

COMMODITY FUTURES TRADING COMMISSION**17 CFR Part 1****Financial Reports of Futures Commission Merchants and Introducing Brokers; Correction**

AGENCY: Commodity Futures Trading Commission.

ACTION: Technical amendment.

SUMMARY: This document contains a technical amendment to the final rule amendments which were published on Friday, March 7, 1997 (62 FR 10441). The rule amendments related to financial reports of futures commission merchants (FCMs) and introducing brokers (IBs) filed electronically. The technical amendment makes clear that the Commodity Futures Trading Commission (Commission) will only accept an electronic filing of a financial report in lieu of a filing in paper form if the FCM, IB or a designated self-regulatory organization (DSRO) has provided the Commission with the means necessary to read and to process the information contained in the financial report filed electronically.

EFFECTIVE DATE: June 18, 1997.

FOR FURTHER INFORMATION CONTACT: Lawrence B. Patent, Associate Chief Counsel, or Lawrence T. Eckert, Attorney Advisor, Division of Trading and Markets, Commodity Futures Trading Commission, 1155 21st Street, NW., Washington, D.C. 20581. Telephone (202) 418-5450.

SUPPLEMENTARY INFORMATION: On March 7, 1997, the Commission published final amendments to Commission Rule 1.10(c), among others, that are intended to facilitate the filing of financial reports by FCMs and IBs with the Commission electronically. 62 FR 10441. These rule amendments provided that financial reports which need not be certified by an independent public accountant in accordance with Commission Rule 1.16 may be submitted to the Commission in electronic form using a Commission-assigned Personal Identification Number, and otherwise in accordance with instructions issued by the Commission, *if the Commission has obtained the means necessary to read and to process the information contained in such reports.* (Emphasis added.)

Member firms of the Chicago Mercantile Exchange (CME) and the Chicago Board of Trade (CBT) are filing financial reports with those exchanges electronically. The software which enables firms to make such electronic

filings, and which enables the CME and CBT to read and to process the data contained in the reports, was co-developed by CME and CBT.

In order for the Commission to permit firms to file financial reports with the Commission electronically, the Commission must be able to read and to process the data contained therein. When the Commission adopted the amendment to Rule 1.10(c), it intended that firms would be permitted to file electronically only if they or a DSRO furnished the electronic filing software to the Commission. However, somewhat broader language was used in the amendment to Rule 1.10(c) to allow for the possibility that the Commission could obtain such software by other means.

The Commission, in an effort to eliminate any possible confusion on this point, has determined to make a technical amendment to the first proviso of Rule 1.10(c) such that the Commission will accept a non-certified financial report filed by an FCM or IB electronically if, among other things, the FCM, IB or a DSRO¹ has provided the Commission with the means necessary to read and to process the information contained in the financial report filed electronically. The Commission believes that this technical amendment is consistent with its original intent in adopting amendments to Rule 1.10(c) as well as with the Commission rule governing maintenance of records in electronic format.² The Commission

¹ There are still some FCMs and IBs that do not belong to a DSRO so the Commission wants to allow for the possibility that such firms may themselves develop electronic filing software and supply it to the Commission. Further, the Commission allows any DSRO to furnish the software, rather than only the FCM's or IB's own DSRO, because these products may be used by more than one DSRO and it may be the case that the software necessary to read and/or to process financial reports filed electronically is supplied by a particular DSRO to the entire industry and the Commission. For example, CME may supply the software that permits the Commission to process a report filed electronically by a CBT member firm.

The Commission reiterates that it encourages the industry to develop a system of electronic filing of financial reports that will provide for the development of a uniform database of financial information with the least burden upon filers, self-regulatory organizations and the Commission. 62 FR 10442 n.8.

² The Commission's general recordkeeping rule, Rule 1.31, provides, among other things, that if microfilm, microfiche or optical disk substitution for hard copy is made, persons required to keep such records shall at all times have on their premises and make available upon request to representatives of the Commission or the U.S. Department of Justice facilities for easily readable projection of the microfilm or microfiche, or display of information stored on optical disk, as well as facilities for making complete, accurate and easily readable copies of the records preserved in those

also believes this methodology for reviewing firm and exchange controls may become increasingly necessary as firms and DSROs move toward "paperless" or electronic surveillance systems.

Need for Correction

As published, the final rules contain statements which may prove to be misleading and are in need of clarification.

List of Subjects in 17 CFR Part 1

Commodity futures; Minimum financial and related reporting requirements.

PART 1—GENERAL REGULATIONS UNDER THE COMMODITY EXCHANGE ACT

Accordingly, 17 CFR Part 1 is corrected by making the following technical amendments:

1. The authority citation for Part 1 continues to read as follows:

Authority: 7 U.S.C. 1a, 2, 2a, 4, 4a, 6, 6a, 6b, 6c, 6d, 6e, 6f, 6g, 6h, 6I, 6j, 6k, 6l, 6m, 6n, 6o, 6p, 7, 7a, 7b, 8, 9, 12, 12a, 12c, 13a, 13a-1, 16, 16a, 19, 21, 23 and 24.

§ 1.10 [Corrected]

2. In § 1.10, paragraph (c), the first proviso is revised to read, "*Provided, however, That any report filed pursuant to paragraphs (b)(1), (b)(2) or (b)(4) of this section or § 1.12 (a) or (b) which need not be certified in accordance with § 1.16 may be submitted to the Commission in electronic form using a Commission-assigned Personal Identification Number, and otherwise in accordance with instructions issued by the Commission, if the futures commission merchant, introducing broker or a designated self-regulatory organization has provided the Commission with the means necessary to read and to process the information contained in such report.*"

Issued in Washington, D.C. on June 12, 1997 by the Commission.

Jean A. Webb,

Secretary of the Commission.

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formats. Commission Rule 1.31(c)(1); see also 17 CFR § 240.17a-4, as amended by 62 FR 6469, 6473 (Feb. 12, 1997) (Securities and Exchange Commission rule governing records to be preserved by certain securities exchange members, securities brokers and securities dealers).