



March 20, 2017

Mr. Christopher J. Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, DC 20581

Re: RIN 3038—AD36: Recordkeeping

Dear Mr. Kirkpatrick:

National Futures Association (NFA) appreciates the opportunity to comment on the Commodity Futures Trading Commission's (CFTC or Commission) proposed amendments to its recordkeeping obligations set forth in the Commission's regulations. Among other things, the proposed amendments would eliminate the requirements that registrants maintain electronic records in their native file format, maintain records in a "non-rewritable, non-erasable" or "write once, read many" (WORM) format and enter into an arrangement with a third-party technical consultant with respect to electronically stored information.

NFA fully supports the Commission's proposed amendments to CFTC Regulation 1.31. As the Commission noted in the proposing release, recordkeeping has evolved significantly since the last major revision to Regulation 1.31, which has resulted in certain provisions of Regulation 1.31 being obsolete or outdated. The Commission proposed amendments recognize that the rapid nature of technology developments requires a recordkeeping framework that is more principles based and technologically neutral so that firms are able to use the most current technology available. NFA believes that the Commission's proposal provides for such a framework. NFA also believes that the proposal will provide important cost benefits to industry participants.

Although beyond the direct scope of the CFTC's proposed amendments to Regulation 1.31, NFA encourages the Commission to address the third-party recordkeeper issue raised by the Managed Funds Association, the Investment Adviser Association and the Alternative Investment Management Association (collectively, Associations) in their July 21, 2014 Petition for Rulemaking (Petition). In that Petition, the Associations requested that the Commission revise Regulations 4.23 and 4.7(b)(4) to eliminate the requirement that records be maintained only with specified categories of third parties, as well as amend Regulations 4.23(c)(2) and 4.7(b)(5) to eliminate the requirement that third party recordkeepers certify that they keep and maintain records in accordance with

Regulation 1.31. Finally, the Petition requested that the Commission expand third-party recordkeeping requirements to also permit CTAs to use third-party recordkeepers.

The Commission's Division of Swap Dealer and Intermediary Oversight (DSIO) partially addressed the Association's request in CFTC Letter No. 14-114.<sup>1</sup> In that Letter, DSIO provided exemptive relief from Regulations 4.7(b)(4) and 4.23 by allowing CPOs to use any third party recordkeeper provided that the CPO maintains timely access to the records in order to satisfy its obligation to provide the records to the Commission for inspection and that the CPO provide certain required statements regarding the identity of the recordkeeper and the recordkeeper's contact information. NFA agrees with DSIO's reasoning for issuing this exemptive relief and encourages the Commission to codify this relief for CPOs and expand the relief to CTAs for the reasons outlined in the Associations' Petition.

NFA also encourages the Commission to consider amending Regulation 4.23 and 4.7 to eliminate the requirement that a third-party recordkeeper certify that it keeps and maintains records in accordance with Regulation 1.31. As the Associations noted in their Petition, the CPO, like all registrants, remains ultimately responsible for ensuring that its records are maintained in accordance with 1.31. NFA does not believe that there is any regulatory benefit for requiring a third-party recordkeeper to file this certification, and it likely will increase the costs borne by a CPO in using a third party for these purposes. Likewise, if the Commission expands the third-party recordkeeping relief to CTAs, then NFA believes that the Commission should not impose a certification requirement upon third-party recordkeepers maintaining a CTA's records.

Finally, as noted above, NFA fully supports the Commission's proposed amendments to CFTC Regulation 1.31. We further understand that some industry participants may have minor concerns with some of the technical aspects of the proposal. NFA encourages the Commission to carefully consider these comments when finalizing the proposed amendments.

Very truly yours,



Carol A. Wooding  
Vice President and  
General Counsel

(caw:Comment Letters\_Recordkeeping)

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<sup>1</sup> See CFTC Letter No. 14-114, *Exemptive Relief to Use Additional Third-party Recordkeepers in Commission Regulations 4.7(b)(4) and 4.23(c)*(September 8, 2014).