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# EXCHANGE ANALYTICS INC.

OFC. OF THE SECRETARIAT

## COMMENT

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

September 12, 2001

Re: Proposed Rules Concerning Intermediaries

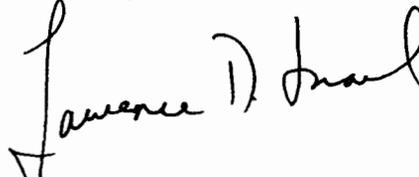
Dear Ms. Webb:

Please find enclosed with this letter a document that is a comment letter to the Proposed Rules Concerning Intermediaries. The date of this Federal Register Announcement was August 28, 2001, and the comment period ended September 12.

This was originally faxed to you on September 12, 2001, and I am forwarding the original letter to you for your convenience.

Thank you very much for including this in the comment file.

Sincerely,



Lawrence D. Israel  
Vice President

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**EXCHANGE ANALYTICS INC.**

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Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

September 12, 2001

Re: Proposed Rules Concerning Intermediaries

Dear Ms. Webb:

Exchange Analytics Inc. is pleased to offer comments to the Commodity Futures Trading Commission specifically regarding the proposed elimination of CFTC Rule 3.34 concerning mandatory ethics training for industry registrants. Exchange Analytics Inc. is a leading provider of ethics training programs for the futures industry, and we have provided 35,000 programs to registrants throughout the world. Our customers include many of the largest financial service companies in the industry. Our courses incorporate a combined 50 years of industry experience by principals who have been extensively involved in sales, compliance, management, dispute resolution, and trading floor issues.

We applaud the CFTC's regulatory reform initiative and believe that overall implementation of core principles and interpretations of acceptable business practices helps the US futures industry maintain a competitive posture in the global marketplace. We believe, however, that in a well-intentioned effort to provide a less restrictive environment, a very important, well-received and functional program is being eliminated and/or seriously diluted to the detriment of the public, the industry, and the marketplace.

The Commission, in its summary of the proposed rule deletion, states "...an essential component of maintaining fitness is continuing education concerning obligations under the Act and rules thereunder. In order to provide flexibility and ease compliance for all registrants, the Commission is proposing to delete Rule 3.34 and instead to implement Congressional intent regarding ethics training through a Statement of Acceptable Practices." We believe that elimination of Rule 3.34 will create a great deal of uncertainty regarding this training, may lead firms, especially small firms, to place an inadequate priority on ethics training, and weaken the overall integrity that the public places in our industry.

We recommend the Commission do two things. First, instead of eliminating this rule, we believe the Commission should modify it to provide more flexibility in ethics training, while making sure that Registrants remain current as to the legal requirements applicable to a person's role in the futures industry. Secondly, we urge the Commission to make sure the National Futures

Association has in place either rules, or at a very minimum stated guidance concerning ethics training.

### Public Interest Issues

Fundamentally we believe that it is in the public interest to promote sound ethics and proficiency standards. Section 210 of the Futures Trading Practices Act of 1992, which initially established the ethics training requirement, describes the purpose of ethics training as one of insuring "... that registrants understand their responsibilities to the public under this Act, including responsibilities to observe just and equitable principles of trade, any rule or regulation of the Commission, any rule of any appropriate contract market, registered futures association, or any other self-regulatory organization, or any other applicable Federal or state law, rule or regulation."

### CFTC Rule 3.34 Provides Guidance

CFTC Rule 3.34 provides guidance and certainty that topics in the public interest will be covered, and that any registrant participating in ethics training will be exposed to those topics. The futures markets have certain unique characteristics and leverage that differentiate them from other markets, and certain topics must appropriately be addressed. Rule 3.34 provides this regulatory guidance. Deletion of Rule 3.34 leaves no assurance whatsoever those important topics pertaining specifically to the futures markets will be addressed.

### CFTC Rule 3.34 Imparts Seriousness

Rule 3.34 sends a message to the industry that ethical behavior is essential in the futures industry. The Securities Industry requires a "Regulatory" training requirement. This impresses upon securities registrants the seriousness of that training and demonstrates to the public the industry's emphasis on ethical behavior. Elimination of Rule 3.34 sends the wrong message to the industry and the public regarding the importance of training.

### CFTC Rule 3.34 Ensures a Level of Quality Control and Integrity

Ethics training providers, under Rule 3.34, must apply to, and be authorized by the NFA. The application process involves submitting an outline of the course, including topics to be addressed, time spent on various subjects, course organization, and delivery method. Additionally the provider of the training has a responsibility to independently ensure that a minimal level of good faith participation in a program has been achieved. Providers compete not only on the efficiency and cost effectiveness of their courses, but also on the quality of content.

### Suggested Changes in Rule 3.34

We have received many comments from Registrants that initial and periodic training are valuable in provoking thought to ethical issues in our industry. We believe that new registrants should be exposed to training within six months of registration, and at periodic three-year intervals. This is both reasonable and appears to work well in practice, and should be maintained.

Under the Commodity Exchange Act of 1992, an initial ethics-training program was required within 6 months of registration for new registrants. This was a congressional mandate and has been omitted in the current proposal. This initial training has been well received by the industry and it has provided a logical framework for providing new registrants with the background and understanding of practices and legal interpretations that are essential for ethical conduct within the industry. It is strongly recommended that if rule 3.34 is eliminated, an initial program be continued and specifically included in the Statement of Acceptable Practices.

We do believe, however, that the minimum amount of time required on a program is arbitrary and should be deleted. Successful completion of the subject material is much more important than a prescribed minimum amount of time that must be spent. For this reason we suggest that Rule 3.34 be modified to eliminate a minimal time requirement.

We also believe that training be allowed to be delivered in whatever format works best for the industry. Currently training must be delivered via a computer or Internet based platform, videotape, live class, or teleconference. We see no reason why different media or format might not be utilized for this training, as long as good faith completion of the program can be proven.

#### The Importance of NFA Oversight and Record Keeping

Finally we believe that if Rule 3.34 is eliminated, the NFA should provide guidance and continue to maintain records related to any training that intermediaries receive in satisfaction of Core Principles.

We believe that it is of the utmost importance to the industry that regulatory guidance is given to the training requirement. We communicate regularly with many compliance directors and to thousands of industry registrants. There is an enormous amount of confusion regarding what the training requirements will be if Rule 3.34 is eliminated.

Currently the NFA oversees compliance with Rule 3.34 and keeps training records. The NFA has developed a highly sophisticated record keeping system for this purpose, and training records are provided periodically to NFA member firms and are available to the public on the NFA's BASIC (Background Affiliation Status Information Center) on the NFA web site. This provides an exceptionally efficient and cost effective record keeping system to the CFTC, NFA, the industry and the public to verify that registrants participate in ongoing training.

The Commission proposes to eliminate Rule 3.34 and replace it with flexible Core Principles, specifically Core Principles Two and Six. Core Principal Two requires that intermediaries in commodity interest markets must be and remain fit. Core Principal Six requires adequate supervision. One of the items that has not been addressed is whether records of training would be kept, and if so who would keep them.

Practically the elimination of Rule 3.34 also removes the requirement that the NFA maintain an ongoing system of record keeping of training, removing an important tool the NFA has in their oversight position. Without a central record-keeping system maintained by the NFA, the only verification of training will be through periodic NFA audits of the firms and registrants.

Removing the centralized NFA record-keeping system will place the burden of record-keeping on the registrants and member firms themselves, eliminate a highly efficient and cost-effective regulatory system to ensure adherence with fitness standards, and eliminate the ability of the public to verify intermediaries have participated in training.

Whether rule 3.34 is deleted or replaced with a Statement of Acceptable Practices, eliminating the NFA's role in maintaining completion records creates more potential problems than it resolves. The NFA should continue to assist firms by maintaining records related to any training. Dismantling a centralized system that assists firms and replacing it with one where the onus is on the firms subject to audit, is not beneficial or in the best interests of the member firms or industry.

### Conclusion

To comply with 1992 CEA 4p(b) the industry needs active CFTC guidance and direction, which Rule 3.34 currently provides and the Statement of Acceptable Practices does not. Elimination of Rule 3.34 raises a host of practical issues and questions regarding compliance oversight, and will cause a great deal of confusion and uncertainty to both firms and registrants regarding what obligations they have for training. This may lead firms, especially small firms, to place an inadequate priority on ethics training, and weaken the overall integrity that the public places in our industry.

The vagueness of the Statement of Acceptable Practices will in all probability increase the financial and paperwork burden on the industry regarding ethics training, and will greatly weaken the ability of regulators to ensure compliance. No competitive, economic or social benefits will accrue from elimination of this rule. Rather the result will be an appearance of a decrease in the perceived seriousness of the training by registrants and the public, confusion on the part of firms and registrants, and diminished market integrity. Finally we believe that the NFA should provide regulatory guidance for ethics training if CFTC Rule 3.34 is eliminated. We urge the CFTC to review this matter further and reconsider the elimination of Rule 3.34.

We appreciate the opportunity to make these comments. Please feel free to contact us if we can be helpful in any way.

Sincerely,



James D. Baer  
President