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Vice President and Administrator
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August 18, 1998

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COMMENT

Jean A. Webb
Secretary of the Commission
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

COMMODITY FUTURES
TRADING COMMISSION
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Re: Proposed Rule for Recordkeeping, 63 Fed. Reg. 30668

Dear Ms. Webb:

The Chicago Board of Trade ("CBOT®") respectfully submits this comment letter in response to the Commodity Futures Trading Commission's ("CFTC" or "Commission") Notice of Proposed Rulemaking Regarding Recordkeeping [63 Fed. Reg. 30668 (June 5, 1998)]. The Commission is proposing to amend CFTC Regulation 1.31 to expand the types of record storage media registrants may use under the rule in light of technological advances in electronic media. Current requirements limit storage media to microfiche, microfilm, and optical disk. With the exception of written orders and trading cards, the proposed regulation would permit registrants to store required records on qualifying "micrographic" or "electronic" storage media for the full five-year recordkeeping period.

The CBOT generally supports the proposed amendment because it will give registrants flexibility to use technological advances in the electronic storage media to reduce the costs associated with record retention. The CBOT, however, has comments on specific parts of the proposal.

General Recordkeeping Standards

The CBOT supports the goal of consistent CFTC and SEC regulations on record retention. That being said, the CBOT is concerned that the Commission makes some artificial distinctions between electronic and other storage media in setting detailed technical and performance specifications for electronic media. Thus, we prefer the NFA's proposal to instead adopt general standards of accessibility, security and reliability for records whether stored on electronic or micrographic storage media or in the original paper format. Eliminating the distinction of different recordkeeping and production requirements for electronic and paper documents ensures consistency and less confusion. Additionally, the NFA approach sets reasonable standards to preserve integrity of the required records while avoiding a detailed set of technological or performance specifications which can become readily outdated. The flexibility the Commission is trying to achieve by amending Regulation 1.31 will be lost if more general recordkeeping standards are not adopted which continue to give guidance as new technologies develop. If the Commission's standards are too detailed, the Commission will need to amend its rules whenever

Ms. Jean Webb
August 18, 1998
Page -2-

new technology does not fit within the exact parameters of those standards; which is a resource draining process for both the industry and the Commission.

Trade Documents (floor orders and trading cards)

The CFTC proposal retains the current requirements of Regulation 1.31 to maintain hard copies of the original trading cards and written customer orders. While the CBOT understands the need to maintain the original trade documents to conduct investigations, we are also aware of the burden our member firms assume to retain the original hard copies. Therefore, the CBOT supports the Futures Industry Association in its recommendation that the Commission consider allowing trading documents to be retained on electronic media storage for the last 4 years of the 5 year retention requirement if the storage media is of such quality that the subtle distinctions of pens, cross-outs, and handwriting are able to be discerned from the storage media.

The CBOT agrees with the Commission that the quality of the storage media is evolving. However, there is no economic incentive to migrate to higher quality storage media for trading documents so long as there is a prohibition on using such medium. Therefore, the CBOT recommends that the Commission amend Regulation 1.31 to allow the retention of original trading documents in other forms for the last 4 years of the 5 year retention period on acceptable storage media.

Additionally, as the exchanges and member firms continue to expand their electronic order routing systems the production of original paper documents will be reduced. These electronic systems are required to capture and retain all electronic time-recording information associated with the order to the nearest second as was stated in the 1997 Advisory on Alternative Method of compliance with the Written Record Requirements. By the Commission limiting registrants' possibility of maintaining original trade documents on electronic storage media, the ability of the domestic futures industry to compete in a cost efficient environment is limited.

In short, the Commission should apply broader flexibility with respect to storage of trading documents as it is proposing for other required documentation. Further, if the Commission liberalizes the record storage requirements for trade records in other contexts, it should make that relief available across the board. In this regard, we note that in the pending application of the Cantor Financial Futures Exchange for contract market designation, the applicant is proposing that certain primary source trading records be retained for only 120 calendar days, and not for the full five years required by CFTC Regulation 1.31.¹ If the Commission accepts this proposal, it

¹ On the Cantor Exchange, orders are phoned directly to floor brokers (called terminal operators) for execution. The Cantor Exchange, unlike other exchanges, will not impose any requirement that a written record be prepared of each order upon receipt on the trading floor. Instead, the Cantor

Ms. Jean Webb
August 18, 1998
Page -3-

should amend Regulation 1.31 to provide the same shortened record retention period for trade documents associated with trading on all other U.S. futures exchanges. We see no justification for shortening the record retention period selectively for trade records on one exchange but not on others.

Third-Party Technical Consultants

The CBOT also wishes to comment on the CFTC-proposed requirement that each registrant that chooses to use electronic storage media must enter into an arrangement with a third party technical consultant through which the CFTC may access the registrant's records. Although this approach may make sense for those rare cases in which a registrant is uncooperative in producing documents, the costs associated with retaining a third party consultant to serve as a records custodian outweigh the benefits the Commission will derive. Additionally, concerns of "immediate" access to the documents may become confusing since document requests could be addressed to both the registrant and the third-party. If the Commission is concerned with firms that may close or leave the industry, the regulation could be crafted in such a way that a firm must establish a the third-party "escrow" relationship for the documents when those limited occasions occur. The issues and concerns this section of the proposed regulation is attempting to address are no different than those associated with records maintained on paper. Therefore, the CBOT believes that the proposed access through a third-party would create financial burden while potentially compromising the confidentiality of the records. Moreover, it will create a disincentive against using electronic storage media.

The CBOT appreciates the opportunity to comment on the Commission's proposed rules, and is willing to work with the Commission to ensure a smooth transition to electronic recordkeeping. We firmly support proposals to reduce long term financial burdens to the industry and improve the efficiency, reliability, and security of electronic record storage and retrieval. If you have any questions regarding this letter, please contact Mary Beth Rooney at (312) 435-3583.

Sincerely,



Bryan T. Durkin

Exchange has stated that the telephone calls will be taped. These audio tapes, then, will be the primary source trade records of all orders placed with the floor broker/terminal operators. Yet, the Cantor Exchange has said that these trade records will only be kept for 120 calendar days.