December 2, 2010

Mr. David Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Via Electronic Mail

SUBJECT: RIN 3038-AD17

Dear Mr. Secretary:

The Minneapolis Grain Exchange, Inc. ("MGEX" or "Exchange") would like to thank the Commodity Futures Trading Commission ("CFTC" or "Commission") for this opportunity to respond to the Commission's request for comment on the above referenced matter published in the November 2, 2010 Federal Register Vol. 75, No. 211.

MGEX is both a Designated Contract Market ("DCM") and Derivatives Clearing Organization ("DCO") which currently offers for trade and clears a physical delivery agricultural commodity; specifically, Hard Red Spring Wheat ("HRSW") which the Commission has identified as a covered agricultural contract (meaning high level of open interest and significant notional value) within proposed Regulation 20.2. The Exchange is concerned about a number of aspects of the rulemaking; particularly, how aggregation limits will be determined, and how economic equivalency and futures equivalency can be practically applied. Further, MGEX is concerned about the potential and unnecessary detrimental effects to the current HRSW contract resulting from any aggregation limits, as well as the potential increased financial risks the proposal may bring to the clearing organization. Finally, the proposal appears to create additional duplication of data and position reporting. These items will be explored further in this comment letter.

First, HRSW is already an enumerated agricultural commodity under part 150 of Commission Regulations. As a result, the Commission has established spot month, single month and total combined speculative position limits. The same position limits apply to wheat contracts traded on two other domestic DCMs. This sort of level playing field standard has served the marketplace well. The marketplace understands those limits and relies upon them as part of typical price hedging strategies. Hedgers and speculators also both use equality of wheat position limits for other legitimate purposes such as spreading and arbitrage opportunities. In other words, the wheat markets have a price correlation. Disruption in pricing and activity in the HRSW contract could well

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occur should futures position limits among the wheat contracts vary. Therefore, the Exchange suggests the Commission consider very carefully potential market implications before changing any position limits involving the wheat contracts, particularly HRSW. Even more damaging would be changing any position limits before having sufficient information to propose adjusting them. MGEX believes that futures position limits should certainly not be reduced just because aggregated position limits may be required. Further, it may well be in the best interest of the marketplace to have or maintain separate futures, swaps and aggregated position limits.

This brings us to a second concern, acting before adequate information is known about the activity and volume of swaps involving any of the listed 20.2 commodities. The Commission has correctly noted that it may not be necessary to propose to amend or establish position limits on those listed commodities or other commodities. The prudent course of action in decision making when assessing a situation when so much factual information is not yet known is not to act in haste or presumptuously. Even more so, one should not act when any particular futures contract is considered to be working to the satisfaction of the marketplace. Again, the impact could be detrimental. And before making any decision, one must assess that potential detrimental impact. Further, MGEX would encourage the Commission to publish for comment any proposed limits or changes to position limits involving an agricultural or covered commodity. Such means could solicit valuable information from the marketplace that the Commission should be aware. Arbitrarily establishing limits or changes to limits prior to publishing could well lead to detrimental effects to current listed contracts. Transparency should be the key here. Decisions should be based on evidence. If the Commission has information it has gathered on potential swaps to be cleared, particularly those swaps that might be "paired" with a futures contract, the Commission should consider sharing such information with DCMs and DCOs.

A third concern that the MGEX has is one of fairness. Setting position limits aggregately across DCMs is begging for potential discrimination. The Exchange can appreciate the Commission's obligation mandated by Dodd-Frank. However, that doesn't mean setting aggregate limits across DCMs should be permitted to be used for regulatory, trading platform or lowest execution price shopping. While MGEX believes the futures industry should always act in the best interest of the marketplace and believes competition supports that goal, aggregation limits should not also operate to consolidate or limit activity on a regulated exchange. MGEX believes it would be wise not to reduce current futures position limits because of swaps that are potential economically equivalent. Again, the goal should never be to effectively punish DCMs by reducing futures or aggregate position limits because of any volume in the swaps arena. The Commission's mandate under Dodd-Frank could be met by having aggregate position limits, as well as retaining futures limits. In other words, there could be separate limits for futures, swaps and aggregate positions. Similar to how there are spot, month and combined position limits.

A fourth concern is the process for "pairing" a swap with a futures contract. Again, the Commission has correctly noted that the number of potential swaps that price off a futures contract or off the price of physical delivery locations is unknown. On its face, the Commission's proposed definition for determining economically equivalent swaps seems logical. However, just because a swap settles to a futures contract doesn't make

it economically equivalent to a futures contract. Is the Commission only referring to standardized swaps? Does it need to be the same underlying commodity? The commercial marketplace evolves and others using swaps move quickly, and must do so for efficiency. Pairing a novel swap that at best, indirectly settles to a futures market is unnecessary. It seems entirely practical that parties could create a swap that uses a futures contract price to settle but is not economically equivalent to the futures contract in substance. Is a unique flour contract that settles to HRSW futures economically equivalent? One would not think so. More clarity is necessary. Who makes the final determination as to what swap is economically equivalent to a futures contract? Is there an appeal process?

A fifth concern is the unknown financial risk and business risk the proposed rulemaking presents. Besides being mandated by law, the purpose for clearing swaps is clear – to reduce financial risk to the marketplace and help guarantee performance by the parties by using a clearing house. However, perhaps an unintended consequence is to essentially force clearing organizations that clear futures to make a business decision to enter into the swaps arena, particularly if the swaps are "paired" with a futures contract that is cleared by the DCO. If aggregation limits are to be applied to futures and economically equivalent swaps, a clearing organization may well feel compelled to provide clearing for both in order to help service their clearing members and their customers. Anything other than a prudent business decision is not wise in the clearing world. And the methodology for margining any swap is not as tested as what has been developed over time for futures. Therefore, a new form of financial risk is brought into the clearing organization. For these reasons, futures position limits should be considered separately from aggregation limits, and DCMs not trading and DCOs not clearing "paired" swaps should not be penalized by reducing futures position limits because they choose not to want to assume unknown business or financial risks.

Aggregated position limits present unique market surveillance and reporting issues. If a DCM does not trade or a DCO does not clear a "paired" swap, how can either be held responsible for monitoring the marketplace as part of its futures surveillance or report it? To require a DCM or DCO to monitor the marketplace or a DCO to report on economically equivalent swaps presents a challenge. What if a swap utilizes multiple contracts to settle? For example, a swap might settle using weighted settlements from multiple contracts trading on multiple DCMs. Which DCM's product is "paired" and which DCO is reporting it? Hence, futures position limits again need to be decoupled from swaps and aggregated position limits. This further argues for the Commission to be the central collection point for non-clearing swaps data and to share such data with the necessary DCMs and DCOs.

The Exchange has further questions as to implementation and effects of the proposed rulemaking. For example, how quickly might futures, swaps and aggregated position limits be changed by the Commission? The marketplace likes legal certainty and stability in limits. Therefore, contract position limits and aggregation position limits cannot be constantly changing. However, improperly set limits must be changed as soon as possible for obvious reasons. In many instances, futures position limits should probably be raised. Swaps activity that might be economically equivalent to a futures contract can explode or decline. How often would position limits need to be reviewed? Would proposed changes or resetting of limits be published for public comment? How

transparent will the process be? Again, some of the issues raised by these questions can be diminished by retaining or establishing futures position limits unaffected by the swaps markets.

The Commission proposes DCOs collect and report any paired swaps. This seems reasonable should each clearing organization clear all swaps that are paired with the futures contracts that they clear and they have all the supplemental data not needed for clearing readily available as part of the clearing process. However, that is clearly not the case now, nor will it likely be the case anytime in the near future. As has been discussed and reported extensively by the futures industry in response to the Commission's rulemaking proposal on the Ownership and Control Report ("OCR"), the best data source is the original source and the Commission is already receiving much of that data. The Exchange strongly recommends that the reporting of non-clearing data be incorporated as part of other initiatives the Commission has proposed and is already exploring. While MGEX understands that much of the swaps data will be new information from new original sources, it seems prudent to build on current reporting standards as much as possible. The goal should be to seek efficiencies wherever possible, not add another layer of reporting bureaucracy. The Futures Industry Association proposal on OCR could serve as the foundation for developing the data collection process for swaps reporting by clearing organizations.

In summary, the Commission's proposed rulemaking for position reporting for physical delivery swaps has the potential for serious negative implications to the futures marketplace if not thoroughly analyzed and applied appropriately and fairly. MGEX believes each of its concerns should present sufficient reason not to rush final rulemaking for the sake of expediency. The Exchange thanks the Commission for the opportunity to comment on the notice of proposed rulemaking. If there are any questions regarding these comments, please contact me at (612) 321-7169 or lcarlson@mgex.com. Thank you for your attention to this matter.

Regards,

Layne G. Carlson
Corporate Secretary

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