**SUPPLEMENTARY INFORMATION:**

**History**

In April 2002, the DOE signed an agreement transferring responsibility for the daily use of R–4809 to the USAF. On May 14, 2003, the USAF submitted a request to add the Los Angeles ARTCC as the controlling agency of R–4809, and to change the area's using agency from the DOE to the USAF.

**The Rule**

This action responds to the above agreement and requested changes. Specifically, this action adds ''FAA, Los Angeles ARTCC,'' as the controlling agency for R–4809, and changes the using agency from the ''DOE, Albuquerque Operations Office, NM,'' to the ''USAF, Headquarters Air Warfare Center, Nellis AFB, NV.'' These changes will designate R–4809 as a joint-use area, and make the airspace accessible to nonparticipating aircraft. This action does not change any boundaries, times of designation, or activities conducted in the restricted airspace area.

Section 73.48 of part 73 of the Federal Aviation Regulations was republished in FAA Order 7400.8K, dated September 26, 2002.

The FAA has determined that this regulation only involves an established body of technical regulations for which frequent and routine amendments are necessary to keep them operationally current. Therefore, this regulation: (1) is not a ''significant regulatory action'' under Executive Order 12866; (2) is not a ''significant rule'' under DOT Regulatory Policies and Procedures (44 FR 11034; February 26, 1979); and (3) does not warrant preparation of a regulatory evaluation as the anticipated impact is so minimal. Since this is a routine matter that will only affect air traffic procedures and air navigation, it is certified that this rule, when promulgated, will not have a significant economic impact on a substantial number of small entities under the criteria of the Regulatory Flexibility Act.

**Environmental Review**

The FAA has determined that this action qualifies for categorical exclusion under the National Environmental Policy Act in accordance with FAA Order 1050.1D, Policies and Procedures for Considering Environmental Impacts. This airspace action is not expected to cause any potentially significant environmental impacts, and no extraordinary circumstances exist that warrant preparation of an environmental assessment.

**List of Subjects in 14 CFR Part 73**

Airspace, Navigation (air).

**Adoption of the Amendment**

■ In consideration of the foregoing, the Federal Aviation Administration amends 14 CFR part 73, as follows:

## PART 73—SPECIAL USE AIRSPACE

■ 1. The authority citation for part 73 continues to read as follows:

**Authority:** 49 U.S.C. 106(g), 40103, 40113, 40120; E.O. 10854, 24 FR 9565, 3 CFR, 1959–1963 Comp., p. 389.

**§ 73.48 [Amended]**

■ 2. § 73.48 is amended as follows:

* * * * *

**R–4809, NV [Amended]**

By removing ''Using agency. DOE, Albuquerque Operations Office, NM,'' and substituting ''Using agency. USAF, Headquarters Air Warfare Center, Nellis AFB, NV.''

By adding ''Controlling agency. FAA, Los Angeles ARTCC.''

* * * * *

Issued in Washington, DC, on July 10, 2003.

**Paul Gallant,**

*Acting Manager, Airspace and Rules Division.*

[FR Doc. 03–18381 Filed 7–18–03; 8:45 am]

**BILLING CODE 4910–13–P**

## COMMODITY FUTURES TRADING COMMISSION

## 17 CFR Part 4

**RIN 3038–AB39**

## Performance Data and Disclosure for Commodity Trading Advisors

**AGENCY:** Commodity Futures Trading Commission.

**ACTION:** Final rule.

**SUMMARY:** The Commodity Futures Trading Commission (''Commission'' or ''CFTC'') is adopting regulations establishing a core principle for commodity trading advisors (''CTAs'') with regard to performance disclosures concerning partially-funded accounts. The core principle specifies that such disclosure must be offered in a manner that is balanced and is not in violation of the antifraud provisions of the Commodity Exchange Act (the ''Act'') or the Commission's regulations thereunder.

**EFFECTIVE DATE:** August 20, 2003.

**FOR FURTHER INFORMATION CONTACT:** Kevin P. Walek, Assistant Director, telephone: (202) 418–5463 or Eileen Chotiner, Futures Trading Specialist, telephone: (202) 418–5467, Division of Clearing and Intermediary Oversight, Commodity Futures Trading Commission, Three Lafayette Centre, 1155 21st Street, NW., Washington, DC 20581. E-mail: *kwalek@cftc.gov* or *echotiner@cftc.gov*.

**SUPPLEMENTARY INFORMATION:**

**I. Background**

On March 13, 2003, the Commission published in the **Federal Register** [1] proposed rule amendments regarding the computation and presentation of rate of return information and other disclosures concerning past performance of accounts over which the CTA has had trading authority. In that release, the Commission also sought comment on whether a core principle should replace detailed performance requirements.

The Commission received thirteen comments on the proposal. The commenters included one industry association,[2] one CTA,[3] one bar association,[4] one consumer organization,[5] one accounting firm,[6] the National Futures Association (''NFA''), and seven members of the public.[7] The industry and bar associations, NFA, and the CTA supported the amendments, particularly the use of nominal account size as the basis for computing rates of return. The seven members of the public and the consumer organization submitted comments expressing concern over the use of nominal account size rather than actual funds as the basis for presentation of a CTA's past performance. Commenters who addressed the core principle approach indicated that specific standards for performance presentation should exist in an area in which continuity and comparability are important, although several indicated that additional flexibility in the application of those standards would be welcome. These comments are discussed more fully below.

[1] 68 FR 12001 (Mar. 13, 2003).

[2] Managed Funds Association (''MFA'').

[3] John Henry & Company, Inc.

[4] Association of the Bar of the City of New York, Committee on Futures Regulation.

[5] Consumer Federation of America (''CFA'').

[6] Arthur F. Bell, Jr., & Associates, LLC.

[7] One of these commenters, Paul H. Bjarnason, Jr., is an accountant and former Commission employee. Six commenters, Elizabeth M. Buckman, Bonnie Kayser, James S. Finucane, Christine E. Schoen, Laura M. Stephens, and Ray Weaver, submitted identical letters.

## II. Final Rules

### *A. Use of Nominal Account Size and Other Detailed Performance Requirements in the Proposal*

The key component of the Commission's rule proposal is the use of nominal account size, rather than actual funds, as the basis for CTAs' computation of rates of return. The consumer organization and members of the public noted that investors look at actual funds when making investment decisions, and expressed concern that performance based on nominal account size would reduce the appearance of volatility of the CTA's trading program. Commenters who supported use of nominal account size noted that it is the amount both the CTA and the client consider to be the account size. They also pointed out that use of actual funds can result in widely divergent return figures for similarly traded accounts; exaggerates positive and negative rates of return; and measures the cash management strategies of clients rather than the performance of the CTA.

The Commission has not found persuasive the comments opposing use of nominal account size rather than actual funds as the basis for computing CTA rates of return. Some commenters and press reports appear to have misunderstood the intent of past performance reporting under Commission rules—to present to prospective clients information on how the trading program, which the CTA is offering, has performed. The amount of actual funds in a client's account is determined by the client and its FCM, not the CTA, and does not affect the CTA's trading decisions based on nominal account size. Use of nominal account size would permit CTAs to present to prospective clients composite performance results that will be consistent for the accounts within the program, even if those accounts have widely divergent amounts of actual funds supporting the same level of trading. The alternatives—either blending all accounts, regardless of the variation in funding levels, into a single actual funds-based table, or presenting multiple performance tables to address each individual funding level—could be less informative and potentially more confusing to prospective clients.

The Commission similarly does not agree that disclosure of the volatility and risk of a CTA's trading program will be reduced if the nominal account size is used. As NFA noted in its comment letter, the proposed use of nominal account size would not understate either volatility or risk, as the dollar amount of any profit or loss will be the same for accounts with the same nominal account size, regardless of the funding level. Further, whatever incentive a CTA may have to make its losses appear smaller would be offset by the fact that calculating rate of return on a larger nominal account size would reduce the appearance of profits as well.

### *B. Adoption of a Core Principle*

In seeking comment on the desirability of implementing a core principle in the proposing release, the Commission cited Congressional intent as expressed in the Commodity Futures Modernization Act of 2000 (''CFMA'').[8] Section 125 of the CFMA required the Commission to conduct a study of the Act and the Commission's rules and orders governing the conduct of registrants under the Act, identifying, among other things, Commission rules that could be replaced with core principles.[9] While commenters participating in the study expressed concerns regarding replacement of regulations with core principles in certain contexts, they did identify a number of areas where existing rules could be modified or eliminated.[10] Several commenters on the current proposal noted that the flexibility offered by a core principle might not adequately address the need for a standard method of calculating performance that will enable continuity and comparability in the presentation of CTAs' rates of return. The Commission believes, however, that a core principle adopted by the Commission would not preclude the development of more explicit guidance or performance standards by the Commission, self-regulatory organizations, and/or an independent organization, as one commenter suggested, that is otherwise consistent with the core principle.[11] The Commission understands that NFA plans in the near future to adopt specific rules regarding presentation of partially funded accounts that would apply to all member CTAs,[12] and that would be consistent with the rules proposed by the Commission.[13] Although the Commission agrees that nominal account size is an appropriate basis for calculating performance results, the Commission encourages NFA, in the development of guidance carrying out a core principle approach, to consider whether or not these nominal account performance results can be supplemented with other performance measures or statistics that enable customers with accounts that are not fully funded to generally gauge performance results for these types of accounts. The Commission further notes that CTAs presenting partially funded account performance in accordance with the detailed requirements in its March 2003 rule proposal[14] will be considered to be in compliance with the core principle.

After evaluating the comments received on both the detailed proposed amendments and the alternative of a core principle described in the proposal, the Commission has determined not to adopt the detailed proposed rules, but rather to amend Commission Rule 4.35(a)[15] so as to permit CTAs to comply with a core principle with respect to the performance of partially-funded accounts. While the Commission is fully supportive of the content and approach of its detailed rule proposal of March 2003, the history of discourse on this issue suggests that any prescriptive rule adopted by the Commission could soon be inconsistent with evolving industry developments and practices in this area. The flexibility of a core principle, rather than a single set of rigid requirements, would ensure that core Commission regulatory concerns are complied with without impeding legitimate business needs. The Commission believes that this approach is consistent with the objective of the CFMA that the Commission, when

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[8] Pub. L. 106–554, 114 Stat. 2763 (2000) (codified as amended in scattered sections of 7 U.S.C.).

[9] A copy of the study may be viewed on the Commission's Web site at: www.cftc.gov/files/opa/opaintermediarystudy.pdf.

[10] Report on the Study of the Commodity Exchange Act and the Commission's Rules and Orders Governing the Conduct of Registrants Under the Act, p. 25. In certain areas, commenters mentioned concerns with regard to the practicability and legal certainty of core principles.

[11] For example, the Association for Investment Management Research (''AIMR''), an international nonprofit organization of investment practitioners and educators, has developed voluntary standards for presentation of investment performance that are used by many investment managers and advisers. AIMR's Investment Performance Council recently issued an invitation to comment on proposed guidance regarding leverage and derivatives to be added to its Global Investment Performance Standards (GIPS). Neither the existing GIPS standards nor the proposed guidance directly addresses the partial funding issue that is the subject of the core principle adopted herein. As standards such as AIMR's evolve to address this issue, they may provide additional guidance to persons or organizations seeking to comply with this core principle or seeking to develop best practices in this area.

[12] With exceptions not otherwise pertinent here, a CTA that conducts futures business with the public and is required to register with the Commission must be a member of NFA, pursuant to NFA Bylaw 1101.

[13] Any rules adopted by NFA would be submitted to the Commission according to the review process for rules of a registered futures association provided in Section 17(j) of the Act.

[14] *See* note 1.

[15] Commission rules referred to herein may be found at 17 CFR Ch. I (2002).

appropriate, permit the industry flexibility in the manner it complies with certain regulatory mandates. Moreover, a core principle regarding the presentation of past performance of partially funded accounts is consistent with the approach governing use of promotional material by CTAs and commodity pool operators (''CPOs'').[16] In addition, as noted in the proposing release, a core principle approach would also be consistent with Federal securities laws applicable to investment advisers, who generally may present past performance in any manner that does not run afoul of general anti-fraud provisions.[17]

The core principle requires that the disclosure must be presented in a manner that is balanced and is not in violation of the antifraud provisions of the Commodity Exchange Act (the ''Act'') or the Commission's regulations thereunder.[18] Each of these two requirements must be complied with in order for the core principle to be met. First, the presentation must not violate the antifraud provisions of the Commodity Exchange Act. For example, a materially misleading disclosure would violate those provisions,[19] and thus would violate this core principle. In addition, the presentation must be balanced. For example, a presentation that emphasizes past gains and minimizes past losses would fail to meet this requirement, and thus would violate the core principle.[20]

Although a few commenters expressed concern that a core principle might impede the Commission's enforcement efforts, or limit them to ''the most egregious cases,'' the Commission believes that the adoption of a core principle based on existing antifraud provisions, which also requires balance, in no way diminishes its current ability to address improper disclosure, nor its ability to address violations of that core principle consistent with its current authority to enforce the antifraud provision of the Act. The SEC has successfully brought actions under its anti-fraud authority against those who have used misleading performance presentations,[21] and NFA has successfully disciplined members who have used unbalanced promotional material.[22]

In addition to the amendment to Rule 4.35, the Commission is also adopting the definition of a ''partially-funded account'' and a conforming amendment to Rule 4.25 regarding the presentation of a CTA's partially-funded account performance in a commodity pool disclosure document.

The rule amendments being adopted herein relate solely to partially-funded accounts. In that regard, Advisory 93–13,[23] which the proposing release stated would be superseded by the adoption of the proposed rule amendments, will remain in effect until such time as the Commission and/or an appropriate self-regulatory organization adopts further guidance on the presentation of partially funded accounts. Other issues noted in the proposal published March 13, 2003, regarding performance presentation generally, such as changes in the calculation of drawdown figures and application of the Commission's 1991 Advisory concerning additions and withdrawals,[24] will be addressed in a subsequent **Federal Register** release.

## III. Other Matters

### *A. Regulatory Flexibility Act*

The Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, requires that agencies, in promulgating rules, consider the impact of those rules on small businesses. The Commission has previously established certain definitions of ''small entities'' to be used by the Commission in evaluating the impact of its rules on such entities in accordance with the Regulatory Flexibility Act.[25] The Commission previously has determined that registered CPOs are not small entities for the purpose of the Regulatory Flexibility Act.[26] With respect to CTAs, the Commission has stated that it would evaluate within the context of a particular rule proposal whether all or some affected CTAs would be considered to be small entities for purposes of the Regulatory Flexibility Act and, if so, to analyze the economic impact on them of any such rule at that time.[27] The Commission has previously determined that disclosure requirements governing CTAs do not have a significant economic impact on a substantial number of small entities.[28] Moreover, the amendments being adopted herein do not impose additional requirements on CTAs, but rather offer CTAs an alternative means by which to comply with existing Commission rules. Therefore, the Chairman, on behalf of the Commission, hereby certifies, pursuant to 5 U.S.C. 605(b), that these regulations will not have a significant economic impact on a substantial number of small entities.

### *B. Paperwork Reduction Act*

The Paperwork Reduction Act of 1995 (''PRA'')[29] imposes certain requirements on federal agencies (including the Commission) in connection with their conducting or sponsoring any collection of information as defined by the PRA. These rule amendments do not require a new collection of information on the part of any entities subject to the rule amendments. Accordingly, for purposes of the PRA, the Commission certifies that these rule amendments will not impose any new reporting or recordkeeping requirements.

### *C. Cost-Benefit Analysis*

Section 15(a) of the Act requires the Commission to consider the costs and benefits of its action before issuing a new regulation under the Act. By its terms, Section 15(a) does not require the Commission to quantify the costs and benefits of a new regulation or to determine whether the benefits of the proposed regulation outweigh its costs. Rather, Section 15(a) simply requires

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[16] Commission Rule 4.41 reiterates the anti-fraud provisions of Section 4*o* of the Act. NFA has promulgated its Compliance Rule 2–29 and issued interpretive notices, which provide more detailed guidance on the preparation and use of promotional material.

[17] *See* the Investment Advisers Act of 1940 section 206(4) (15 U.S.C. 80b–6(4)) and Securities and Exchange Commission Rule 275.206(4)–1(a)(5) (17 CFR 275.206(4)–(1)(a)(5). The SEC's general antifraud approach to performance disclosure, which is analogous to the core principle approach adopted herein, has not impeded the SEC's ability to bring enforcement actions for inappropriate disclosure. For a more complete discussion regarding the use of past performance by investment advisers for soliciting clients, *see* Robert J. Zutz, *Compliance Review,* Schwab Institutional, Vol. 10, Issue 8, Aug. 2001.

[18] 7 U.S.C. 1 *et seq.* (2000); 17 CFR Ch. I (2002). Antifraud provisions under the Act and regulations include Sections 4b, 4o, and Regulations 1.1, 4.41, 30.9, 32.9 and 33.10.

[19] *See, e.g., In re Slusser,* [1998–1999 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 27,701 at 48,311 (CFTC July 19, 1999), *aff'd in part and rev'd in part on other grounds sub nom. Slusser* v. *CFTC,* 210 F.3d 783, 784 (7th Cir. 2000).

[20] *See also* National Futures Association Compliance Rule 2–29(b)(3) (prohibiting the use of promotional material that ''mentions the possibility of profit unless accompanied by an equally prominent statement of the risk of loss.'') NFA has issued guidance interpreting this rule, *see, e.g.,* NFA Interpretive Notices ¶ 9003.

[21] *See, e.g., In Re F.X.C. Investors Corp. and Francis X. Curzio* 79 SEC 276 (2002) (Distribution of misleading performance information violates section 206(4) of Investment Advisers Act and SEC Rule 275.206(4)–1(a)(5)).

[22] *See, e.g., Minogue Investment Company, Inc.* (NFA Case No. 98–App–006); *Vision Limited Partnership* (NFA Case No. 00–BCC–005).

[23] CFTC Advisory 93–13, 58 FR 8226 (February 12, 1993).

[24] CFTC Advisory, ''Adjustments for Additions and Withdrawals to Computation of Rate of Return in Performance Records of Commodity Pool Operators and Commodity Trading Advisors,'' 56 FR 8109 (Feb. 27, 1991).

[25] 47 FR 18618–18621 (Apr. 30, 1982).

[26] 47 FR 18619–18620.

[27] 47 FR 18618–18620.

[28] *See* 60 FR 38146, 38181 (July 25, 1995) and 48 FR 35248 (Aug. 3, 1983).

[29] 44 U.S.C. 3501 *et seq.*

the Commission to ''consider the costs and benefits'' of its action.

Section 15(a) further specifies that costs and benefits shall be evaluated in light of five broad areas of market and public concern: Protection of market participants and the public; efficiency, competitiveness, and financial integrity of futures markets; price discovery; sound risk management practices; and other public interest considerations. Accordingly, the Commission could in its discretion give greater weight to any one of the five enumerated areas and could in its discretion determine that, notwithstanding its costs, a particular rule was necessary or appropriate to protect the public interest or to effectuate any of the provisions or to accomplish any of the purposes of the Act.

The Commission is considering the costs and benefits of these rules in light of the specific provisions of Section 15(a) of the Act:

1. Protection of Parket Participants and the Public

The amendments being adopted herein are not expected to result in less protection of market participants or the public. Rather, the amendments provide the opportunity for a more meaningful and accurate disclosure, as demanded by marketplace forces. Moreover, the Commission, along with NFA, will continue to monitor the presentation of performance by CTAs and take action wherever necessary.

2. Efficiency and Competition

The amendments are expected to increase efficiency by providing a CTA with increased flexibility for providing past performance. With this flexibility, a CTA will be better able to respond to changes in the industry and demands from the marketplace with regard to the disclosure of the CTA's past performance.

3. Financial Integrity of Futures Markets and Price Discovery

The amendments should have no effect, from the standpoint of imposing costs or creating benefits, on the financial integrity or price discovery function of the commodity futures and options markets.

4. Sound Risk Management Practices

The amendments should have no effect on sound risk management practices.

5. Other Public Interest Considerations

The amendments being adopted herein provide more flexibility for CTAs in being able to present past performance in a manner that more accurately represents the trading results of their systems, while maintaining adequate safeguards so as to protect prospective clients from misleading or fraudulent solicitations.

After considering these factors, the Commission has determined to issue the amended rules.

**List of Subjects in 17 CFR Part 4**

Advertising, Commodity Futures, Customer Protection, Reporting and recordkeeping.

■ For the reasons discussed in the foregoing, the Commission hereby amends Chapter I of Title 17 of the Code of Federal Regulations as follows:

## PART 4—COMMODITY POOL OPERATORS AND COMMODITY TRADING ADVISORS

■ 1. The authority citation for Part 4 continues to read as follows:

**Authority:** 7 U.S.C. 1a, 2, 6(c), 6b, 6c, 6l, 6m, 6n, 6o, 12a and 23.

■ 2. Section 4.10 is amended by adding paragraph (m) to read as follows:

### § 4.10 Definitions.

* * * * *

(m) *Partially-funded account* means a client participation in the program of a commodity trading advisor in which the amount of funds in the client's commodity interest account over which such commodity trading advisor has trading authority is less than the account size that establishes the client's level of trading in a commodity trading advisor's program.

■ 3. Section 4.25 is amended by adding paragraph (a)(1)(ii)(H) to read as follows:

### § 4.25 Performance disclosures.

* * * * *

(a) * * *

(1) * * *

(ii) * * *

(H) Partially-funded accounts directed by a commodity trading advisor may be presented in accordance with § 4.35(a)(7).

* * * * *

■ 4. Section 4.35 is amended as follows:

■ a. By redesignating paragraphs (a)(7) and (a)(8) as (a)(8) and (a)(9) respectively;

■ b. And adding new paragraph (a)(7) to read as follows:

### § 4.35 Performance disclosures.

* * * * *

(a)(7) *Performance of partially-funded accounts.* Notwithstanding the foregoing, a commodity trading advisor will be deemed in compliance with this § 4.35(a) concerning the performance of partially-funded accounts if the commodity trading advisor presents the performance of such accounts in a manner that is balanced and is not in violation of the antifraud provisions of the Commodity Exchange Act or the Commission's regulations thereunder.

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Issued in Washington, DC, on July 15, 2003 by the Commission.

**Jean A. Webb,**

*Secretary of the Commission.*

[FR Doc. 03–18413 Filed 7–18–03; 8:45 am]

BILLING CODE 6351–01–P

## DEPARTMENT OF HEALTH AND HUMAN SERVICES

### Food and Drug Administration

### 21 CFR Part 520

### Oral Dosage Form New Animal Drugs; Meloxicam

**AGENCY:** Food and Drug Administration, HHS.

**ACTION:** Final rule.

**SUMMARY:** The Food and Drug Administration (FDA) is amending the animal drug regulations to reflect approval of a new animal drug application (NADA) filed by Boehringer Ingelheim Vetmedica, Inc. The NADA provides for use of meloxicam oral suspension for the control of pain and inflammation associated with osteoarthritis in dogs.

**DATES:** This rule is effective July 21, 2003.

**FOR FURTHER INFORMATION CONTACT:** Melanie R. Berson, Center for Veterinary Medicine (HFV–110), Food and Drug Administration, 7500 Standish Pl., Rockville, MD 20855, 301–827–7540, e-mail: mberson@cvm.fda.gov.

**SUPPLEMENTARY INFORMATION:** Boehringer Ingelheim Vetmedica, Inc., 2621 North Belt Highway, St. Joseph, MO 64506–2002, filed NADA 141–213 that provides for use of METACAM (meloxicam) Oral Suspension for the control of pain and inflammation associated with osteoarthritis in dogs. The NADA is approved as of April 15, 2003, and the regulations are amended in 21 CFR part 520 by adding new § 520.1350 to reflect the approval. The basis of approval is discussed in the freedom of information summary.

In accordance with the freedom of information provisions of 21 CFR part 20 and 21 CFR part 514.11(e)(2)(ii), a summary of safety and effectiveness data and information submitted to support approval of this application may be seen in the Dockets Management