

CFTC Letter No. 01-84

October 30, 2001

Interpretation

Division of Trading and Markets

This is in response to your e-mail message to the Secretary of the Commodity Futures Trading Commission (the "Commission") dated October 23, 2001, which was referred to the Division of Trading and Markets ("Division") for reply. Your message concerns the requirement of Commission Rule 1.31 that a registrant who chooses to store all, or all of a particular class, of its books and records on electronic media must retain a third-party technical consultant. You inquired whether this requirement may be satisfied if the records are stored on zip drives at the firm and at the residence of an employee of the firm who has signed an agreement that, if for any reason the stored documents are not available at the firm, the employee would make them available.

The requirement to retain a third-party to ensure Commission access to electronically stored documents where a registrant is unable or unwilling to provide such access is intended to provide the Commission with an alternative source for those documents and records. *See* the proposing release for the most recent amendments to Rule 1.31, *Recordkeeping 63 Federal Register* 30668, 30670 (June 5, 1998). If the firm goes out of business and/or all of the principals and employees who know the firm's electronic data storage systems become unavailable or uncooperative, the existence of a consultant separate and distinct from the firm, who can provide access to the firm's stored records is of great importance to the Commission in carrying out its enforcement and general regulatory functions. It is precisely the "third-party" attribute of the consultant that provides assurance of continued access comparable to the level of access that exists where all required records are stored as paper documents.

Therefore, we do not believe that having an employee of the firm retain duplicates of the firm's electronically stored documents on a zip drive at the employee's home would constitute compliance with the third-party technical consultant requirement of Rule 1.31.

You may reply to this e-mail message if you have additional questions.

Sincerely,

Christopher W. Cummings
Staff Attorney
Division of Trading and
Markets