

CFTC Letter No. 04-19

July 12, 2004

Interpretation

Division of Clearing and Intermediary Oversight

Re: Rule 1.31 – Maintaining Required Records in PDF Format

Dear :

This is in response to your e-mail messages dated March 30 and April 13, 2004, to the Division of Clearing and Intermediary Oversight (the “Division”) of the Commodity Futures Trading Commission (the “Commission”). By that correspondence, you have requested, on behalf of “A”, the Division’s views on whether the procedure you proposed to employ in keeping daily and monthly trader statements and reports (the “Records”) would comply with the requirements of Commission Rule 1.31.^[1]

Based upon the representations made in your correspondence, we understand the facts to be as follows. “A” is registered with the Commission as a futures commission merchant (“FCM”). “A” proposes to keep the Records in PDF format^[2] at four different locations. The Records would be stored on servers in “A”’s Chicago and London offices, and DVD or CD back-up copies would be kept at on-site and off-site locations. The underlying data for these Records would be maintained in an electronic storage medium and stored on servers in “A”’s Chicago and London offices.

Subject to certain conditions, Rule 1.31 permits an FCM to store most required records electronically.^[3] Rule 1.31(b)(4) provides that “[i]n addition to the foregoing conditions, any person who uses *only* electronic storage media to preserve some or all of its required records (“Electronic Recordkeeper”) shall, prior to the media’s use, enter into an agreement with at least one third-party technical consultant. . .” (emphasis added). The procedure that you propose employs two different formats, multiple redundancy, and widely separated locations. Although those features squarely address disaster recovery and business continuity concerns, “A” must take steps to address the concerns embodied in Rule 1.31.

Specifically, Rule 1.31(b)(4) requires that a third-party technical consultant hired by the person required to keep the records be ready and willing to retrieve electronically stored records and make them available to be read and used by Commission staff members in the event that “A” personnel are unavailable or unwilling to perform that task. Information, including both the underlying data and the PDF Records, stored on “A”’s servers may be inaccessible to Commission representatives without the assistance of “A”’s personnel or such third-party consultant, due to firewall, security and other potential obstacles. Information stored in PDF format on a CD or DVD, however, if properly labeled and/or

indexed, could potentially be readily accessed by Commission representatives without assistance under the following circumstances: (i) each record must be stored on the CD or DVD in the format “filename.pdf” where “filename” represents the actual name given to the stored record; (ii) the date and type of record must be easily discernible, whether from the file name, from an index or otherwise,^[4] and the information must be updated at least daily; and (iii) each record must be maintained in a consistent format in terms of size, font and orientation on the page.

The use of a third-party technical consultant is, of course, strongly preferred. If “A” determines not to employ a third-party technical consultant, it must observe the foregoing particular requirements and, in general, maintain the Records in such a way that a representative of the Commission could find, read, and use the Records without technical assistance as required by Rule 1.31.

This letter is based upon the representations you have made. It pertains only to storage of the Records, and is conditioned upon the underlying data being maintained in an electronic storage medium and stored on servers in “A”’s Chicago and London offices, in addition to the Records being stored on CD or DVD, and “A”’s compliance with all other provisions of the Act and Commission rules, particularly Rule 1.31 regarding recordkeeping.^[5] Any different, changed or omitted material facts or circumstances might render this letter void. Further, this letter represents the position of this Division only and does not necessarily reflect the views of the Commission or of any other office or division of the Commission.

If you have any questions concerning this correspondence, please contact me or Christopher W. Cummings, Special Counsel, at (202) 418-5445.

Very truly yours,

James L. Carley
Director

^[1] Commission rules referred to herein are found at 17 C.F.R. Ch. I (2003).

^[2] PDF, or portable document format, was developed by Adobe Systems Incorporated as a standardized document storage format.

^[3] Trading cards and customer order tickets are required to be kept in original hard-copy form.

^[4] For example, “2004-04-12_Daily_Stmts.pdf.”

[\[5\]](#) Note, for example the requirement of Rule 1.31(d) that “[t]rading cards, documents on which trade information is originally recorded in writing, and written orders required to be kept pursuant to [Rule] 1.35(a), (a-1)(1), (a-1)(2) and (d) must be retained in hard-copy for the required time period.” Note, also, the requirement of Rule 1.31(b)(2)(v) to maintain an index, and in particular, to keep a duplicate of the index in a separate location.