



Commodity Futures Trading Commission

Office of Public Affairs

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December 18, 2015

Fact Sheet – Final Rule Regarding Records of Commodity Interest and Related Cash or Forward Transactions

The Commodity Futures Trading Commission (the “Commission”) is adopting a Final Rule that amends the recordkeeping requirements under Commission Regulation 1.35(a) to: (1) exclude certain market participants from some of the written and oral recordkeeping requirements under the rule; and (2) ease the requirements governing the form and manner in which records must be kept.

Overview of Commission Regulation 1.35(a)

Commission Regulation 1.35(a) is a recordkeeping rule that applies to futures commission merchants, retail foreign exchange dealers, introducing brokers, and members of a designated contract market (“DCM”) or of a swap execution facility (“SEF”), including DCM or SEF members that are not registered or required to register with the Commission (“Unregistered Members”). The rule requires these market participants to keep records of their business of dealing in commodity interest transactions and related cash or forward transactions (“Transaction Records”). Subject to certain exceptions, these market participants must also keep records of written communications that lead to the execution of a commodity interest transaction and related cash or forward transactions (“Written Pre-Trade Communications”), and a subset of these market participants must keep records of oral communications that lead to the execution of a commodity interest transaction (“Oral Pre-Trade Communications”). The rule also specifies the form and manner in which records must be kept.

Exclusion of Unregistered Members from Certain Written Recordkeeping Requirements

Under the Final Rule, Unregistered Members are only required to keep Transaction Records, and are no longer required to keep: (1) Written Pre-Trade Communications; or (2) Transaction Records transmitted via text messages (as defined in the Final Rule). Additionally, Unregistered Members are not required to keep their records in any particular form and manner.

Exclusion of CTAs from Oral Recordkeeping Requirements

Under the Final Rule, commodity trading advisors (“CTAs”) that are members of a DCM or of a SEF are excluded from the requirement to record and keep Oral Pre-Trade Communications.

Form and Manner in Which Required Records Must Be Kept

Under the Final Rule, all required records must be kept in a form and manner which permits prompt, accurate, and reliable location, access, and retrieval of any particular record, data, or information. In addition, all Transaction Records must be kept in a form and manner that allows for identification of a particular transaction. In the Preamble to the Final Rule, the Commission clarifies that, for the purpose of this rule, records “allow for identification of a particular transaction” when a market participant can identify those records that pertain to a particular transaction. The Final Rule does not require Commission registrants to convert their records to searchable electronic databases. Instead, the Final Rule was deliberately drafted to permit the Commission registrants subject to the rule to keep their paper and electronic records in a manner which they deem prudent and appropriate for their particular business. There is no prescribed methodology by which records must be searched or retrieved, so long as those searches yield prompt and accurate results.

Reorganization of the Text of Regulation 1.35(a)

The Final Rule reorganizes the text of 1.35(a) to provide greater clarity regarding the regulatory obligations of affected Commission registrants and Unregistered Members. The reorganized rule text defines separate categories of required records and then separately specifies for each type of Commission registrant, and for Unregistered Members, the category or categories of records each is required to keep. This reorganization does not modify the regulatory obligations of Commission registrants or Unregistered Members under Regulation 1.35(a). Only the substantive changes to the rule, as described above, modify these regulatory obligations.