



March 9, 2011

Mr. David A. Stawick  
Secretariat  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

Re: Publication of Systems of Records Managed by the Commodity Futures  
Trading Commission

Dear Mr. Stawick:

National Futures Association appreciates the opportunity to comment on the Commodity Futures Trading Commission's ("Commission" or "CFTC") notice regarding the Publication of the Existence and Character of Revised Systems of Records and Routine Uses ("Notice"). NFA's comments are limited to three systems of records covered in the Notice: CFTC-12 Fitness Investigations, CFTC-20 Registration, and CFTC-28 Self-Regulatory Organization Disciplinary Action Files.

Through a series of orders beginning December 13, 1984 the Commission has delegated to NFA the responsibility to administer the Commission's registration program for all categories of registrants under the Commodity Exchange Act. We anticipate the Commission will also delegate to NFA later this year the responsibility to administer the Commission's registration program for Swap Dealers and Major Swap Participants. I would like to briefly describe the various elements of the registration program administered by NFA as they relate to hard copy and electronic records.

### **Hard Copy Records**

At the time of the initial delegation of December 13, 1984, the CFTC transferred to NFA the hard copy registration and fitness records of all persons that had pending or registered statuses at that time. It also transferred the records of other persons that had become inactive in the two year period prior to the delegation and transfer of records. From December 13, 1984 through June 30, 2002 NFA continued to receive and store hard copy registration and fitness records for persons applying for



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registration during that time period. Since July 1, 2002, with certain infrequent exceptions, all registration records that NFA receives are electronic, although hard copy fitness records continue to be received, obtained and processed.

### **Electronic Records**

NFA has operated three electronic databases to support the registration program.

The first system, the Membership Registration Receivable System ("MRRS"), went into production on December 13, 1984, and was populated with critical data from the CFTC's registration system. The CFTC data did not contain all of the information from the hard copy source records, such as the employment and residential history of applicants and the specific application form disciplinary questions that had affirmative responses. The CFTC's database did, however, contain the most recent critical information collected on the hard copy forms: personal identifying information, current home address, and the existence of affirmative responses to disciplinary information questions.

The second system, New MRRS, was put into production on April 1, 1988. Existing MRRS data was converted to the new format and populated in New MRRS. All of the information from hard copy applications and updates received subsequent to the conversion to New MRRS was entered from the hard copy documents into New MRRS. Whenever changes to New MRRS data were made because new hard copy applications or updates were received, the new information overwrote the prior information. However, there was an audit trail in New MRRS that would enable NFA staff to reconstruct the history of a person's responses to the disciplinary information questions. Thus, the critical registration information was captured in New MRRS.

The third system, Online Registration System ("ORS"), has been in production since July 1, 2002. The existing New MRRS data, including the disciplinary question responses audit trail, was converted to the new format and populated in ORS. ORS is a web based filing system. Virtually all applications, updates and changes are filed electronically, and all information filed is captured and maintained in the database. Any registration-related hard copy documents received have been imaged and are maintained electronically.





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All three of NFA's registration systems generated registration and membership status histories for all persons.

In addition to the three registration systems, NFA put its Fitness Image Processing System into production on March 15, 1991. From that day forward, all hard copy fitness records have been scanned, indexed and maintained as digital images.

### **Hard Copy Records Retention**

With respect to hard copy registration records, NFA's historical practice had been to store hard copy registration and fitness records on site for all persons for however long they had an active registration status and for two years after the termination of a last active registration status. At that point, the hard copy files were stored off site and destroyed after an additional eight year inactive period had elapsed. When an inactive person with an off site file became active again, the file was retrieved from off site and put back in the active registration files.

With respect to hard copy fitness records, NFA followed a regime that paralleled the hard copy registration records regime described above for records received and obtained from the initial transfer of records from the CFTC in 1984 until the introduction of the Fitness Image System on March 15, 1991. From that date forward hard copy fitness records are destroyed two years after they have been received and scanned, regardless of the registration status of the person.

From 1982 until December 2007 NFA's headquarters was at 200 W. Madison Street in Chicago. Throughout that twenty-five year period NFA operated a sizeable registration records storage room in our headquarters space. In 2007 NFA began planning the move of its headquarters to our current location at 300 S. Riverside Plaza in Chicago. Since ORS and the Fitness Image System had been in production since July 1, 2002, and March 15, 1991, respectively, the amount of hard copy registration and fitness records for active persons was steadily decreasing. Because of this trend, NFA preliminarily decided not to devote floor space in the Riverside Plaza location to the storage of hard copy registration and fitness records. Before making any final decision, NFA reexamined the entire registration and fitness records program with the Registration Working Group ("RWG") in early 2007. The RWG consists of members from NFA staff and CFTC staff from the Division of Clearing and Intermediary Oversight, the Division of Enforcement, and the Office of the General Counsel. After a series of



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RWG meetings, NFA was authorized to send all hard copy registration and un-imaged hard copy fitness records off site, regardless of the status of the person to whom the records related. Since September 2007, all hard copy records are stored off site, including some records related to persons with active registration statuses.

Further, as a result those RWG discussions, CFTC staff advised NFA that, beginning July 1, 2012, NFA would be authorized to destroy all remaining hard copy records and that the CFTC would issue revised notices of systems of records to this effect. The rationale for this authorization was: the ORS database contained all registration information filed since July 1, 2002, as well as the critical data from the earlier legacy CFTC, MRRS and New MRRS systems; and by July 1, 2012, all of the remaining hard copy records would be at least ten and up to thirty-five or more years old. In 2007, NFA halted destruction of hard copy registration and hard copy fitness records in anticipation of what NFA believed was to be an imminent release of revised notices of systems of records. NFA inquired about the status of the revised notices during the 2010 CFTC Rule Enforcement Review of NFA's registration program and has been awaiting a response to that inquiry.

Based on the information provided above, NFA respectfully submits the following recommendation for changes to the Notice.

#### **CFTC-12 Fitness Investigations**

NFA recommends that the Notice be amended to clarify that any remaining hard copy fitness records (i.e. records that have never been imaged) can be destroyed effective July 1, 2012. NFA notes that these records pre-date March 15, 1991, and fitness reviews of these records have been completed pursuant to CFTC guidelines. These records no longer have any utility. NFA is in agreement with maintaining the electronically stored Fitness Image records indefinitely as described in the Notice.

NFA also has two technical comments for this section of the Notice. In describing the categories covered by the Fitness Investigations system of records, the draft notice omits Retail Foreign Exchange Dealers. Also, the Notice lists the National Association of Securities Dealers ("NASD") as a records source. The Notice should be amended to include Retail Foreign Exchange Dealers and reflect NASD's successor's name, the Financial Industry Regulatory Authority.





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### **CFTC-20 Registration**

The Notice states that paper records prior to 2002 and electronic index/summaries of these hard copy records are stored indefinitely. Similar to our Fitness Investigations comment above, NFA recommends that the Notice be amended to provide that paper records be destroyed 10 years after the person becomes inactive, and that any remaining paper records existing on June 30, 2012 be destroyed. NFA is in agreement with maintaining registration computer files indefinitely as described in the Notice.

NFA also has two technical comments regarding this section of the Notice. First, the Notice should be amended to include Retail Foreign Exchange Dealers. Also, NFA recommends that the paragraph describing the directories that may be sold to the public by NFA be amended. These directories contain information about FCMs, IBs, CPOs, CTAs and RFEDs. The information contained in directories is limited to the registration category or categories, main office address, and main office phone number. One of the directories also contains branch office addresses, branch office phone numbers, and branch office managers' names. The directories do not contain any of the information cited in the final sentence of the paragraph in the Notice that describes the directories, and NFA therefore recommends that this sentence be deleted from the notice.

### **CFTC-28 Self-Regulatory Organization Disciplinary Action Files**

NFA agrees with the Notice's statement providing for the indefinite retention of the computer files of this system of records. This disciplinary information is contained in NFA's BASIC database. BASIC is an important resource for the investing public and the futures industry, and it is very appropriate that these electronic records be maintained indefinitely. NFA notes that the Notice also makes reference to the existence of paper records being maintained indefinitely. NFA has never had possession of any paper records for this system of records. If the CFTC has paper records, NFA suggests that those paper records be destroyed. The SRO disciplinary actions have been filed electronically into the Clearinghouse of Disciplinary Information (the predecessor system to BASIC) since 1991 and into BASIC since 1998, so it would seem that any hard copy SRO disciplinary action records that the CFTC maintains would be at least 20 years old at this point.



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The CFTC-12 Fitness Investigations and CFTC-20 Registration systems refer to records related to individuals who have applied or may apply for registration as floor brokers, floor traders, futures commission merchants, introducing brokers, commodity pool operators, commodity trading advisors, leverage transaction merchants and agricultural trade option merchants; and individuals who are listed or may be listed as principals. The Dodd-Frank Wall Street Reform and Consumer Protection Act created two new registration categories, swap dealers and major swap participants, and the CFTC has proposed regulations governing the registration process for swap dealers and major swap participants. While not certain, NFA anticipates that the CFTC will delegate to NFA the registration and related recordkeeping functions for swap dealers and major swap participants. NFA suggests that the CFTC consider revising the Notice to include these new registration categories in Fitness Investigation and Registration Systems.

If you have any questions concerning this letter, please do not hesitate to contact Michael Crowley, Associate General Counsel, at (312) 781-1388 or [mcrowley@nfa.futures.org](mailto:mcrowley@nfa.futures.org), Gregory Prusik, Vice President of Registration, at (312) 781-1424 [gprusik@nfa.futures.org](mailto:gprusik@nfa.futures.org), or the undersigned at (312) 781-1413 or [tsexton@nfa.futures.org](mailto:tsexton@nfa.futures.org).

Respectfully submitted,

A handwritten signature in dark ink, appearing to read "T. Sexton", is written over a large, loopy circular flourish.

Thomas W. Sexton  
Senior Vice President and General  
Counsel