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COMMENT

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OFFICE OF THE SECRETARIAT

Paul B. O'Kelly
Senior Vice President and
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August 4, 1998

COMMODITY FUTURES
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Ms. Jean A. Webb, Secretary
Commodity Futures Trading Commission
Three Lafayette Center
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Proposed Rules Regarding Recordkeeping

Dear Ms. Webb:

The Commission is proposing amendments to its Regulation 1.31 regarding certain recordkeeping requirements imposed by the CEA and CFTC Regulations.

The Commission's current approach to these recordkeeping requirements specifies classes of electronic or micrographic storage media that are appropriate for maintaining records under the Act and Regulations. The proposed amendment ("Proposal") would shift the focus of Regulation 1.31 to a more generic, performance-based approach to the definition of permissible technology. The Proposal would also expand the class of required records that may be maintained on micrographic or electronic storage media for the full five-year period.

The Chicago Mercantile Exchange ("CME") welcomes the opportunity to comment on this Proposal. The CME applauds and agrees with the Commission's stated goal of the simplification and streamlining of recordkeeping systems which is likely to result in both a reduction in costs and an improvement in system reliability. Moreover, the CME agrees that some aspects of the Proposal may result in improvement in both the security and availability of required records.

A. Comments on Revised Definitions of Micrographic and Electronic Storage Media.

- (i) **Micrographic Media:** The CME agrees that the expansion of the definition of Micrographic Media to include microfilm, microfiche or any similar medium, is appropriate. This change reflects the CFTC's transition to a performance-based standard.

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- (ii) **Electronic Media:** The CFTC is proposing the following four criteria to define appropriate electronic storage media: 1) The media must preserve records exclusively in a non-rewriteable, non-erasable format. 2) The media must automatically verify the quality/accuracy of the recording process. 3) The media must serialize the units of storage media and create a date/time record whenever information is placed on the storage media. 4) The media must permit the immediate downloading of indices and records maintained on the storage media to paper, micrographic, or other electronic media.

The first of these four criteria, that the system or media must preserve records exclusively in a non-rewriteable, non-erasable format is vague. Current CD-ROM burning technology, for example, might not be acceptable under this definition due to the advent of rewritable CD-ROM drives. The regulation should clarify that it is the media, not the system, that must be non-erasable and non-rewritable.

The remaining criteria appear to reflect the current regulatory regime with regard to micrographic and electronic storage media and are appropriate means of achieving regulatory objectives. The CME supports the Commission's attempt to provide registrants with options for electronic storage media without specifically dictating which technology is appropriate.

B. Conditions on Use.

As a condition for using electronic storage media, the Commission has proposed that the registrant maintain an index of all records stored electronically. Additionally, a registrant who maintains required records solely in electronic format would be responsible for providing facilities for the immediate production of easily-readable images of the stored records, including hard-copies. The Proposal also requires that a duplicate of each record be stored, in any acceptable medium, in a separate location from the original.

The CME supports the CFTC's Proposal on these points as they reflect the current regulatory regime with regard to micrographic and electronic storage media and are appropriate means of achieving regulatory objectives. The requirement that backup copies of electronically-stored records be stored in a separate location from the originals appears to be a logical means of ensuring the preservation of records in the event that the original records are destroyed or damaged.

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C. Additional Conditions.

The proposed amendments require that a record-keeper must develop an audit system that can detect any inadvertent or intentional errors in recording the data electronically. The audit system would automatically or systematically capture the identities of individuals actually inputting records and making particular changes, and the identity of both new documents created and documents changed. The Proposal does not adequately explain the need for the development of the audit system. The CME cannot distinguish between the concerns raised by hardcopy record keeping and those raised by electronic records. In fact, due to the exclusive use of non-erasable, non-alterable media to store electronic records, it appears that the need for an audit system as described in the Proposal is lessened in the case of electronic records. Therefore, the CME does not believe that the audit system is necessary for the achievement of regulatory objectives.

The Proposal requires that all of the information, including: physical and logical format of the electronic storage media; file format; and software source code/documentation needed to access the records must either be kept available for Commission review or be placed in escrow. The CME believes that this criterion should require the deposit or availability of only the object code necessary to read the records in question. Registrants may choose to use software developed by third-parties to store their records electronically. In such a case the registrant may not have access to the source code. Therefore, specifically requiring the deposit of source code may represent an undue regulatory burden.

The CFTC has also proposed that every registrant that maintains its records solely in electronic form must contract with a third-party to give such third-party access to their records. The CFTC would then have access to records through the third-party as well as through the registrant. The CME strenuously disagrees with this aspect of the Proposal. It is unclear how the maintenance of records solely in an electronic format raises any issues regarding access to records that are not present when such records are maintained on paper. The requirement of third-party access would create a significant financial burden as well as the potential for unacceptable breaches of confidentiality of registrant records.

D. Retention of Trading Cards.

The proposed amendment allows for all required records, other than trading cards and orders, to be kept using the electronic media. Trading cards and orders must be kept in original, hard copy form for the full retention period. The CME chooses not to comment on this aspect of the Proposal at this time.

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E. Issues for Comment.

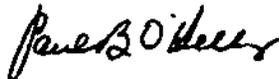
The National Futures Association ("NFA") has proposed amendments to the production standards set forth in Regulation 1.31. The NFA proposal would require that registrants be able to produce hard copies or electronic versions of records requested by the CFTC within one business day following the request. This "one business day" standard would supplant the standards set forth in the current regulation that require a registrant to produce hard copies of records "promptly" and electronic and micrographic versions of records "immediately."

The NFA also proposed that the facility and equipment related provisions in question be limited to the two years when the original records must be readily accessible under Section 1.31(a)(1).

The CME cannot support the NFA proposal regarding the change of the production requirements. Instead, the CME proposes that Regulation 1.31 be modified to require "prompt" production of any records, regardless of how stored, if the affected person "retrieve[d] the documents requested as expeditiously as is reasonable in light of the circumstances." The CME agrees that "the extent and nature of a document request could be appropriate factors in assessing the promptness of a production." This requirement would clarify the registrant's duty while recognizing the burdens involved in processing extremely large or complex document requests.

Thank you for the opportunity to comment on the Proposal. Do not hesitate to contact Michael R. Weiner, Attorney, at (312) 930-3042 should you have any questions or comments regarding this matter.

Sincerely,



Paul B. O'Kelly
Senior Vice President
and General Counsel