



January 3, 2011

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

Via Electronic Mail

SUBJECT: RIN 3038-AD26

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.

Antidisruptive Trade Practices

Considering the vast quantity of rules Congress has mandated the CFTC promulgate within the next year, MGEX recommends that the Commission delay promulgating the rules required by section 747 of the Dodd-Frank Wall Street Reform Act ("Dodd-Frank Act"), and certainly no more rules than required by the Dodd-Frank Act, until it has more time to determine the best course of action, assess industry comment, and can adequately provide the industry and marketplace descriptions and definitions of the specific prohibited disruptive activity. While MGEX understands the need and benefit of promulgating rules, from prohibiting disruptive trading practices to legal certainty, it would be most prudent to not rush the rulemaking process. The rules that will regulate disruptive trading practices will have a deep and meaningful impact on all participants in the marketplace. Therefore, MGEX recommends that the Commission, after taking time to review the landscape, start with the most basic and universally accepted disruptive practices and build layers upon that foundation. The Exchange believes that as the Commission promulgates rules, the rules should be specific and clear thus providing legal certainty. MGEX understands the paradox that the Commission is in – the Dodd-Frank Act language is too vague to enforce until clarifying rules are in place but the Commission must take its time to ensure that any rule put in place has been given its full review. It is better to adopt good rules from the start than to publish many rules and then retract.

The determination whether there has been disruptive activity and a corresponding violation depends on the facts and circumstances of each case. Some market activity

may be intended to have a disruptive impact while other nearly identical activity may have legitimate business purposes. Prosecution of a specific violation should be viewed in light of all relevant facts and circumstances and proven by the Commission with substantive evidence. If the Commission narrowly defines an act as disruptive, innocent parties could unintentionally be captured while others with malicious intent may escape the literal application of the rule. Disruptive actions must be viewed in the context of the type of contract, liquidity, open interest and types of market participants among other factors. By way of example, error codes generated on Exchange trade practice reports signify a *potential* violation, but further investigation and proof gathering is required to determine whether an actual violation has occurred or whether it was legitimate activity. Therefore, any rules the Commission promulgates should sufficiently define disruptive trading practices so that regulating authorities and market participants can recognize when activity could potentially be considered disruptive and, therefore, subject to further inquiry.

In addition, the Commission should more clearly specify the requirement for intent in order for there to be a violation. As under section 747 of the Dodd-Frank Act regarding spoofing and section 6(c)(1) of Commodity Exchange Act regarding manipulation, scienter should be a required threshold for all antidisruptive trade practices. A system based on strict liability alone is neither practicable nor fair for market participants.

Conclusion

Preventing disruptive activity is important for keeping the markets liquid and efficient. However, excessive as well as vague regulation can chill market participation and efficiency. MGEX recommends the Commission take its time and roll out regulations upon completion of due diligence rather than be driven by a need for speed to comply with any internal deadlines.

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

cc: Mark G. Bagan, CEO, MGEX
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