



NATIONAL FUTURES ASSOCIATION  
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August 18, 1998

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Via Facsimile and Regular Mail

OFFICE OF THE SECRETARY

Ms. Jean A. Webb  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, N.W.  
Washington, DC 20581

COMMENT

COMMODITY FUTURES  
TRADING COMMISSION  
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Re: Proposed Amendments to Rule 1.31 Recordkeeping Rule

Dear Ms. Webb:

In the June 5, 1998 Federal Register, the Commodity Futures Trading Commission ("Commission") requested comments on proposed changes to Commission Regulation 1.31. National Futures Association ("NFA") welcomes this opportunity to comment on the Commission's proposal.

In December 1997, NFA submitted a letter to Commission staff recommending that the Commission consider amending Rule 1.31 to allow for greater use of electronic storage of business records. Specifically, NFA suggested that the Commission eliminate the Rule's references to specific technology and suggested that the Rule require that registrant recordkeeping systems meet general reliability and accessibility standards. NFA believes that the Commission's current proposal is a significant step in the right direction, but, as discussed more fully below, NFA requests that the Commission consider additional modifications to the Rule.

One of the main components to NFA's proposal was to adopt a uniform standard of accessibility and security for all required records, eliminating the distinction between records maintained in hard copy and those maintained in electronic media. In its release, however, the Commission disagreed with NFA's suggestion, noting that it has always made this distinction. Moreover, the Commission stated that it believes that it is appropriate to require immediate production of electronically stored records. NFA does not disagree with the Commission that electronically stored records should, in most cases, be produced more quickly than hard copy records. NFA questions, however, whether it is necessary to adopt different standards for different media in order to ensure faster production where possible. NFA believes that what constitutes "promptly" depends on a number of factors, including the type of media upon which the record is stored and the volume of the request. On the other hand, the term "immediate" provides for no flexibility and may become an unreasonable standard depending on the size of the request. By requiring that



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all records, regardless of the media, be produced promptly, the Commission can expect to receive electronically stored records more quickly, while retaining the flexibility to adjust the time frame depending on the type or size of the request being made.

NFA would also like to comment on the issue of whether trading cards and order tickets need to be maintained in hard copy form for the entire five-year retention period. NFA recognizes that there will be enforcement cases in which it may be vital to detect alterations to trading cards or order tickets and we understand, therefore, the Commission's interest in ensuring that these records are maintained in hard copy. We would, however, like to raise two issues for the Commission's consideration. First, even assuming that hard copy retention is and will remain the only method which can provide adequate assurances that alterations can be detected, we question whether hard copy retention for the full five-year period should be required. The Commission could, for example, require hard copy retention of order tickets and trading cards for some shorter period of time and allow such records to be stored electronically for the balance of the required retention period. Moreover, it seems unwise to codify in the regulation the notion that no form of electronic storage could ever provide adequate assurances that alterations could be detected. Given the pace of technological evolution, such a concept will undoubtedly become outmoded sooner rather than later. We would suggest that the Commission provide that order tickets and trading cards can be stored electronically only if the Commission and the firm's DSRO have found that the storage media employed can produce copies of sufficient clarity that alterations can reasonably be detected. The Commission could state that it is currently unaware of any technology which satisfies this standard but that it would be willing to consider petitions from registrants who feel their systems meet that standard.

In summary, NFA supports the Commission's move toward adopting a performance based approach in defining permissible technology for record retention. NFA urges the Commission, however, to give serious considerations to the points raised above.

Sincerely,

A handwritten signature in black ink, appearing to read 'Daniel J. Roth', written in a cursive style.

Daniel J. Roth  
General Counsel

/pjf(Ltrs/1.31comment.CAW)