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RECORDKEEPING: RECENT RULE AMENDMENTS AND OTHER DEVELOPMENTS

The CFTC recently adopted amendments to Regulation 1.31, in an effort to bring recordkeeping requirements for market participants up-to-date with technological advances. The CFTC has also addressed recordkeeping rules for CPOs and CPAs. In a recent rulemaking, the SEC expanded its requirements that registered investment advisers maintain records relating to performance information distributed to any person. The authors describe these changes and then discuss recent CFTC recordkeeping violation cases involving block trades, EFRPs, and audit trails.

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Recordkeeping is one of the most fundamental obligations to which market participants must adhere, whether they are registered with the U.S. Commodity Futures Trading Commission ("CFTC" or "Commission") or whether they are non-registrants, such as end-users and exchange members. Without the maintenance of proper records by market participants, regulators will find it difficult to verify compliance with regulatory requirements by market participants or to conduct investigations, and market participants will find it difficult to demonstrate compliance with regulatory requirements, all of which may increase the likelihood of enforcement actions from recordkeeping failures. Thus, it is critical for market participants to know not only the types of records that they must retain, but the form, manner, and duration of their retention obligations. Moreover, if a CFTC registrant is also required to be registered with the Securities and Exchange Commission ("SEC"), additional recordkeeping obligations apply under the SEC's rules.

The CFTC recently adopted amendments to CFTC Regulation 1.31, which were intended to modernize the "form and manner" requirements applicable to records required under the U.S. Commodity Exchange Act ("CEA" or "Act") and CFTC regulations. The CFTC has also been active with respect to recordkeeping requirements in other contexts. For example, it issued no-action relief to permit commodity pool operators ("CPOs") and commodity trading advisors ("CTAs") to

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retain records off-site with a third party. Further to these developments, the CFTC amended another recordkeeping regulation, Regulation 1.35, issued no-action relief from that amendment's requirements, and again amended Regulation 1.35. The amendments to Regulation 1.35 impact CFTC registrants and non-registrants alike. Like the CFTC, the SEC recently amended its recordkeeping requirements. However, the SEC's amendments add, rather than eliminate, obligations relating to recordkeeping. These requirements, and others, are discussed herein.

I. RECENT AMENDMENTS TO CFTC REGULATION 1.31

A. Background

Recordkeeping may be one of the most banal aspects of compliance, but it is also one of the most fundamental components of a comprehensive compliance program. The CEA and Regulation 1.31 require that registrants and non-registrants keep records related to commodity interest trading for a specified period of time and in a specified form and manner.[1] In addition, the regulation sets forth inspection and production requirements, mandating that a person keep records open to inspection by any representative of the CFTC or U.S. Department of Justice, and produce records promptly upon request by a CFTC representative.[2] Many of the technologies (such as microfiche) used by market participants, and specifically referenced in the regulation at the time of its adoption, are no longer in use, and over the years the regulation was not updated to reflect advancements in technology. Compliance with the outdated requirements of the regulation had become difficult, if not impossible, in some respects. The CFTC recently adopted long-awaited rule amendments to Regulation 1.31, in an attempt to bring the recordkeeping requirements up-to-date with technological advances.[3] Accordingly, this is an opportune time for market participants (both registered and non-registered) to review and bolster their recordkeeping practices.

B. Highlights of the Rulemaking

The CFTC's goal in amending Regulation 1.31 is to "modernize and make technology neutral in the form and manner in which regulatory records must be kept."[4] Importantly, the CFTC provides that the amendments do not impose new requirements on the types of records a person must retain.[5] The amended rule introduces new definitions and eliminates requirements that have become obsolete in light of technological advances, among other things.

Important New Definitions. The amendments introduce new definitional terms, including "regulatory records," which means "all books and records required to be kept by the Act or Commission regulations in this chapter, including any record of any correction or other amendment to such books and records, provided that, with respect to such books and records stored electronically, regulatory records shall also include: (1) any data necessary to access, search, or display any such books and records and (2) all data produced and stored electronically describing how and when such books and records were created, formatted, or modified."[6]

In addition, the amended regulation includes a definition of "records entity" (any person required by the Act or Commission regulations in this chapter to keep regulatory records, which definition captures non-registrants, such as market participants subject to the exchange for related position recordkeeping requirements of Regulation 1.35 or large trader reporting requirements of Regulation 18.05). The amended regulation also adds a new definition of "electronic regulatory records" (all regulatory records other than regulatory records exclusively created and maintained by a records entity on paper).[7] Although commenters suggested that the CFTC limit recordkeeping obligations to registrants, the CFTC adopted a definition that covers

[1] *See, e.g.*, 7 U.S.C. §§ 6c, 6g, 6r(c); 17 C.F.R. § 1.31.

[2] 17 C.F.R. § 1.31(d)(1)-(4).

[3] Recordkeeping, 82 Fed. Reg. 24,479 (May 30, 2017).

[4] *Id.*

[5] *Id.* at 24,480.

[6] 17 C.F.R. § 1.31(a).

[7] *Id.*

end-users and other non-registered entities who must retain records as prescribed by the CFTC.

A records entity must maintain data about a regulatory record, but only after it is created. Thus, a document and modifications thereto, before the document becomes a regulatory record (i.e., when the document is in "draft" form), is not required to be retained.[8] A records entity is required to keep "all data produced and stored electronically describing how and when such books and records were created, formatted, or modified" or, in essence, a comprehensive audit trail, including the "metadata" of a regulatory record. Accordingly, a records entity must keep versions of, and metadata relating to, its regulatory records, although, as explained below, the CFTC declined to define the term "metadata." In addition, a records entity must have the ability to display books and records. Where a records entity maintains records on a CD-ROM, it must have the ability to use the CD-ROM to access and view the record.

Notably, the amendment to Regulation 1.31 eliminates certain defined terms, including "micrographic media" and "electronic storage media," and eliminates references to "microfilm," "microfiche," "optical disk," and "non-rewritable WORM (write once read many)." By eliminating these terms from the regulation, the CFTC furthers its goal to make the regulation technology-neutral in an effort to prevent the regulation from becoming outdated again.

Changes Driven by Technological Advances. In order to reduce some of the burdens associated with Regulation 1.31, the CFTC eliminated certain requirements that previously existed in the regulation. For example, the CFTC eliminated the requirements that a records entity: (1) store electronic regulatory records in their native file format (the format in which an electronic file is ordinarily used and maintained during the normal course of business);[9] (2) retain electronic records in non-rewritable, non-erasable format (WORM); and (3) retain a third-party technical consultant with respect to electronic records who must file representations with the Commission.[10] Moreover, the CFTC declined to issue routine publications of technical standards for electronic regulatory records, consistent with a commenter's objection that such standards "would result in increased costs and devotion of technical resources to ensure compliance with any changing standards."[11]

Despite the CFTC's determination that a definition for the term "metadata" (data about data) was not necessary, the CFTC likely will continue requesting metadata in certain information requests. For example, the CFTC's Data Delivery Standards guide requires a person to provide available metadata of audio and video files, and describes the types of metadata to be provided for a document collection (including the author, company, and subject information of each document).[12] In the adopting release, the CFTC stated that it declined to adopt a definition of metadata in an effort to adopt less prescriptive requirements but that it already asks for metadata related to certain records and the definition of "regulatory record" was sufficient to support the CFTC's inspection and investigative functions.[13] Accordingly, it is reasonable to expect CFTC staff to continue to request metadata in connection with record requests.

The CFTC determined that records entities may apply the new rules to existing regulatory records, meaning that the amendments have a retroactive effect with respect to records created before the amendments took effect.[14] Thus, a records entity no longer needs to store any record, including an existing regulatory record, in its native file format or use a third-party technical consultant (who was required to file an undertaking with the CFTC) to store such records. The CFTC's Data Delivery Standards guide (used in connection with a Division of Enforcement document production) asks for records in their native file format, and the CFTC needs records in such format to utilize and more efficiently analyze the data. Despite the elimination of the native file format requirement, it is unclear whether CFTC staff will refrain from continuing to request the production of records in their native file format or update the Data Delivery Standards guide.

Records are increasingly stored using "cloud storage," i.e., storing digital data through a hosting service provider responsible for keeping the data available and accessible through a web service application

[8] 82 Fed. Reg. at 24,481.

[9] For example, where a file is generally created and maintained using Microsoft Excel, the native file format is Microsoft Excel and not a portable document format ("PDF") file.

[10] 82 Fed. Reg. at 24,482.

[11] *Id.* at 24,483.

[12] CFTC Data Delivery Standards (May 27, 2016), http://www.cftc.gov/idc/groups/public/@lrenforcementactions/documents/file/enfdatadeliverystandards052716.pdf.

[13] 82 Fed. Reg. at 24,480-81.

[14] *Id.* at 24,482.

programming interface or other methods. The CFTC did not delve into the topic of cloud storage in great detail in the rulemaking. The CFTC did, however, respond to a comment asking it to confirm that cloud storage was an acceptable means of storing electronic regulatory records by stating that it was "not requiring or endorsing any type of record retention system or technology" because the amendments are intended to be technology neutral.[15] Therefore, one could infer that cloud storage is an acceptable means of storing electronic regulatory records. (However, other issues related to cloud storage, such as cybersecurity concerns, should be considered.)

C. Written Policies and Procedures Not Explicitly Required

As proposed, the CFTC would have required a records entity to establish and maintain written recordkeeping policies and procedures. Although the CFTC did not adopt this proposed requirement, it cautioned any records entity to ignore the recordkeeping obligations at "its peril."[16] The CFTC also warned records entities that the withdrawal of the proposed written policies and procedures requirement does not create "an explicit or implicit defense against recordkeeping violations or failure to supervise violations," explaining that registrants are subject to a duty to diligently supervise all activities related to their business as a CFTC registrant.[17] Based on the CFTC's guidance on written recordkeeping policies and procedures, it appears prudent for a records entity to formalize its recordkeeping practices in writing to avoid any would-be recordkeeping and supervisory violations.

II. DEVELOPMENTS IN RECORDKEEPING RULES APPLICABLE TO CPOs AND CTAs

A. Background

Under Regulations 4.23 and 4.7(b)(4), a CPO is required to maintain books and records at its main business office. Similarly, a CTA is required to maintain books and records at its main business office pursuant to Regulation 4.33. However, in 2012, the CFTC issued "Harmonization Relief" to CPOs that manage registered investment companies under the Investment Company Act of 1940.[18] In the Harmonization Relief, the CFTC eased the mandate that books and records be maintained at a CPO's main business office, to permit any CPO (not just a CPO of a registered investment company) to maintain its books and records at specific third parties, including the pool's administrator, distributor or custodian, or a bank or registered broker or dealer acting in a similar capacity with respect to the pool.[19]

Subsequent to the Harmonization Relief, the CFTC acknowledged that the enumerated list of third-party recordkeepers was unnecessarily restrictive, recognizing that a CPO may use specialized data centers, and servicers or affiliates that have day-to-day control over records to manage its records. Accordingly, the CFTC issued no-action relief that permits a CPO to maintain its books and records with any third party, subject to certain conditions (e.g., making a notice filing with the National Futures Association), provided that the CPO remains ultimately responsible for compliance with CFTC recordkeeping obligations.[20] The CFTC's no-action relief only addressed CPO recordkeeping obligations, but not CTA obligations. Thereafter, the CFTC issued similar relief to permit a CTA to maintain its books and records with a third party.[21] A CTA that takes advantage of this relief must make a notice filing with the CFTC and remains ultimately responsible for compliance with CFTC recordkeeping obligations.[22]

The requisite notice filings for CPOs and CTAs differ slightly, primarily because the regulation applicable to CPOs includes procedures for a notice filing whereas the regulation applicable to CTAs does not. The filings include a statement from the third party acknowledging that the CPO or CTA intends for the third party to keep and maintain books and records, and that it agrees to do so in accordance with Regulation 1.31, and further agrees to keep books and records open to inspection by any CFTC or DOJ representative and available to investors pursuant to CFTC regulations. Many third-party recordkeepers are reluctant to provide such a statement. Although the relief available to CPOs and CTAs is not time-limited, the CFTC has not proposed to

[15] 82 Fed. Reg. at 24,479.

[16] *Id.*

[17] *Id.*

[18] Harmonization of Compliance Obligations for Registered Investment Companies Required to Register as Commodity Pool Operators, 78 Fed. Reg. 52,308 (Aug. 22, 2013).

[19] 78 Fed. Reg. at 52,320.

[20] CFTC No-Action Letter No. 14-114 (Sept. 8, 2014).

[21] CFTC No-Action Letter 17-24 (Apr. 20, 2017).

[22] *Id.*

amend Part 4 of the CFTC's regulations to codify the no-action relief.

B. Amendments to Regulation 1.35

Regulation 1.35 requires certain persons, including non-registrants, to keep records about futures, swaps, and other commodity interest transactions, as well as related cash and forward transactions, among other records. In 2012, the CFTC adopted amendments to Regulation 1.35 that required futures commission merchants ("FCMs"), introducing brokers, retail foreign exchange dealers, and CTAs that are members of a designated contract market ("DCM") or swap execution facility ("SEF") to maintain transaction records, and oral and written records of pre-trade communications.[23] The CFTC explicitly excluded from the oral communications recordkeeping requirement CPOs, floor traders, and unregistered members of DCMs and SEFs.[24] Subsequent to the rulemaking, the CFTC issued several no-action letters providing CTAs relief from the requirement to maintain oral and written pre-trade communications. In the first such no-action letter, the CFTC granted to registered CTAs that were members of a SEF, relief from compliance with the requirement to record oral communications, but extended this relief with respect to asset managers that are members of a DCM or SEF.[25] Subsequently, the CFTC provided further relief to registered CTAs that are members of a DCM or SEF from compliance with the requirement to record oral communications under Regulation 1.35(a); it also extended to all market participants relief from compliance with the form and manner requirements that apply to records of oral and written communications that lead to the execution of a transaction in a commodity interest, and related cash or forward transactions.[26] In 2015, the CFTC codified the relief.[27]

Pursuant to the current Regulation 1.35, registered CPOs and CTAs that are members of a DCM or SEF must maintain Transaction Records and Written Pre-Trade Communications, but unregistered members of a DCM or SEF are subject only to the requirement to maintain Transaction Records (and even then, such non-registrants do not need to maintain records of text messages (SMS or MMS)).[28] Transaction Records consist of: (1) Commodity Interest and Related Records (full, complete, and systematic records of all transactions relating to its business of dealing in commodity interests, and related cash or forward transactions) and (2) Original Source Documents (all documents on which trade information is originally recorded (regardless of whether documents must be prepared pursuant to the rules or regulations of the CFTC or an exchange)).[29] Written Pre-Trade Communications include communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices that lead to the execution of a transaction in a commodity interest and any related cash or forward transactions (but not oral communications that lead solely to the execution of a related cash or forward transaction) whether transmitted by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device, or other digital or electronic media.[30] Where such pre-trade communications are transmitted orally, they are referred to as Oral Pre-Trade Communications.[31]

Registered CPOs and CTAs that are members of a DCM or SEF are subject to more stringent form and manner requirements (i.e., maintaining records in a way that allows for the identification of a particular transaction) and Regulation 1.31, whereas unregistered members of a DCM or SEF are subject to the general form and manner requirement in Regulation 1.31.[32]

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[23] Adaptation of Regulations to Incorporate Swaps — Records of Transactions, 77 Fed. Reg. 75,523 (Dec. 21, 2012). The National Futures Association has amended Interpretive Notice 9021 (Compliance Rule 2-9: Enhanced Supervisory Requirements) to require a firm subject to enhanced supervisory requirements to maintain a record of all electronic written communications that occur between their associated persons and customers, or potential customers. The National Futures Association describes "electronic written communications" to include, but are not limited to, e-mail, text messages, instant messages conducted via any web-based messaging system (including instant messages sent via a social media application), and any other communication that occurs in a chat room or on any social media platform. Audio records must also be retained. The retention period for the records required by the interpretive notice is five years.

[24] *See, e.g.*, 77 Fed. Reg. at 75,542.

[25] CFTC No-Action Letter 13-77 (Dec. 20, 2013); *and* CFTC No-Action Letter No. 14-60 (Apr. 25, 2014).

[26] CFTC No-Action Letter No. 14-147 (Dec. 16, 2014).

[27] Records of Commodity Interest and Related Cash or Forward Transactions, 80 Fed. Reg. 80,247 (Dec. 24, 2015).

[28] 17 C.F.R. § 1.35(a)(2), (6).

[29] *Id.* at § 1.35(a)(1)(i)-(ii).

[30] *Id.* at § 1.35(a)(1)(iii).

[31] *Id.*

[32] *Id.* at § 1.35(a)(5).

III. INVESTMENT ADVISERS ACT REQUIREMENTS AND RECENT DEVELOPMENTS

A. Rules Applicable to Registered Investment Advisers

CFTC regulated entities are quite often also engaged in the provision of investment advice regarding securities and thereby also subject to the Investment Advisers Act of 1940 ("Advisers Act") and regulation by the SEC. Rule 204-2 under the Advisers Act dictates the types of books and records that have to be maintained by registered investment advisers, as well as the manner in which the records should be kept.[33] In addition, SEC-registered investment advisers are required to adopt and implement written policies and procedures designed to prevent violation of the Advisers Act by the adviser or any of its supervised persons.[34] Such written policies and procedures should include policies and procedures governing the creation and maintenance of books and records in accordance with Rule 204-2. As a practical matter, firms that are subject to both CFTC and SEC regulation often adopt comprehensive procedures taking a lowest common denominator approach — meaning that the firm adopts procedures mandating the most restrictive approach required under applicable regulations.

B. Recent Rulemaking

The SEC recently adopted amendments to Rule 204-2, which went into effect on October 1, 2017.[35] In contrast to the CFTC's recent recordkeeping amendments, which eliminate certain regulatory requirements, the amended rule requires advisers to maintain *additional materials* related to the calculation and distribution of performance information. The SEC indicated that the amendments were motivated by, among other things, a recent enforcement action where the lack of an evidentiary record prevented the action from moving forward. As noted above, a significant driver of many of the books and records obligations of regulated entities is the need for such records in order for the applicable regulatory agencies to appropriately review the activities of such firms.

Advisers Act Rule 204-2(a)(16) formerly required advisers to maintain all documents or records that are necessary to form the basis for, or demonstrate the calculation of, the performance or rate of return of any or all managed accounts or securities recommendations in any communication that an adviser distributes or circulates to 10 or more persons. The amended Rule 204-2(a)(16) removes the "10 or more persons" condition, resulting in a requirement that advisers maintain records to support performance claims in communications that are distributed to any person. Notably, the amended Rule applies to communications created or distributed on or after October 1, 2017. In practice this means that to the extent an adviser distributes performance information to clients relating to historic periods, the adviser will be required to maintain the records necessary to form the basis of the historic performance, even if the period of time to which the performance relates, predated the effectiveness of the amended Rule. By removing the "10 or more persons" condition of the Rule and now making it applicable to communications that are distributed to *any* person, in effect, advisers will only be permitted to send communications addressed to particular clients that contain that client's historic performance, to the extent that the adviser has and retains the back-up for the performance information.

Additionally, the SEC amended Rule 204-2(a)(7) to require advisers to maintain originals of all written communications received and copies of written communications sent by an adviser relating to the performance or rate of return of any or all managed accounts or securities recommendations. Rule 204-2(a)(7) formerly required advisers to keep originals of written communications relating to securities recommendations, advice, and transactions.

Both changes to Rule 204-2 result in an expansion of the universe of records required to be maintained by advisers. In adopting these changes, the SEC stated that it believed these records will be useful for the SEC examination staff in reviewing and evaluating adviser performance claims.

IV. CFTC ENFORCEMENT ACTIONS INVOLVING RECORDKEEPING VIOLATIONS

Compliance with recordkeeping obligations can be an arduous task, but it is essential in avoiding enforcement actions claiming violations of Regulations 1.31 or 1.35, among others. It is important to note that the CFTC does not need to establish scienter to prove a violation of a recordkeeping regulation.[36] Over the past several years, the CFTC has conducted investigations of block trades

[33] *Id.* at § 275.204-2.

[34] *Id.* at § 275.206(4)-7.

[35] Adv. Act Rel. No. IA-4509 (2016).

[36] In re GNP Commodities, Aug. 11, 1992.

and exchange for related position transactions ("EFRPs") across the industry. In enforcement actions against FCMs and swap dealers for violations related to block trades and EFRPs, the CFTC has found the firms to have violated CFTC recordkeeping obligations, discussed in more detail below.

A. Block Trade Enforcement Cases with Recordkeeping Violations

In connection with a CME investigation, the CFTC found that a large institutional FCM failed to prepare or maintain the trade ticket and other records on which its employees were to record information regarding an executed block trade, including the execution time.[37] The CFTC also found that where the FCM did prepare and maintain records related to block trades, the records contained inaccurate, illegible, or missing or incomplete information regarding the block trade.

The settlement order provided that the FCM pay a $2.5 million civil monetary penalty and develop procedures and controls regarding block trades that, at a minimum:

- clearly specify that FCM sales personnel are responsible for recording the block trade execution time and reporting the block trade to the relevant exchange;
- ensure that the technology used to record block trade execution time: (1) is synchronized for all persons responsible for recording block trade execution times and (2) derives the time used to record the block trade execution time from a common source;
- provide for regular, periodic checks of the technology used to record block trade execution time;
- ensure that the records of block trade executions are maintained in electronic format, and unambiguously and legibly indicate the actual execution time of the block trade; and
- be accessible and available to all persons with responsibility under these procedures and controls
- for recording block trade execution times and reporting block trades to the relevant exchanges.

The CFTC also required the FCM to have an audit conducted every three months (for a two-year period) and thereafter every six months for an additional three years.

B. EFRP Enforcement Cases

In 2014, the CFTC found that another FCM failed to keep records related to block trades, among other violations (including improper investment of customer funds) and ordered the FCM to pay a $3 million civil monetary penalty.[38]

In perhaps the most severe of the enforcement cases discussed herein, a registered FCM agreed to withdraw from registration with the CFTC and to never, directly or indirectly, apply for registration or claim exemption from registration with the CFTC in any capacity, or engage in any activity requiring such registration or exemption (except as provided for in Reg. 4.14(a)(9)), for a failure to maintain records of EFRP transactions.[39] In addition, the CFTC ordered the FCM to pay a $200,000 civil monetary penalty.

In another case, CFTC staff had requested (during an EFRP document request) that a provisionally registered swap dealer's affiliated FCM through which EFRPs were cleared provide documentation relating to EFRPs entered into by the bank or its affiliates.[40] The FCM and the swap dealer did not provide all of the documentation (missing at least 1358 metals and energy trades out of over 3700) until more than one year later. The CFTC found that the failure to produce in a timely manner the requested EFRP confirmations that did exist violated Regulations 1.31(a)(2) and 1.35(a-2) (currently (c)). In light of these findings, the CFTC ordered the swap dealer to pay a $500,000 civil monetary penalty.

C. Audit Trail Enforcement Action

In a recent audit trail enforcement action, the CFTC found a registered Introducing Broker ("IB") and its affiliated clearing FCM to have violated Section 4g(a) of the CEA and Regulations 1.31(a), 1.35(a) and 166.3 for failure to retain and promptly produce certain records for

[37] CFTC Docket No. 17-25 (Sept. 22, 2017).

[38] *Id.* at No. 15-20 (Dec. 22, 2014).

[39] *Id.* at No. 17-23 (Aug. 31, 2017).

[40] *Id.* at No. 16-30 (Sept. 22, 2016).

inspection to CFTC staff, as well as supervisory failures.[41] The CFTC ordered the IB and its affiliated clearing FCM to pay a $280,000 civil monetary penalty.

In the settlement order, the CFTC found that the IB used a third-party vendor to provide the front-end order entry system for all of its futures customers. The third-party vendor generated audit trail logs on a monthly basis, but stored these records for 10 days (the IB wrongly believed that it could access the logs at any time despite the vendor's warnings about its retention policy). The CFTC found that the clearing FCM erroneously believed that its audit log documents were stored on an internal database and, therefore, that it had satisfied its recordkeeping obligations. In reality, the database did not store audit logs. The CFTC found that neither the IB nor the FCM had written policies or procedures in place to comply with CFTC recordkeeping requirements, despite the fact that there is no such regulatory requirement. The CFTC noted that the registrants did not update their manuals with recordkeeping requirements more than a year after they learned of their failure to comply with such requirements.

V. CONCLUSION

The CFTC's efforts to modernize its recordkeeping rules and reduce the associated compliance burdens are laudable. The CFTC's adoption of technology-neutral rules will facilitate compliance now and years into the future. The elimination of the technical consultant requirement from Regulation 1.31 relieves records entities from a burdensome requirement with which most found difficult to comply. In addition, the relief available to CPOs and CTAs, with respect to location of records and oral records, further reduces the costs associated with recordkeeping for these types of registrants. The SEC's rulemaking, in contrast, expands the universe of records that an investment adviser must maintain. Records entities should consider the amendments to Regulation 1.31 an opportunity to comprehensively review their recordkeeping practices to determine whether there are gaps in their practices, particularly in light of the CFTC's recent enforcement actions focusing on recordkeeping failures and the SEC's desire to augment the information available to it in support of its enforcement agenda. ■

[41] *Id.* at No. 17-07 (Jan. 26, 2017).