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August 18, 1998

COMMENT

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

Re: **Proposed Rules for Recordkeeping**

Dear Ms. Webb:

The Futures Industry Association ("FIA") respectfully submits this comment letter in response to the Commodity Futures Trading Commission ("CFTC" or "Commission") Notice of Proposed Rulemaking regarding Recordkeeping, published in the Federal Register, 63 Fed. Reg. 30668 (June 5, 1998) (the "Notice"). The Commission's proposal would amend Rule 1.31 to permit the use of additional types of record storage technology beyond the current rule's limited provisions for microfiche, microfilm and optical disk. The proposed rules would also permit registrants to store most types of required records – except written orders and trading cards -- on qualifying "micrographic" or "electronic" storage media for the full five-year recordkeeping period.

The FIA, a not-for-profit corporation, is a principal spokesman for the futures industry. Its members include approximately 70 of the largest futures commission merchants ("FCMs") in the United States. Among its associate members are representatives from virtually all other segments of the national and international futures industry, including approximately seven active domestic futures exchanges. Reflecting the scope and diversity of its membership, the FIA estimates that its members effect more than 80% of all customer transactions executed on United States contract markets.

The FIA commends the Commission for proposing to amend Rule 1.31 in light of technological advances in electronic storage media. The Commission is moving in the right direction in its attempt to provide a more generic, performance-based approach to the definition of permissible record storage technology, to replace the current rule's focused specifications of a particular class of optical disk or micrographic media. In practical terms, the Commission's

rule would permit recordkeepers to use CD-ROM, optical tape, and other popular electronic storage media for most required records, if certain conditions are satisfied. The FIA believes, however, that some provisions of the proposed rule may not be practicable and therefore would deter registrants from implementing electronic storage systems. The FIA respectfully submits the following comments in the hope that they will foster more reasonable electronic recordkeeping requirements, so that both recordkeepers and the Commission can benefit from the improved efficiency, reliability, and security of electronic record storage and retrieval.

I. The General Approach to Electronic Recordkeeping Rules.

Ideally, the Commission should adopt rules that meet regulatory needs, yet are flexible enough to accommodate the exponential rate of technological advancement. With more general recordkeeping standards, recordkeepers would have continuing guidance as new technologies unfold, and the Commission would not need to amend its rules each time a new technology is developed that does not fit squarely within the parameters of the Commission's current rules.

The CFTC's proposed rule, with a few notable exceptions set forth below, generally parallels the amended recordkeeping rules that the Securities and Exchange Commission ("SEC") adopted in February, 1997.[1] The FIA does not object to the adoption of electronic recordkeeping rules that generally follow the SEC's blueprint, so long as the CFTC rules are no more restrictive than the SEC's rules. Indeed, as the CFTC's Notice observes, the CFTC previously has relied upon the SEC recordkeeping rules in several instances. 63 Fed. Reg. at 30668 & nn.9-10.

If the CFTC's amended recordkeeping rules dovetail the SEC provisions, FCM-broker-dealers and other dual registrants would have to follow only one set of recordkeeping rules for their securities and futures businesses. Moreover, recordkeepers would be permitted to use CD-ROM, optical tape, and other electronic storage media that are not permitted by the CFTC's current rules. However, as discussed below, the FIA objects to many of the CFTC's proposed provisions that either: (a) do not go as far as the SEC in embracing electronic storage technology (see Section II, written orders and trading cards); (b) overstep the SEC's benchmark and set forth more stringent requirements (see Sections III-IV, regarding requirements for immediate production and inspection, formatting, and waiver of privilege and confidentiality); or (c) despite the SEC's adoption, seem unnecessary and overburdensome (see Section VI, third-party technical consultants).

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[1] The SEC amended its broker-dealer record preservation rule in early 1997 to allow broker-dealers to use electronic storage media that meet certain criteria. 62 Fed. Reg. 6469 (SEC Feb. 12, 1997) (amendments codified at 17 C.F.R. § 240.17a-4(f) (effective Apr. 14, 1997)).

As an alternative approach, the CFTC should consider adopting general standards for recordkeeping, without any reference to specific media or technological requirements. For example, the National Futures Association ("NFA") has made an informal proposal to amend Rule 1.31, to provide general standards for reliability, security and accessibility which would apply both to paper records and to records stored on electronic or micrographic storage media. Although the FIA does not necessarily agree with all the specifics of NFA's proposal, the FIA's Operations and Information Technology Divisions generally support the concept of a general set of standards to preserve the integrity of required records rather than a detailed set of technological or performance specifications which readily become outdated.

II. The CFTC Should Permit Electronic Storage of Order Tickets and Trading Cards After One Year, and Sooner In Individually Approved Cases.

The CFTC proposal would maintain Rule 1.31's current requirement that trading cards and written customer orders be kept in hard copy for the entire recordkeeping period. Proposed Rule 1.31(d). In contrast, the SEC's rules permit electronic storage of these records, for the entire recordkeeping period.[2] 62 Fed. Reg. at 6471.

The FIA believes that the Commission should permit ***all*** records to be retained on electronic media—including order tickets and trading cards--for the entire recordkeeping period.[3] For many FCMs, the written orders and trading cards for thousands of futures and options transactions each day comprise the largest portion of their paper record storage needs. The cost to organize, index, and store several boxes of orders and trading cards each day, multiplied over a five-year period, are very substantial. Moreover, there are substantial costs to retrieve boxes from off-site warehouses and to retain personnel to search through large boxes containing thousands of order tickets or trading cards to find particular requested records. The retrieval process is often like the proverbial search for a needle in a haystack. Controlling this

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[2] The SEC initially expressed concern about using electronic technology to store records with handwritten text, because from an examinations and enforcement standpoint, it might be more difficult to detect forgeries and alterations. Yet, the SEC recognized that its experience since 1970 with the use of microfilm to store handwritten records has been positive. Moreover, few broker-dealers currently keep documents in hard copy or paper format, and many larger broker-dealers enter most orders directly through electronic systems which automatically retain electronic records. Accordingly, the SEC decided that allowing preservation of handwritten records in electronic storage media would not significantly increase the difficulty of detecting forgery or alterations. The SEC noted that it could revisit the issue if difficulties arise. 62 Fed. Reg. at 6470-71.

[3] For this reason, FIA supported First Option of Chicago, Inc.'s ("FOC's") request that the CFTC publish for public comment FOC's May 12, 1998 petition for the amendment of Rule 1.31 to permit use of a variety of qualifying means of electronic recordkeeping for all categories of required records -- including order tickets and trading cards -- and for the entire required recordkeeping period under the Commodity Exchange Act ("CEA" or "Act") and Commission regulations.

voluminous paper record storage, search, and retrieval process is a major concern to many registrants (and the New York futures exchanges, which are responsible for retaining written orders and trading cards).

There are also security risks in maintaining large volumes of original hard copy documents. Paper records stored in offices or off-site warehouses can be misplaced, misfiled, or destroyed by fire, flood, or other catastrophic event. In contrast, electronic and micrographic media may be readily duplicated, with the duplicate stored in a separate location, to minimize the risk of accidental destruction or misplacement.

If recordkeepers cannot use new electronic technology to store written orders and trading cards, it may not be as cost effective for them to invest in a new electronic recordkeeping system. More important, without electronic recordkeeping, the substantial security and efficiency benefits of electronic record management systems will be lost for the industry and the Commission.

The FIA recognizes that the Commission and some futures exchanges have concerns about enforcement efforts if the original handwritten orders and trading cards are unavailable. However, many of the CFTC's enforcement concerns may be overstated. The FIA located only one reported CFTC enforcement case that involved expert analysis of handwriting on original order tickets or trading cards. In re Buckwalter, [1984 - 1986 Transfer Binder] Comm. Fut. L. Rep. (CCH) ¶ 24,995 (1991).[4] The Commission should consider whether the high cost and burden of maintaining original written orders and trading cards is disproportionate to the limited use of these documents in enforcement cases. Even recognizing that there may be a very few cases where analysis of the original order tickets or trading cards is pivotal, on balance, the added value of requiring preservation of such originals is outweighed by the significant benefits of electronic storage, search and retrieval. Nevertheless, the FIA has tried to fashion a compromise that fairly balances recordkeepers' desire for flexibility and efficiency with regulators' desire for the retention of secure and accurate original records "to assure an effective audit trail for trades." 62 Fed. Reg. at 300670-71.

A. Shortened One-Year Required Retention for Hard Copies.

After consulting with the principal futures exchanges in Chicago and New York, the FIA requests that the Commission consider a compromise proposal pursuant to which it would require the retention of hard-copy original trading cards and written customer orders for one year only, after which recordkeepers would be permitted to retain such records solely on acceptable electronic or micrographic media for the remainder of the required record retention period. This compromise proposal for a one-year retention requirement for original documents would apply

[4] Most reported enforcement cases involving analysis by handwriting experts or document examiners concerned alleged signature forgeries on account agreements or other documents.

only to written orders and trading cards -- not to any other records. The Chicago Board of Trade, the Chicago Mercantile Exchange, and the New York Board of Trade, have authorized the FIA to represent to the Commission that they support this shortened one-year retention requirement for order tickets and trading cards.[5] In the futures exchanges' experience, the vast majority of order tickets and trading cards are requested, from a compliance or audit perspective, within the first year. Therefore the foregoing exchanges agree that it would be sufficient to require retention of the original order tickets and trading cards for one year only, provided that, for the remaining four years, reproductions would be available from qualifying high-quality micrographic or electronic storage media that are reasonably able to detect alterations.[6] From recordkeepers' perspective, the one-year rule would reduce their required paper storage burden by 80%, which would be a meaningful benefit.

B. The Commission Should Establish an Approval Process for Alternative and Other Recordkeeping Systems.

The Commission's regulations simply cannot keep current with developments in technology and ever-evolving industry practices. Moreover, it is difficult to develop fully some technologies or specialized applications without testing in the field. Therefore, the Commission should implement an approval process that would permit recordkeepers, on an individual or industry-wide basis, to use alternative recordkeeping systems that arguably do not fit squarely within the Commission's regulations. Furthermore, if the Commission adopts the one-year hard-copy retention rule for order tickets and trading cards as proposed in subsection A above, an approval process would confirm that certain record storage media are acceptable for storing order tickets and trading cards for the remaining four years of the required record retention period.

The approval process should permit registrants, futures exchanges, third-party vendors and technical consultants to petition the Commission for approval of a particular record storage system on a case-by-case or system-by-system basis. To qualify for approval, the petitioner must demonstrate that the subject electronic storage medium and recordkeeping system will provide high-quality record imaging and reproduction, preserve the integrity of records, and be reasonably able to detect alterations. The FIA further proposes that the CFTC review and respond to such requests for approval within 30 days, to provide timely guidance to firms that are considering purchasing and/or implementing new electronic record management systems.

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[5] These futures exchanges do not necessarily support the other comments and proposals set forth in this comment letter.

[6] The Commission could periodically publish lists of such acceptable media, and/or permit recordkeepers to seek Commission approval of a particular record storage medium or system for order tickets and trading cards for the final four years of the required record retention period, as described in Section B below.

This type of approval process will provide the flexibility and incentive needed for recordkeepers, technical consultants, and system vendors to develop and explore new and innovative recordkeeping systems. A case-by-case or system-by-system approach is appropriate during the initial period when both registrants and the Commission have had limited experience in transferring a large volume of written order tickets and trading cards, as well as other records, to electronic storage media. An approval process would provide a procedure for recordkeepers to obtain some relief from the Commission's recordkeeping rules and immediately to test implementation of new electronic storage media for all required records.

III. The CFTC's Proposed Requirements for "Immediate" Responses to Requests for Records and Access Information are Overburdensome.

The CFTC's proposed recordkeeping amendment would require that electronic recordkeepers adhere to a stringent set of requirements for producing requested records stored on electronic media and related information to access such records and their indexes. The recurring requirement is that all regulatory requests must be accomplished ***"immediately."*** The CFTC's proposed rules use the word "immediate" or "immediately" at least nine times, with respect to:

- "immediate downloading" of indexes and records, Proposed Rule 1.31(b)(1)(ii)(D);
- "immediate ascertain[ment]" of the location of any particular record, Proposed Rule 1.31(b)(2)(v)(A);
- "immediate" provision of copies of records on approved machine-readable media, Proposed Rule 1.31(b)(2)(ii) and (b)(3)(i); and
- "immediate examination" of indexes, audit system results, written operation procedures and controls, and information necessary to access records and indexes, Proposed Rule 1.31(b)(2)(v)(B), (b)(3)(ii)(A)-(C), (b)(3)(iii)(A).

In comparison, the SEC rules require that access and audit information need only be "readily" downloaded, "available" or "provide[d] promptly." The SEC's rule uses the word "immediate" only in a few instances with respect to facilities for "immediate, easily readable projection or production," with enlargements "immediately provide[d]"; even the SEC requirements, in context, are less taxing than the CFTC's.

Notably, the SEC rejected a proposed provision that was virtually identical to the CFTC's proposed requirement that the location of any particular record stored on electronic media be immediately ascertained. The SEC's initial proposal would have required that the recordkeeper "[a]rrange the records and indexes, and file the films and optical disks in such a manner as to permit the ***immediate*** location of any particular record." SEC, Proposed Amendments, 58 Fed. Reg. 38092, 38094 (July 15, 1993) (emphasis added). The SEC declined to enact this proposed

provision in its final rule, in apparent recognition of the practical difficulties in complying with such a stringent requirement.

The CFTC's numerous proposed requirements for "immediate" action are problematic for at least two reasons: (1) they are somewhat vague; and (2) they are unreasonable. First, there is no clear definition of the meaning of "immediate." The Commission's Notice seems to suggest that "immediate" is quicker than "promptly" and might be sooner than the next day. See 63 Fed. Reg. at 30671-72. Yet, if "immediate" requires a same-day response, this standard would impose an exceptionally onerous burden on recordkeepers. The Notice acknowledges that nothing in the proposed rule specifies how "readily accessible" a record must be to ensure "immediate production," and that the regulatory history to Rule 1.31 provides only "limited guidance regarding the difference between the standard governing production under subsection (a) – promptly – and the standard governing production under subsections (b), (c), and (d) – immediately." Id. at 30671.

Second, under any of these interpretations, an "immediate" response time would not be feasible in all circumstances. Regardless of technological improvements, any recordkeeping system requires people to operate the system, search for and retrieve requested records and information, and then respond to the regulatory request. There are a number of practical problems arising out of an "immediate" production standard. Even the NFA's "next business day" deadline, as discussed in the Notice, may be impossible or unduly burdensome where a request for records or information is extensive or a key employee is not immediately available to process the request.

For example, the Commission's hard-line proposal for "immediate" production and inspection does not provide any flexibility depending on the nature or breadth of a particular request – or other pending requests. Recordkeepers are subject to document requests from a myriad of exchanges and regulatory authorities in addition to the Commission – all of which demand prompt responses. Regulatory requests for documents and information are not standard. Each request is unique. A request could require production of a single document or index -- or the retrieval of records reflecting all activity in several accounts over an extended period. While an immediate response might seem reasonable for the former request, it is clearly unreasonable for the latter.[7]

In addition, the Commission's strict "immediate" standard does not recognize the differences between digital electronic storage media and traditional analog micrographic media. Requested documents and information may not necessarily be "on-line," but could be stored on microfiche, microfilm, optical disk or tape, CD-ROM or other electronic media, in hard copy, or

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[7] FIA expects that some of its members in their individual comment letters to the Commission on the proposed rule will provide the Commission with specific information concerning the number and nature of the regulatory requests they receive in the ordinary course of business.

a combination of different media. Even with non-paper media, it can take as long as several days to "run the tapes" or electronically or manually search for the records necessary to reconstruct a transaction or an account history.

Also, with new electronic storage media like CD-ROM, specially trained personnel are required to search for and retrieve requested documents and information. The Commission's proposal does not provide any relief for an employee's temporary absence, illness, or the press of other regulatory requests or business exigencies. Construed literally, where a response is required "immediately," a few hours can make the difference between compliance and noncompliance.

The FIA recognizes that comparable requirements for "immediate" responses are found in the Commission's existing rules for storage on micrographic media and optical disk.[8] CFTC staff typically exhibits flexibility when requesting documents to accommodate practical considerations. This practice should be codified. Accordingly, the Commission should amend its existing and proposed rules to clarify a less onerous and more flexible standard depending on the circumstances or, at a minimum, add language in the adopting release to clarify that "immediately" need not be construed literally to mean "instantly."

The FIA recommends that the Commission adopt a uniform standard for all the recordkeeping and production requirements set forth above, to clarify that compliance should be "as expeditiously as is reasonable in light of the circumstances." 63 Fed. Reg. at 30671 (quoting 46 Fed. Reg. 21 n.6). This standard would require expeditious production of records, yet provide reasonable allowance for the scope and length of the request, the type of media on which records are stored, availability of necessary employees, and other practical variables.[9] Consequently, in applying the uniform standard to practical situations, it would be reasonable to expect that a request for a single account statement or disclosure document stored on CD-ROM would be produced more promptly than a request for all the daily confirmation and monthly statements for particular account over a two-year period stored on microfiche; and that the latter request would be produced more promptly than a request for 50 order tickets and trading cards for futures and options trades on different exchanges stored in hard copy in 50 different boxes in an off-site warehouse.

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[8] The "immediate" standard apparently was inherited from the CFTC's regulatory precursors at the Department of Agriculture and Commodity Exchange Commission, see 63 Fed. Reg. at 30671.

[9] In most circumstances, absent an immediate threat that customer funds may disappear (in which cases the CFTC usually seeks and obtains an ex parte freeze order from a federal court), there is little compelling regulatory need or justification for "immediate" production.

IV. The CFTC's Proposal to Specify the Format and Coding Structure of Requested Documents Could Present Fundamental Compatibility Problems.

The CFTC proposal would require copies of records stored in electronic media to be provided on approved machine-readable media pursuant to CFTC Rule 15.00(l) (which defines the term as "data processing media approved by the Commission or its designee"), and would further require that, upon production, records must use a format and coding structure specified in the CFTC's request. Proposed Rule 1.31(b)(3)(i). In the explanatory section of its Notice, the CFTC suggests, for example, that the Commission may request that recordkeepers produce electronic records in standard ASCII format. 63 Fed. Reg. at 30669 n.16. The CFTC's proposed requirement raises the possibility of insurmountable technological compatibility issues, as highlighted by its ASCII example. Notably, there is no SEC counterpart to this proposal.

The FIA anticipates that many recordkeepers will optically scan documents onto electronic storage media, which will store the document images. This technique is especially well-suited for handwritten documents and other pictorial images. With current technology and readily available formats, the record images are usually retained in a standard TIF format for black-and-white images, or a GIF or JPEG format for color images. These formats, however, cannot be converted readily to ASCII or EBCDIC, which are commonly used to store text. Indeed, there is a risk that there will be significant distortion or a loss of reproduction quality if the Commission asks for documents to be converted to another format -- or that conversion is not possible at all. Even conversion between two different text-based or image-based formats is uncertain and unreliable at best.

Moreover, despite performing a computer search of the CFTC's interpretative letters and advisory releases and making inquiries to Commission staff, the FIA has been unable to determine whether, to date, the Commission or its designee has approved or defined any acceptable data processing or machine-readable media pursuant to CFTC Rule 15.00(l) (other than certain of the media previously defined in the rule before its amendment. See 62 Fed. Reg. 24026, 24028 n.10 (May 2, 1997)). Consequently, the CFTC's proposal does not provide sufficient notice or certainty to recordkeepers who want to implement an electronic storage system.

The FIA appreciates the Commission's desire to ensure that it can access, view and read documents, regardless of the format in which they are stored.[10] To this end, the FIA suggests the following alternatives. First, at any given time, there are usually only a limited number of commonly used formats for record storage; the Commission should have the ability to access documents stored on widely used formats. Second, the recordkeeper always should have the

[10] There is a practical need to ensure that all current ***data*** can be exported in a uniform method to assist transfers of customers' positions between firms in emergency situations, as well as for regulatory analysis. The need is not as compelling with scanned documents which are substituted for physical documents and stored for archival purposes.

option of producing hard-copy records or reproductions. Third, if the Commission does not have the technology to access and read electronically-stored records, the recordkeeper should be permitted to provide the Commission with the technology or other means necessary to access and view requested records. Fourth, the Commission could publish a list of approved "browsers" to access the electronically stored records; if recordkeepers use a different browser, a copy of the browser software would have to be filed with the CFTC or maintained in a third-party escrow arrangement. Taken together, these alternatives would permit the recordkeeper to select from a variety of record storage formats, while ensuring that the Commission will be able to access the records regardless of the storage format selected.

V. The CFTC Should Make Allowances for Inadvertent Waiver of Privileged or Confidential Documents Stored on Electronic Media.

The CFTC's proposed rule would require waiver of any privilege, claim of confidentiality, or other objection to disclosure of non-CFTC required information stored on the same individual medium as CFTC-required records.[11] There is no similar provision in the SEC's record preservation rules.

Rather than mandate a blanket waiver in all cases, the CFTC should provide relief for the inadvertent waiver of privileged and/or confidential material. The American Bar Association ("ABA") has concluded that an attorney who receives materials that on their face appear to be privileged or confidential, under circumstances where it is clear that they were not intended for the recipient, should: (a) refrain from examining the materials; (b) notify the sender of their receipt; and (c) abide by the sender's instructions as to their disposition. ABA Op. No. 92-368 (Nov. 10, 1992). The Commission and its staff, whether or not they are attorneys, should abide by these ethical guidelines when faced with the receipt of privileged or confidential information that was inadvertently produced and obviously not intended to be disclosed to the Commission..

The FIA recognizes that there is a similar waiver provision in the CFTC's current rules for microfiche and optical disk, Rule 1.31(c)(4), and recommends that the Commission also amend that provision in light of the ABA opinion. The inadvertent waiver issue becomes even more compelling with the use of newer, high capacity electronic storage media, which likely will be used more widely, and for more types of required and non-required records. While the FIA anticipates that most recordkeepers will take reasonable precautions to segregate the media for storage of required records from the media for storage of privileged or confidential business records, there is greater likelihood that isolated errors could occur where large volumes of records are transferred to high-density electronic storage media. Given the large capacity of CD-ROMs, optical tape, and other electronic media, it would be difficult to detect if a file of

[11] This provision is similar to the provision currently found in CFTC Rule 1.31(c)(4), for optical disk storage.

confidential documents was erroneously scanned onto the same CD-ROM used to store customer account statements. Such errors would not be obvious to the naked eye. The rule should require the Commission to return inadvertently disclosed privileged or confidential documents.

VI. The CFTC's Proposed Requirements for Third-Party Technical Consultants Is Burdensome and Unnecessary.

The CFTC proposal would require registrants who use electronic record storage to enter into arrangements with a third-party "technical consultant" to maintain access to the electronic recordkeeper's required records and download records if necessary. (This proposal generally parallels the SEC rule.) The Commission has requested comment about the potential cost of such requirements, as well as alternatives to ensure access to records stored by uncooperative registrants.

The FIA members are concerned that the requirement for a third-party "guarantor" for record access will be expensive and is unnecessary. Increasingly, registrants will develop in-house operations to convert documents to electronic storage media (rather than using outside vendors and consultants). Under the Commission's proposal, recordkeepers with in-house scanning and conversion operations would still have to retain an outside third-party technical consultant who would undertake to provide access to electronically stored records.

The third-party technical consultant requirement is somewhat duplicative of the proposed requirement that electronic recordkeepers either maintain, keep current, and make available to CFTC staff all information necessary to access records and indexes maintained on the electronic storage media, or place such information in escrow. Proposed Rule 1.31(b)(3)(iii). Given this requirement, the Commission will have access to the information it needs to retrieve required records from electronic storage media. Furthermore, the Commission may rely upon audits regularly conducted by recordkeepers' self-regulatory organizations ("SROs") to help ensure that recordkeepers who use electronic storage media maintain readily accessible information necessary to access records and indexes. Such information can also be stored on the individual CD-ROM disks or other digital storage media. Thus, the extra burden and expense of a required technical consultant is unwarranted. Indeed, there is no comparable requirement to ensure access to paper records or records stored on micrographic media.

The Commission's concerns about recordkeepers who cease doing business and "disappear" cannot be solved by imposing more regulations upon registrants who stay in business. There is always a risk that some persons will not follow the rules. The Commission's proposed requirement for third-party consultants will not solve that problem. Rather, it will impose an unnecessary expense and burden upon those industry participants who "play by the rules," or, even worse, it will deter such registrants from adopting electronic recordkeeping systems.

As an alternative, the Commission could require that if an electronic recordkeeper ceases to do business, all electronically-stored records and the information necessary to access such records shall be placed in escrow for the remainder of the period of time required to preserve the records. If a registrant who continues to do business does not cooperate or comply in providing access to electronic records, the Commission may commence an enforcement action.

VII. The Security and Integrity of Hard Copy and Micrographic Records.

The Commission's notice states that the NFA correctly notes that Rule 1.31 does not include any requirements for the security and integrity of paper records, but has fairly detailed requirements for records stored on optical disks. 63 Fed. Reg. at 30672. Likewise, the Commission's proposed rules contain detailed requirements for the security/integrity of records stored on "electronic storage media." The Commission seeks comment on whether Rule 1.31 could be improved by specifying the nature of the duty to have and enforce procedures to keep records maintained in hard copy form or on micrographic media from being altered or destroyed. The Commission observed that as a regulatory duty, it is implicit in registrants' duty to supervise pursuant to Rule 166.3. When it amended Rule 1.31 in 1993, the Commission stated that microfilm records are considered trustworthy, since the image cannot be readily altered and firms use documented procedures that are performed in the ordinary course of business. 63 Fed. Reg. at 30672 (citing 58 Fed. Reg. 27460).

The FIA disagrees that the security and integrity of records stored in hard copy is covered by Rule 166.3's duty to supervise. Nevertheless, the FIA is unaware of any evidence that tampering with paper records during storage is a problem in the futures industry. Accordingly, the FIA does not believe that further regulations or requirements are necessary.

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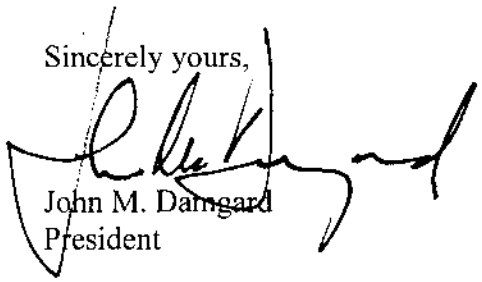
The FIA appreciates the opportunity to comment on the Commission's proposed rules, and looks forward to working with the Commission in enacting rules that will foster a smooth transition to electronic recordkeeping. The FIA believes that regulators and registrants alike will benefit immensely from a new regulatory scheme with the resilience to preserve the integrity of required records while embracing new recordkeeping technologies.

Sincerely yours,



John M. Damgard
President