance or success, and does not prominently state that it is a paid testimonial (if applicable).

(c) Hypothetical Results.

- (1) Any FCM, IB, CPO or CTA Member or Associate who uses promotional material which includes a measurement or description of or makes any reference to hypothetical performance results which could have been achieved had a particular trading system of the FCM, IB, CPO or CTA Member or Associate been employed in the past must include in the promotional material the following disclaimer prescribed by NFA's Board of Directors:

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 an FCM, IB, CPO or CTA Member or Associate 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 MEMBER) 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.

(2) Any FCM, IB, CPO or CTA Member or Associate who uses promotional material which includes a measurement or description of or makes any 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 must include in the promotional material the following disclaimer prescribed by NFA's Board of Directors instead of the disclaimer prescribed by Section (c) (1) of this Rule:

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 an FCM, IB, CPO or CTA Member or Associate has less than one year of experience allocating assets among particular trading advisors, then the disclaimer must also contain the following statement:

(THE MEMBER) 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 ALLOCATION, CUSTOMERS SHOULD BE PARTICULARLY WARY OF PLACING UNDUE RELIANCE ON THESE RESULTS.

(3) Any FCM, IB, CPO or CTA Member or Associate who uses promotional material which includes a measurement or description of or makes any reference to hypothetical performance results which could have been achieved had a particular trading system of the FCM, IB, CPO or CTA Member or Associate been employed in the past must include in the promotional material comparable information regarding:

(i) past performance results of all customer accounts directed by the FCM, IB, CPO or CTA Member pursuant to a power of attorney over at least the last five years or over the entire performance history if less than five years;

(ii) if the FCM, IB, CPO or CTA Member has less than one year of experience in directing customer accounts, past performance results of its proprietary trading over at least the last five years or over the entire performance history if less than five years.

(4) No FCM, IB, CPO or CTA Member or Associate may use promotional material which includes a measurement or description of or makes any reference to hypothetical performance results which could have been achieved had a particular trading system of the FCM, IB, CPO or CTA Member or Associate been employed in the past if the FCM, IB, CPO or CTA Member or Associate has three months of actual trading results for that system.

(5) Any FCM, IB, CPO or CTA Member or Associate utilizing promotional material containing hypothetical performance results must adhere to all the requirements contained in the Board's Interpretive Notice 9025 entitled *Compliance Rule 2-29: Use of Promotional Material Containing Hypothetical Performance Results*.

(6) The restrictions on the use of hypothetical trading results set forth in subsections (3) and (4), as well as related portions of Interpretive Notice 9025, shall not apply to promotional material directed exclusively to persons who meet the standards of a "Qualified Eligible Person" (QEP) under CFTC Regulation 4.7.

(7) For promotional material directed exclusively to QEPs that includes a measurement or description of or makes any reference to extracted performance (i.e., performance where a Member or Associate highlights one or more components of its overall past trading results), the Member may include either the disclaimer required under subsection (c)(1) or other language that appropriately describes the performance shown and the limitations of such performance.

(8) For promotional material directed exclusively to QEPs that includes a measurement or description of or makes reference to a 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 Member may include either the disclaimer required under subsection (c)(2) or other language that appropriately describes the performance shown and the limitations of such performance.

(d) Statements of Opinion.

Statements of opinion included in promotional material of an FCM, IB, CPO or CTA Member must be clearly identifiable as such and must have a reasonable basis in fact.

(e) Supervisory Requirements

Every FCM, IB, CPO and CTA Member shall adopt and enforce written procedures to supervise its Associates and employees for compliance with this Rule. Prior to its first use, all promotional material (as defined in paragraph (i) of this Rule) shall be reviewed and approved, in writing, by an officer, general partner, sole proprietor, branch office manager or other supervisory employee other than the individual who prepared such material (unless such material was prepared by

the only individual qualified to review and approve such material). If the Member is registered as a broker-dealer under Section 15(b)(11) of the Exchange Act and the promotional material specifically refers to security futures products, the individual reviewing and approving the promotional material must be a designated security futures principal.

(f) Recordkeeping.

Copies of all promotional material along with a record of the review and approval required under paragraph (e) of this Rule and supporting materials for any results described under paragraphs (b)(5)-(6) or (c) of this Rule must be maintained by each FCM, IB, CPO and CTA Member and be available for examination for the periods specified in CFTC Regulation 1.31, measured from the date of the last use. Each Member who uses promotional material of the types described in paragraph (b)(5)-(6) or (c) of this Rule shall demonstrate the basis for any reported results to NFA upon request.

(g) Filing with NFA.

The Compliance Director may require any Member for any FCM, IB, CPO and CTA specified period to file copies of all promotional material with NFA promptly after its first use.

(h) Audio and Video Promotional Material.

No FCM, IB, CPO or CTA Member shall use or directly benefit from any promotional material that uses audio or video content to make any specific trading recommendation or refer to or describe the extent of any profit obtained in the past or that can be achieved in the future unless the Member submits the advertisement to NFA's Promotional Material Review Team for its review and approval at least 10 days prior to first use or such shorter period as NFA may allow in particular circumstances.

(i) Definitions.

(1) For purposes of this Rule "promotional material" includes: (i) any text of a standardized oral presentation, or any communication for publication in any newspaper, magazine or similar medium, or for broadcast over television, radio, internet or other electronic medium, which is disseminated or directed to the public concerning a commodity interest account, agreement or transaction; (ii) any standardized form of report, letter, electronic communication (e.g., email, text message or instant message), circular, memorandum, presentation or publication that is disseminated or directed to the public concerning a commodity interest account, agreement or transaction; and (iii) any other written material disseminated or directed to the public for the purpose of soliciting a commodity interest account, agreement or transaction.

(2) "Commodity interest account, agreement or transaction" includes commodity interest accounts, transactions and orders, commodity pool participations, agreements to direct or guide trading in commodity interest accounts, and agreements and transactions involving the sale, through publications or otherwise, of non-personalized trading advice concerning commodity interests.

(j) Security Futures Products

In addition to the other requirements of this Rule, Members registered as broker-dealers under Section 15(b)(11) of the Exchange Act and their Associates shall not use any promotional material that specifically refers to security futures products unless the promotional material:

- (1) prominently identifies the Member;
- (2) includes the date that the material was first used;
- (3) provides contact information for obtaining a copy of the disclosure statement for security futures products;
- (4) states that security futures products are not suitable for all customers;
- (5) does not include any statement suggesting that security futures positions can be liquidated at any time;
- (6) does not include any cautionary statement, caveat, or disclaimer that is not legible, that attempts to disclaim responsibility for the content of the promotional material or the opinions expressed in the material, that is misleading, or that is otherwise inconsistent with the content of the material;
- (7) discloses the source of any statistical tables, charts, graphs, or other illustrations from a source other than the Member, unless the source of the information is otherwise obvious;
- (8) states that supporting documentation will be furnished upon request if it includes any claims, comparisons, recommendations, statistics or other technical data;
- (9) if soliciting for a trading program that will be managed by an FCM or IB or Associate of an FCM or IB, it includes the cumulative performance history of the Member's customers who have used the trading program; provided, however, that if the Member does not have customers who have traded the program through the Member, the promotional material must state that the trading program is unproven and must include all of the information required by section (c) of this Rule and the Interpretive Notice on the Use of Promotional Material Containing Hypothetical Performance Results (9025);
- (10) refers to past recommendations regarding security futures products, the underlying securities, or a derivative thereof only if it sets forth all recommendations as to the same type, kind, grade, or classification of securities (including security futures products and other security derivatives) made by the Member or Associate within the last year; which information must include the name of each security recommended with the date and nature of each recommendation (e.g., whether to buy or sell), the price at the time of the recommendation, the price at which or the price range within which the recommendation was to be acted upon, and the general market conditions during the period covered if the promotional material refers to past recommendations regarding security futures products, the underlying securities, or a derivative thereof;
- (11) includes current recommendations regarding security futures products only if: (i) the Member has a reasonable basis for the recommendation; (ii) the material discloses all material conflicts of interest created by the Member's or Associate's activities in the underlying security; and (iii) the material contains contact information for obtaining the list of prior recommendations described in subsection (10);
- (12) includes only a general description of the security futures products for which accounts, orders, trading authorization, or pool participations are being

solicited; the name of the Member; and contact information for obtaining a copy of the current disclosure statement for security futures products; provided, however, that this subsection does not apply if the promotional material is accompanied or preceded by the disclosure statement for security futures products; and

(13) has been submitted to NFA for review and approval at least ten days prior to first use if it reaches or is designed to reach a public audience through mass media (e.g., newspapers, magazines, radio, television, or other electronic media). This requirement does not apply to any promotional material in which the only reference to security futures products is contained in a listing of the Member's services.
