



March 20, 2017

**Via Electronic Submission**

Christopher Kirkpatrick  
Secretary of the Commission  
U.S. Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street NW  
Washington, DC 20581

**RE: Comment on RIN No. 3038-AE36, Recordkeeping**

Dear Mr. Kirkpatrick:

ICE Futures U.S., Inc. (“IFUS” or “Exchange”) appreciates the opportunity to provide comments and recommendations to the Commodity Futures Trading Commission (“CFTC” or “Commission”) in response to the Commission’s notice of proposed rulemaking for recordkeeping obligations (“Proposal”). The Exchange strongly agrees with all of the Commission’s stated objectives and the majority of the Proposal as a whole. However, as discussed below, we are deeply concerned that it will be next to impossible for designated contracts markets (“DCMs”), which are required to keep books and records of all their business activities, to comply with certain aspects of the Proposal.

Unlike other types of registrants, such as introducing brokers and futures commission merchants, which have specific defined categories of records that must be generated and maintained, there are virtually no limitations on DCM record keeping obligations. Under DCM Core Principle 18 and Commission Regulation 38.950, contract markets are required to maintain records of all activities relating to the business of the contract market. Neither the Core Principle nor the regulations carve out any type of record from this broad requirement. There are no definitions for the terms “record” or “business of the contract market” and no compliance guidance provided in Appendix B to Part 38, where guidance and acceptable practices are both “reserved.”

The proposed amendments to Regulation 1.31 add to the recordkeeping burden already incumbent on a DCM by expressly requiring that every correction or amendment to a record be maintained. We believe the Commission intended this requirement to apply only to official, permanent records of the DCM and not to each record generated in the course of the DCM’s activities. However, without defining what is a “record” for purposes of the proposed

amendments, every document, communication, line of code or program could be viewed as a record of the contract market's activities.

While we recognize the need to maintain an accurate history for certain types of information, particularly audit trail and related trading records that are regularly reported to, and relied upon by, the Commission, it seems unnecessary for many other aspects of a DCM's activities and the types of records they generate on a daily basis. The activities related to the business of a contract market are broad. Surely the Commission does not intend to burden DCMs with maintaining something as innocuous as an original invoice sent to a member which is later revised to correct a billing error, or drafts of meeting minutes, correspondence, rule amendments, contract specifications, investigatory reports, sales presentations, disciplinary decisions and arbitration awards which may go through multiple iterations before becoming final, if at all. A DCM that fails to record and retain every version of a document or other record pertaining to any aspect of its operations would appear to do so at its own peril under the proposed amendments. The extreme burden of compliance clearly outweighs any resulting utility to the Commission.

Without guidance or limitation, Core Principle 18, Regulation 38.950 and Regulation 1.31 essentially requires a DCM to keep records of every draft, edit, correction or other alteration along with the corresponding metadata for nearly everything performed by each of its employees on a day-to-day basis. The Commission should provide some practical limitation on which records are captured by the requirements of Regulation 1.31(a)(i). To be clear, the Exchange is not proposing to eliminate the existing requirement to keep all records relating to the business of a contract market. The Exchange is proposing that the onerous requirements to keep every version of a record and the metadata relating to such changes be limited to those records generated by an Exchange which capture essential information on which the Commission relies, such as audit trail records.

The proposed amendments also add the requirement that "metadata," such as who created, accessed, modified or formatted a record be generated and maintained for every record and every correction or amendment to every record, when "relevant." The Commission expressed the view that it is not necessary to further define this term, since technical terms such as this may change over time. At the same time, the Commission noted that there is not "universal agreement" on what constitutes "metadata." For that reason, it may be appropriate to conduct a separate rulemaking in the future to clearly define this term.

Finally, IFUS is also concerned with proposed Regulation 1.31(c)(4), which increases the duration of time that electronic regulatory records must be kept "readily accessible." This requirement is problematic for DCMs, which are required to keep voluminous electronic records relating to orders and trading activity. For example, IFUS will receive tens of millions of order messages on an average day. The cost to keep such records "readily accessible" for two years under the current requirement is quite substantial. The Proposal will require such records to be kept readily accessible for a period of 5 years, more than doubling the duration and significantly increasing the expense. Further, the Commission has not demonstrated any need to have the records kept in this state. As such, the Exchange requests that the Commission keep the current requirement that records be readily accessible for 2-years. This will provide tremendous cost savings to participants without any sacrifice to the quality or reliability of such records.

The Exchange thanks the Commission for the opportunity to comment on the proposed rules.

Very truly yours,

A handwritten signature in cursive script that reads "Trabue Bland". The ink is dark and the signature is fluid and legible.

Trabue Bland  
President