

**DIVISION OF TRADING AND MARKETS ADVISORY  
CONCERNING REGISTRANTS THAT HAVE HAD RECORDS DESTROYED  
DUE TO THE DAMAGE TO THE WORLD TRADE CENTER AND  
SURROUNDING BUILDINGS ON SEPTEMBER 11.**

In light of the disruptions to the financial markets caused by the terrorist attacks of September 11, 2001, the Commodity Futures Trading Commission (“Commission”) issued a Statement of Policy Regarding Temporary Relief From Certain Provisions of the Commission’s Regulations (the “Statement of Policy”) on September 19, 2001. The Statement of Policy noted that “[t]he Commission recognizes that there may be registrants whose individual circumstances warrant relief beyond that provided by this Statement of Policy,” and encouraged such registrants to contact Commission staff to advise of the particulars of their situation and the relief requested.

Staff of the Division of Trading and Markets (“Division”) have received a number of requests for relief from entities that had records destroyed due to the damage to the World Trade Center and surrounding buildings on September 11. These entities indicated that they have lost records that Commission recordkeeping regulations 1.31, 4.23 and/or 4.33 require be kept. The Division understands that a number of other entities may be similarly situated. In addition, some registrants may have lost records that they are required to maintain on a current basis pursuant to other Commission rules. The Division is accordingly issuing the following no-action relief.

**I) Inventory of Lost Records**

Subject to the conditions set forth below, the Division will not recommend that the Commission take enforcement action against any registrant based on a failure to keep records as required by Rules 1.31, 4.23 or 4.33 where such failure is due to the records being lost or destroyed as a direct consequence of the damage to the World Trade Center and surrounding buildings arising out of the events of September 11. Registrants will be required to replace records to the extent, and only to the extent, specified in Section III below. The relief will apply to records included in an inventory of records that were lost or destroyed, submitted to the Commission at the address below no later than March 31, 2002.

The inventory must identify the records lost by category and date. For example: “Order tickets for contracts traded on the New York Mercantile Exchange for orders received between January 1, 2000 and September 11, 2001.” The inventory should be supported by copies of any available documentation that substantiates the inventory of lost records.

The inventory must be supported by a certification, signed by the registrant’s Chief Executive Officer, Chief Financial Officer, managing partner, or sole proprietor (as applicable) that the records included in the inventory were, in fact, lost or destroyed. The certification should explicitly note any applicable limitations on the

certainty that records were lost or destroyed. For example: “Copies of some records [in categories 1, 7, and 8] may have been retained at branch offices.”

The inventory must be accompanied by the following identifying information:

- a) Name of registrant;
- b) National Futures Association registration number;
- c) Current business address. If current business address is temporary, then
  - i) Permanent business address and anticipated effective date, if known, or
  - ii) A statement that the current business address is temporary and the permanent business address is not known; and
- d) Name, address and telephone number of a contact person from whom Commission staff may obtain further information if necessary.

## **II) Electronic storage media and micrographic media**

Pursuant to Rule 1.31(b)(2)(iv), “persons who use either micrographic media or electronic storage media to maintain records in accordance with [Rule 1.31]” are required to “[s]tore a duplicate of the record, in any medium acceptable under this regulation, at a location separate from the original for the period of time required for maintenance of the original.” Division staff are aware that some registrants maintained primary and backup facilities that were both within the scope of destruction or damaged on September 11. For these registrants, the loss of both the records and their duplicates is subject to this no-action position.

## **III) Records that must be replaced**

Registrants are required to maintain specified information concerning their current customers and their accounts, as well as written permissions and elections. This information is typically gathered as part of the account opening process. Registrants are also required to maintain specified information concerning their current operations, and past performance. Because such records stored at or near the World Trade Center may have been lost due to the events of September 11, certain registrants may have been or may be technically out of compliance with their obligation to maintain these records.

Subject to the conditions set forth below, the Division will not recommend enforcement action against any registrant that failed to maintain the records specified below between September 11, 2001 and March 31, 2002 where such records were lost due to the damage to the World Trade Center and surrounding buildings arising out of the events of September 11. On or before March 31, 2002, the registrant must either obtain copies of required documents (from, as applicable, the customer, other registrants, attorneys, accountants, depositories, or any other source of copies of the original

documents) or obtain replacement documents, in the following areas (as applicable to the registrant):

- 1) Information regarding current customers:<sup>1</sup>
  - a) Information regarding each customer's name, address and occupation required by Rule 1.37.
  - b) The customer elections concerning liquidation of hedging accounts as specified in Rule 190.06.
  - c) If a CPO has lost the subsidiary ledger information required by Rule 4.23(a)(4), the CPO must determine by the most reliable means practicable the account value for each participant as of the close of business on September 10, 2001, and create a subsidiary ledger or other equivalent record for each participant showing the participant's name, address, balance as of September 10, 2001, and property received from and distributed to that participant since that date.
  - d) For CTAs, the name and address of each client and each subscriber, as required by Rule 4.33(a)(1), and all powers of attorney and other documents, or copies thereof, authorizing the CTA to direct the commodity interest account of each client or subscriber, as well as all other written agreements, or copies thereof, in force between the CTA and any client or subscriber.
  - e) To the extent an FCM takes any action for which the customer's written authorization is necessary, such written authorization.
- 2) Other information:
  - a) Written acknowledgements of segregated accounts, as required by Rule 1.20(a) and 1.26(a), and of foreign futures and options secured amount accounts, as required by Rule 30.7(c)(5).
  - b) The record of investments required by Rule 1.27(a) as applied to current investments of customer funds.
  - c) The information required by Rule 1.14 to be maintained by FCMs.
  - d) Written operational procedures and controls as required by Rule 1.31(b)(3)(ii), and the information necessary to access records and indexes or the physical and logical formats required by Rule 1.31(b)(3)(iii), as they apply to records not included in the inventory.

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<sup>1</sup> For the purposes of this relief, a "current customer" is a customer for which a Futures Commission Merchant ("FCM") holds customer funds or whose account is in deficit, a participant in a pool operated by a Commodity Pool Operator ("CPO"), or a client of a Commodity Trading Advisor ("CTA") or Introducing Broker ("IB").

- e) The account certification information required by Rule 1.35(a-1)(5)(iv).
  - f) For IBs, the written authorization to receive checks specified in Rule 1.57(c).
  - g) The written representations concerning spread or hedged positions required by Rule 1.58(b).
  - h) The consent to prospective transfers of a customer's account required by Rule 1.65(a)(2), if the FCM intends to rely on such consent to avoid the specific consent requirement of Rule 1.65(a)(1).
- 3) A CPO that has lost the supporting data required to substantiate its performance, as required by Rule 4.25(a)(7), may rely upon performance figures included in a Disclosure Document filed with the National Futures Association ("NFA") prior to September 11, 2001, to the extent such figures are available and were computed in good faith.
- 4) A CTA that has lost the supporting data required to substantiate its performance, as required by Rule 4.35(a)(6), may rely upon performance figures included in a Disclosure Document filed with NFA prior to September 11, 2001, to the extent such figures are available and were computed in good faith.

**For further information, please contact:**

**Robert B. Wasserman**  
**Associate Director**  
**Division of Trading & Markets**  
**Commodity Futures Trading Commission**  
**1155 21<sup>st</sup> Street, NW**  
**Washington, DC 20581**  
**(202) 418-5092**  
**[rwasserman@cftc.gov](mailto:rwasserman@cftc.gov)**