



Commodity Futures Trading Commission

Office of Public Affairs

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Proposed Amendments to Rules Regarding Records of Commodity Interest and Related Cash or Forward Transactions

The Commodity Futures Trading Commission (the “Commission”) is proposing to (i) provide that all required records under this regulation must be searchable and (ii) clarify that all records be kept in a form and manner that allows for identification of a particular transaction, except records of oral and written communications leading to the execution of a transaction. In addition, the Commission is proposing to exclude certain market participants from some of the written and oral recordkeeping requirements under the rule.

Overview of Proposed Amendments to Rules Regarding Records of Commodity Interest and Related Cash or Forward Transactions

This Proposed Rule would amend the Commission’s existing recordkeeping requirements under Regulation 1.35(a) to: (i) provide that all records required to be maintained under this regulation must be searchable, and (ii) clarify that all records be kept in a form and manner that allows for identification of a particular transaction, except that records of oral and written communications leading to the execution of a transaction in a commodity interest and related cash or forward transactions are not required to be kept in a form and manner that allows for identification of a particular transaction. The Commission is also proposing to exclude those members of designated contract markets (“DCMs”) or swap execution facilities (“SEFs”) that are not registered or required to register with the Commission in any capacity (“Unregistered Members”) from the requirements to retain text messages, to maintain records in a searchable format, and to maintain records in a form and manner that allows for the identification of a particular transaction. Further, the Proposed Rule also would exclude commodity trading advisors (“CTAs”) from the requirement to record and maintain oral communications that lead to the execution of a commodity interest transaction.

Types of Records That Must Be Retained in a Form and Manner That Allows for the Identification of a Particular Transaction

Under the current rule, each futures commission merchant (“FCM”), retail foreign exchange dealer (“RFED”), introducing broker (“IB”), and member of a DCM or SEF is required to keep full, complete, and systematic records of all transactions relating to its business of dealing in commodity interests and related cash or forward transactions. Included among such records are all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices that lead to the execution of a transaction in a commodity interest and related cash or forward transactions, whether communicated by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device, or other digital or electronic media. All required records must be “identifiable and searchable by transaction.”

The Proposed Rule would amend Regulation 1.35(a) to (i) provide that all records required to be maintained under this regulation must be searchable and (ii) clarify that all records be kept in a form and manner that allows for identification of a particular transaction, except that records of oral and written communications leading to the execution of a transaction in a commodity interest and related cash or forward transactions are not required to be kept in a form and manner that allows for identification of a particular transaction.

Exclusion of Unregistered Members from Some Written Recordkeeping Requirements

Under the current rule, Unregistered Members are subject to all the written recordkeeping requirements, including the requirement to retain text messages and to store records in a form and manner identifiable and searchable by transaction. Under the Proposal, Unregistered Members would be excluded from the requirements to retain text messages and to maintain records in a particular form and manner.

Exclusion of CTAs from Oral Recordkeeping Requirements

Under the current rule, FCMs, RFEDs, large IBs, and members of a DCM or SEF that are floor brokers (only with regard to acting as an agent for a non-affiliated client) or CTAs must record oral communications relating to commodity interest transactions. The Proposed Rule would exclude CTAs from the requirement to record oral communications.