

ONPOINT / A legal update from Financial Services Group

CFTC Proposes Significant Disclosure Requirements with which CPOs and CTAs Operating under CFTC Rule 4.7 Will Have to Grapple

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The Commodity Futures Trading Commission (Commission or CFTC) voted to announce proposed rule changes on October 2, 2023, that would significantly change the disclosure requirements applicable to registered commodity pool operators (CPOs) of private funds¹ and registered commodity trading advisors (CTAs) to sophisticated clients.²

Of the most significant impact, the proposal would require CPOs that operate private funds under the operational exemption in CFTC Rule 4.7(b) to deliver to prospective pool participants disclosure documents containing many of the substantive disclosure that have historically only applied to “retail” commodity pools. The changes would have a similar effect on brochures provided to clients receiving CTA advice under CFTC Rule 4.7(c). These disclosures would need to cover information about a pool or advisory program’s trading strategies, principal risk factors, fees and expenses, associated conflicts of interest and past performance over certain time periods. These new requirements would entail different disclosures than the U.S. Securities and Exchange Commission (SEC) and other regulators require of—in many cases—the same asset managers.

If adopted as proposed, registered CPOs and CTAs may need to expend significant time and resources to address such disclosure requirements. Registered CPOs and CTAs operating under CFTC Rule 4.7 should examine the proposed requirements carefully (detailed in the **Appendix** to this *Dechert OnPoint*) and consider if the application of such requirements would create conflicts, duplicate existing requirements or present an opportunity for harmonization with other applicable regulatory regimes and how such CPOs and CTAs would need to change their compliance procedures to address the changes initially and comply with the changes on an ongoing basis.

If adopted, the new disclosure requirements would mark a significant paring back of the operational relief available to registered CPOs and CTAs providing investment products to “qualified eligible persons” (QEPs) via pools and trading programs operated pursuant to CFTC Rule 4.7. This aspect of the overall proposal has the potential to be the most substantive set of changes to affect private funds that trade commodity interests that the CFTC has undertaken since its rescission in 2012 of the full CPO registration exemption then under CFTC Rule 4.13(a)(4) and under which many CPOs of private funds had operated. Registered CPOs and CTAs that anticipate being affected by the proposed changes should carefully consider the proposal and consider whether to submit comments to the Commission.

In addition, the CFTC is proposing (i) to update the portfolio requirement thresholds that certain participants in commodity pools operated under CFTC Rule 4.7(b) and clients advised under CFTC Rule 4.7(c) must meet to qualify

¹ Throughout this *Dechert OnPoint*, commodity pools affected by the proposed rulemaking will be referred to as “private funds,” meaning that they are collective investment vehicles which are excepted from the definition of “investment company” and the registration requirements under the U.S. Investment Company Act of 1940, as amended (1940 Act), and whose shares are exempt from registration under the U.S. Securities Act of 1933, as amended (Securities Act). Affected commodity pools may include funds that are considered to be “retail” products in jurisdictions outside the United States, but are offered and sold to U.S. persons without Securities Act registration.

² [Commodity Pool Operators, Commodity Trading Advisors, and Commodity Pools: Updating the ‘Qualified Eligible Person’ Definition; Adding Minimum Disclosure Requirements for Pools and Trading Programs; Permitting Monthly Account Statements for Funds of Funds; Technical Amendments](#), 88 Fed. Reg. 70852, Oct. 12, 2023 (Proposing Release). At times, this *Dechert OnPoint* tracks the text of the Proposing Release and current CFTC rules without quotation marks.

as QEPs to reflect inflation and (ii) to codify certain exemptive relief many CPOs of commodity pools that invest in one or more underlying pools or funds have requested and received to provide them additional time to circulate periodic account statements to participants.³

Comments on the proposal are due to the CFTC for consideration on December 11, 2023 (60 days following the proposal's publication in the Federal Register).

Background on CFTC Rule 4.7

Adopted in 1992, CFTC Rule 4.7 provides exemptions from certain Part 4 compliance requirements regarding disclosure, periodic reporting and recordkeeping for registered CPOs and CTAs whose pool participants and/or advisory services are restricted to individuals and entities considered to qualify as QEPs. Currently, the definition of QEP includes, among others, "qualified purchasers," "knowledgeable employees" and "non-United States persons." It also includes investment companies, "accredited investors" and non-profit organizations that meet certain portfolio requirements (discussed further below).⁴

A registered CPO that has claimed the CFTC Rule 4.7(b) exemption by filing an electronic notice with the National Futures Association (NFA) with regard to the operation of a private fund restricted to QEP participants currently is subject to only two disclosure requirements under the operational exemption: (i) it must include all disclosures necessary to make the information contained therein not misleading, and (ii) it must include a prescribed eight line disclaimer on the front page of the offering memorandum for the fund, or if no offering memorandum is provided, the disclaimer must appear immediately above the signature line on the investor's subscription agreement. So long as these conditions are met, the CPO is currently exempt from the CFTC Part 4 retail commodity pool disclosure requirements that encompass: (1) the requirement to deliver a disclosure document in CFTC Rule 4.21; (2) the general disclosures required by CFTC Rule 4.24; (3) the performance disclosures required by CFTC Rule 4.25; and (4) the use and amendment requirements in CFTC Rule 4.26 (e.g., the requirement to keep the disclosure document up-to-date on a certain schedule).⁵ In fact, there is no requirement that the CPO provide prospective pool participants with a disclosure document at all; however, in practice, most do.

A registered CTA that has claimed the exemption at the firm level under CFTC 4.7(c) is currently not required to meet the following otherwise applicable CFTC Part 4 requirements with regard to CTA services restricted to QEPs: (1) the requirement to deliver a disclosure document in CFTC Rule 4.31; (2) the general disclosures required by CFTC Rule 4.34; (3) the performance disclosures required by CFTC Rule 4.35; and (4) the use and amendment requirements in CFTC Rule 4.36. The CTA must provide a prescribed disclaimer on the cover page of any brochure or disclosure statement it chooses to distribute to its prospective advisory clients or near the signature line of the advisory

³ Even the codification of the CFTC's exemptive relief for fund-of-funds' periodic account statements could be an opportunity for harmonization with new SEC private fund adviser reporting requirements.

⁴ CPOs of private funds have the opportunity to operate private funds under a full CPO registration exemption under CFTC Rule 4.13(a)(3); however, in order for the CPO to qualify for the exemption with respect to a fund, trading in commodity interests in the fund must meet one of two de minimis commodity interest trading tests, among certain other conditions. The investor sophistication requirement under CFTC Rule 4.13(a)(3) is also less stringent. An investor must only qualify as an accredited investor or be a knowledgeable employee in order to participate in such a pool.

⁵ The CPO operating a private fund under CFTC Rule 4.7 must still provide periodic account statements to participants, provide an audited annual report to participants and file it with the NFA and file information about itself and the private fund in the quarterly risk report on CFTC Form CPO-PQR/NFA Form PQR.

agreement if the CTA chooses not to distribute a brochure or disclosure statement. The CTA is also subject to quarterly risk reporting about its registered CTA business on CFTC Form CTA-PR/NFA Form PR, but it is possible that a registered CTA operating under CFTC Rule 4.7 would not need to produce any disclosure document for its qualifying advisory clients nor is it required to provide periodic reports of any kind to advisory clients that are QEPs.

Scope of Proposed Rule Changes

The CFTC is not proposing to make all of the CFTC Part 4 disclosure requirements listed above applicable to CPOs and CTAs operating under CFTC Rule 4.7, but is proposing to establish what it frames as certain minimum content requirements to ensure that existing QEP disclosures are consistent in structure, accurate, kept up-to-date and contain materially complete information regarding CFTC Rule 4.7 pools and trading programs.

Importantly, the CFTC is **not** proposing that disclosure documents that CPOs and CTAs would be required to produce under these amendments be filed with and reviewed by the NFA in advance of use. However, the disclosure documents would continue to be subject to review during routine NFA audits.

In addition, the definition of “participant” would continue to exclude a commodity pool operated by a pool operator that is the same as, or that controls, is controlled by or is under common control with, the CPO of the offered pool such that special purpose trading vehicles and underlying funds in affiliated fund-of-funds arrangements would not need to deliver these proposed disclosures to their investor pools or parent pools.⁶

Proposed Disclosure Requirements for CPOs and CTAs

The table set forth in the Appendix to this *Dechert OnPoint* details the elements of the CFTC Part 4 rule disclosure requirements that the CFTC is proposing to add to the requirements applicable to CPOs and CTAs operating under the CFTC Rule 4.7 operational relief. The additional disclosure requirements would cover information about a pool or advisory program’s trading strategies, principal risk factors, fees and expenses and associated conflicts, as described in CFTC Rules 4.24 and 4.34, and certain past performance disclosures, as described in CFTC Rules 4.25 and 4.35. These prescriptive requirements would supplement current CFTC Rule 4.7 requirements to include all other disclosures necessary to make the information contained therein, in the context in which it is furnished, not misleading and to include the traditional disclaimer on the front page of the disclosure document would remain in place. In addition, the disclosure document would become an enumerated record that a registered CPO or registered CTA must maintain in accordance with the CFTC recordkeeping rules.

The prescriptive format applicable to performance disclosures that the CFTC is proposing to require, as well as the requirement that all performance information must be current as of a date not more than three months preceding the date of the document and that a CPO or CTA may not use a disclosure document dated more than 12 months prior to the date of its use, likely would be the most burdensome requirements.

⁶ For example, registered CPOs operating controlled foreign corporations (CFC) that are wholly-owned subsidiaries of investment companies registered under the 1940 Act (RIC), will be unaffected by this rule amendment. Those CFCs are most often operated under CFTC Rule 4.7, but the CPO of the parent RIC and CFC are the same.

In addition, subject to certain conditions, CFTC Rule 4.26(b) would also require that a CPO must attach to the disclosure document the most current account statement and annual report for the pool.⁷

The prescribed performance disclosures will pose special challenges for CPOs and CTAs that are dually-registered with the SEC as investment advisers and are also subject to detailed performance presentation requirements pursuant to (i) Rule 206(4)-1 under the Investment Advisers Act of 1940, as amended (also known as the Marketing Rule) and (ii) recently adopted SEC private fund adviser reporting requirements. The requirements of these SEC rules and the CFTC's proposed rule changes are inconsistent with respect to the content of performance presentations, the timing of disclosures, and the currency (or as-of date) of required performance information.

Other CFTC Proposals

In addition to the disclosure amendments, the CFTC is also proposing to update the portfolio requirement criteria by which certain persons and entities qualify as QEPs for participation in CFTC Rule 4.7 pools and accounts, and to codify previously granted exemptive relief for commodity pools operated as fund-of-funds with regard to distributing periodic account statements.

The CFTC is proposing to increase the two thresholds in the portfolio requirement under CFTC Rule 4.7(a)(1)(v) from \$2 million to \$4 million for the securities portfolio test, and from \$200,000 to \$400,000 for the initial margin and premium test. The changes are intended to reflect the effect of inflation since the portfolio requirement was adopted with CFTC Rule 4.7 in 1992, as by various inflation index metrics the value of these two thresholds has been halved in the last thirty years. The types of investors that must meet the portfolio requirement in order to qualify as QEPs are listed in CFTC Rule 4.7(a)(3) and include: registered investment companies, business development companies, banks and savings and loan associations trading for their own accounts, insurance companies, state pension plans, ERISA plans, non-profits, operating companies and individuals who are accredited investors, among others.⁸ The portfolio requirement does not apply to non-United States persons, qualified purchasers or knowledgeable employees. Existing pool participants and separately managed account clients that meet the current QEP definition but would not meet the new QEP standard would not be required to be redeemed or have their account terminated, but it is unclear if they would be permitted to make additional investments or account contributions.

Finally, the CFTC is proposing to grant commodity pools operated under CFTC Rule 4.7(b) that are fund-of-funds (i.e., pools that invest in one or more pools or funds operated by third parties) an extra 15 days for a total of 45 days to distribute their periodic participant account statements so long as those statements are distributed on a monthly basis. Under CFTC Rule 4.7(b), CPOs may distribute quarterly participant account statements, but must do so within 30 days following fiscal quarter-end. Fund-of-funds often run into the issue that they must wait for information from underlying pools and funds in order to prepare their own participant account statements. This change is intended to grant CPOs operating these types of pools under CFTC Rule 4.7 additional time to process information from underlying funds and pools, so long as they notified participants of the reporting schedule. The rule amendment

⁷ In lieu of the most current account statement the CPO may provide performance information for the pool current as of a date not more than 60 days prior to the date on which the disclosure document is distributed and covering the period since the most recent performance information contained in the disclosure document.

⁸ Certain other conditions may also apply to some of these entities to qualify as QEPs that are beyond the scope of discussion in this memorandum.

would codify exemptive relief that CPOs have until now had to seek on an individual basis, and that the CFTC staff has granted on a wide basis.

Rationale for Proposed Amendments

The CFTC cites as rationale for its proposed disclosure changes that certain aspects of the operational relief no longer align with its intentions. The CFTC is concerned that the absence of minimal disclosure obligations and an ongoing requirement to keep them accurate fails to ensure that all QEPs have the leverage and resources to demand the information necessary for them to make informed investment decisions, or to engage in ongoing close monitoring to confirm that the information provided remains accurate and complete to facilitate their continued understanding of their investments. The CFTC is concerned that the types of investors that are eligible to invest in pools and accounts operated under CFTC Rule 4.7 represents a broad range of sophistication with varying levels of access and resources to be informed about and updated regarding their investments. The CFTC is concerned that CPOs and CTAs are incentivized to seek capital from individuals who are generally less able to engage in rigorous monitoring than institutional investors. The CFTC is also concerned about the effect that lock-up periods and infrequent redemption windows have on the ongoing provision of information about an investment. As far as the proposed pool performance disclosures go, the role of participant account statements and audited annual reports in informing pool participants regarding current performance is curiously absent from the Proposing Release. The disclosure proposals are intended to level the playing field by setting a baseline upfront with ongoing disclosure that all QEPs would receive.

The CFTC also cites the developing and evolving commodity interest markets in which CFTC Rule 4.7 pools and accounts may invest as a source of concern that investors may not be receiving the level of information necessary to appreciate fully the risks associated with their trading. The CFTC cites the trading of swaps and digital assets as examples of these developments.

The CFTC makes passing acknowledgement of the overlay of the U.S. federal securities laws in the disclosure provided to pool and account participants, but does not acknowledge any non-U.S. jurisdiction's contributions to regulation of these products, or contemplate that there may be conflicts or a lack of harmonization between its proposals and other applicable statutory and regulatory regimes. These conflicts, if not resolved, would complicate compliance for a large portion of registered CPOs and CTAs. Market stakeholders will need to inform the Commission of these issues, as well as the full cost of compliance and the length of the implementation period that they would need to come into compliance.

Conclusion

The CFTC's proposals would likely create significant new compliance burdens for registered CPOs and CTAs operating in the sophisticated client portion of the investment management market. As noted above, the CFTC is seeking a wide range of comments on its proposal, and those who anticipate being affected should consider providing the Commission with data and comments.

Appendix – Summary of the Proposed Rule 4.7 CPO and CTA Disclosure Document Contents

CPO	Part 4 Rule	CTA	Part 4 Rule
		<p>A description of persons to be identified:</p> <ul style="list-style-type: none"> • Each principal of the CTA⁹ • Each FCM¹⁰ and/or RFED¹¹ • Each IB¹² 	4.34(e)
<p>A description of principal risk factors, including risks due to:</p> <ul style="list-style-type: none"> • Volatility • Leverage • Liquidity • Counterparty Credit <p>and types of trading programs to be followed, trading structures to be employed and expected investment activity (including retail forex and swap transactions)</p>	4.24(g)	<p>A description of principal risk factors, including risks due to:</p> <ul style="list-style-type: none"> • Volatility • Leverage • Liquidity • Counterparty Credit <p>and types of investment activity expected to be engaged in, including retail forex and/or swaps</p>	4.34(g)
<p>A description of the exempt pool's investment program, custodians and use of proceeds, including:</p> <ul style="list-style-type: none"> • Types of commodity interests and other interests the pool will trade 	4.24(h)	<p>A description of the exempt commodity trading advisor's trading program, including:</p> <ul style="list-style-type: none"> • Types of commodity interests and other interests the CTA plans to trade 	4.34(h)

⁹ The term “principal” is defined in CFTC Rule 3.1(a), with each individual principal of a registered CTA being listed with the NFA on NFA Form 8-R and each entity principal being disclosed to the NFA on the CTA's NFA Form 7-R.

¹⁰ An FCM is a futures commission merchant.

¹¹ A RFED is a retail foreign exchange dealer.

¹² A IB is an introducing broker. The CTA would be required to disclose to the client the FCM, RFED and/or IB, as applicable, with which the client will be required to maintain its account. If the client is free to choose which sell-side market intermediaries it uses, the CTA will be required to state this in the disclosure document.

CPO	Part 4 Rule	CTA	Part 4 Rule
<ul style="list-style-type: none"> • Description of the trading and investment programs and policies that will be followed by the pool • Summary description of the pool's major CTAs,¹³ including their respective percentage allocations of the pool assets and a description of the nature and operation of the trading programs such CTAs will follow • Summary description of the pool's major investee pools¹⁴ or funds, including their respective percentage allocations of pool assets and a description of the nature and operation of such investee pools and funds • Description of how the pool will fulfill its margin requirements, the percentage of the pool's assets held in segregation pursuant to the Commodity Exchange Act of 1936, as amended, and information regarding to whom income from margin or security deposits will be paid • Types of commodity interests and other interests the pool will be trading, including the custodian or other entity (e.g., bank or broker-dealer) that will hold such interests, and if such interests will be held in jurisdictions outside of the United States, the jurisdiction in which such interests or assets will be held 		<ul style="list-style-type: none"> • Any restrictions or limitations the CTA has established or that otherwise apply • Treatment of certain offsetting positions 	

¹³ "Major commodity trading advisor" means any commodity trading advisor that is allocated or is intended to be allocated at least 10 percent of the pool's funds available for commodity interest trading. For this purpose, the percentage allocation shall be the amount of funds allocated to the trading advisor by agreement with the commodity pool operator (or trading manager) on behalf of the pool, expressed as a percentage of the lesser of the aggregate value of the assets allocated to the pool's trading advisors or the net assets of the pool at the time of allocation (CFTC Rule 4.10(i)).

¹⁴ "Major investee pool" means any investee pool that is allocated or intended to be allocated at least 10 percent of the net asset value of the pool (CFTC Rule 4.10(d)(5)).

CPO	Part 4 Rule	CTA	Part 4 Rule
<p>A description of fees, commissions and expenses that have been incurred in the preceding fiscal year and that are expected to be incurred in the current fiscal year, including fees and expenses resulting from investment in underlying funds and/or pools</p> <p>A break-even point analysis presented in tabular format and description of how the break-even point was calculated¹⁵</p>	4.24(i)	<p>A complete description of fees, including:</p> <ul style="list-style-type: none"> • Specification of the dollar amount of fees, wherever possible • An explanation of certain fees where fees are dependent on specifically listed base amounts, or on any increase in the client's account 	4.34(i)
<p>A description of any actual or potential conflicts of interest on the part of the:</p> <ul style="list-style-type: none"> • CPO • Pool's trading manager¹⁶ • Any major CTA • The CPO of any major investee pool • Any principal of the foregoing <p>any other person providing services to the pool, soliciting participants for the pool, acting as a counterparty to the pool's</p>	4.24(j)	<p>A description of any actual or potential conflicts of interest on the part of the:</p> <ul style="list-style-type: none"> • CTA • FCM/RFED • IB • Any principal of the foregoing <p>and any other material conflicts involving any aspect of the offered program and any certain</p>	4.34(j)

¹⁵ A simple example of a break-even point analysis from a retail commodity pool would be the following:

The amount of trading income required for the redemption value of a share at the end of one year to equal the initial selling price of the share, assuming an initial selling price of \$[], is \$[] or []% of the initial selling price. The breakeven analysis assumes that the shares have a constant month-end NAV and is based on a \$[] NAV. The fund is subject to (i) the management fee of []% per annum, (ii) estimated continuous offering fees and expenses of []% per annum; (iii) estimated brokerage expenses of []% per annum; (iv) estimated routine operational, administrative and other ordinary fees and expenses of []% per annum. Accordingly, the fund is subject to fees and expenses in the aggregate amount of approximately []% per annum.

The fund will be successful only if its annual returns from the exchange-traded futures contracts, plus annual interest income from its holdings in cash instruments, exceeds approximately []% per annum. The fund is expected to earn approximately []% per annum, based upon the yield of the cash instruments. Therefore, based upon the difference between the current yield of the cash instruments and the annual fees and expenses, the fund would be required to earn approximately []% per annum during the first 12 months of an investment in order for a shareholder to recoup its initial investment. Actual interest income could be higher or lower than the amount indicated for the cash instruments.

¹⁶ "Trading manager" means any person, other than the commodity pool operator of the pool, having sole or partial authority to allocate pool assets to commodity trading advisors or investee pools (CFTC Rule 4.10(h)).

CPO	Part 4 Rule	CTA	Part 4 Rule
<p>retail forex or swap transactions, acting as a swap dealer to the pool, or introducing the pool to any sell-side market intermediary</p>		<p>specified direct or indirect arrangements where the CTA or any principal thereof may benefit</p>	
<p>Performance disclosures for the offered pool that include certain specific information summarized below:</p> <ul style="list-style-type: none"> • The name of the pool; • A statement as to whether the pool is privately offered, a multi-advisor pool¹⁷ and/or and a principal-protected pool;¹⁸ • The date of inception of trading; • The aggregate gross capital subscriptions to the pool; • The pool's current net asset value; • The largest monthly draw-down during the most recent five calendar years and year-to-date, expressed as a percentage of the pool's net asset value and indicating the month and year of the draw-down; • The worst peak-to-valley draw-down during the most recent five calendar years and year-to-date, expressed as a percentage of the pool's net asset value and indicating the months and year of the draw-down; and • The annual and year-to-date rate of return for the pool for the most recent five calendar years and year-to-date, computed on a compounded monthly basis <p>The rate of return must be presented on a monthly basis for the specified period (most recent five calendar years and year-to-</p>	<p>4.25 <i>except</i> information required by 4.25(a)(3) and (c)(2)</p>	<p>Performance disclosures for the account or trading program that include certain specific information summarized below:</p> <ul style="list-style-type: none"> • The name of the CTA or other person trading the account and the name of the trading program; • The date on which the CTA or other person trading the account began trading client accounts and the date 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 specified, as of the date of the disclosure document; • The total assets under the management of the CTA or other person trading the account, as of the date of the disclosure document; • The total assets traded pursuant to the trading program specified, as of the date of the disclosure document; 	<p>4.35</p>

¹⁷ "Multi-advisor pool" means a pool in which (i) no commodity trading advisor is allocated or intended to be allocated more than 25 percent of the pool's funds available for commodity interest trading; and (ii) no investee pool is allocated or intended to be allocated more than 25 percent of the pool's net asset value (CFTC Rule 4.10(d)(2)).

¹⁸ "Principal-protected pool" means a pool (commonly referred to as a "guaranteed pool") that is designed to limit the loss of the initial investment of its participants (CFTC Rule 4.10(d)(3)).

CPO	Part 4 Rule	CTA	Part 4 Rule
<p>date or for the life of the pool, if less than five years), either in a numerical table or bar graph, the latter of which must meet certain requirements as to presentation</p> <p>Certain disclaimers must be included, as applicable</p> <p>The CPO would not be required to include performance information for pools or accounts the CPO operates or trades, other than the offered pool</p> <p>The CPO would be required to include performance information for any major CTA to the pool (CFTC Rule 4.25(c)(3)) and any major investee pool (CFTC Rule 4.25(c)(4))</p>		<ul style="list-style-type: none"> • The largest monthly draw-down for the account or trading program specified during the most recent five calendar year and year-to-date expressed as a percentage of client funds and indicating the month and year of the draw-down; • The worst peak-to-valley draw-down for the trading program specified during the most recent five calendar year and year-to-date, expressed as a percentage of net asset value and indicating the months and year of the draw-down; • The annual and year-to-date rate-of-return for the program specified for the five most recent calendar years and year-to-date, computed on a compounded monthly basis; <i>Provided, however,</i> That performance of the offered trading program must include monthly rates of return for such period; and • The number of accounts traded pursuant to the offered trading program that were opened and closed during a certain period with a positive net lifetime rate of return as of the date the account was closed; and a measure of the variability of returns for accounts that were both opened and closed during the same period and closed with positive net lifetime rates of return; and 	

CPO	Part 4 Rule	CTA	Part 4 Rule
		<ul style="list-style-type: none"> The number of accounts traded pursuant to the offered trading program that were opened and closed during the same period with negative net lifetime rates of return as of the date the account was closed; and a measure of the variability of returns for accounts that were both opened and closed during the same period and closed with negative net lifetime rates of return. <p>Certain disclaimers must be included, as applicable</p>	

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