



February 14, 2011

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

Via Online Submission

SUBJECT: RIN 3038-AC98

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 December 15, 2010 Federal Register Vol. 75, No. 240.

MGEX is both a Designated Contract Market ("DCM") and Derivatives Clearing Organization ("DCO"). MGEX appreciates the continued efforts the Commission has put forth to address the requirements placed upon it by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act").

39.19 – Reporting Requirements

Information Required on a Daily Basis

The CFTC is requesting DCOs submit a daily report to the CFTC. Under the proposed rule, the daily report must include:

- i. The initial margin requirements and initial margin on deposit for each clearing member, by customer and house origin;
- ii. The daily variation margin paid or received by the DCO and separately list the mark-to-market amount collected from or paid to each clearing member, by origin;
- iii. All other daily cash flows relating to clearing and settlement, paid to/collected from each clearing member, by origin; and
- iv. The end-of-day positions for each clearing member, by origin.

While MGEX already is internally performing these tasks, the Exchange is concerned about the daily reporting requirement to the CFTC and the additional burdens it may

create. Not addressed within the proposed rulemaking is how the required data will be transmitted to the CFTC. If the CFTC is flexible in the method and form of delivery, the burden may be minimal. However, if the CFTC requires a specific method and form of delivery, the cost to DCOs may be significantly more than the Commission's estimated \$8,280 initial cost and \$16,800 annual cost. The Exchange's recent experience with the Trade Capture Reporting initiative conversion from legacy files and reporting to the CFTC's new FIXML standards and specifications has taken significant time, effort and resources over the last 18 months and has been much more costly and time consuming than originally envisioned for a simple file conversion of existing data.

In addition, Commissioner O'Malia has pointed out that the CFTC potentially has data storage capacity limitations.¹ MGEX does not believe the value of the daily reports will outweigh the burden on the DCOs to establish and maintain the daily reporting, or the burden on the CFTC if there are data storage limits. MGEX respectfully suggests requiring these reports on an as-needed basis rather than on a daily basis. MGEX, as well as other DCMs and DCOs, has a vested interest in ensuring these duties are carried out timely in order to protect their market participants and clearing members, regardless of whether these duties are CFTC mandated. Therefore, reporting only on an as-needed basis may limit the burden on DCOs and at the same time not strain CFTC budgets and systems while ensuring relevancy as to the data being requested.

Event-Specific: Decrease in Financial Resources

The Commission requested comment on possible alternatives regarding what would be considered a significant drop in the value of financial resources and whether there should be alternative reporting requirements. Under proposed §39.19(c)(4)(i), a DCO is required to timely alert the Commission of a "significant decrease in the value of a DCO's financial resources and the reason for the decrease." The CFTC then proposes that a "significant drop" is either "(1) a 10 percent decrease from the total value of the financial resources reported on the last quarterly report submitted under proposed §39.11(f); or (ii) a 10 percent decrease from the total value of the financial resources as of the close of the previous business day."² MGEX believes that a 10 percent drop is an arbitrary threshold and does not always imply there has been a "significant decrease." Rather, "significant decrease" should be changed to a "material decrease" or interpreted under a materiality standard. As such, a thirty percent drop over the course of any five-day period or perhaps a twenty-five percent drop from the previous quarter is more appropriate to gauge a material decrease. Within volatile markets, a next day drop may occur but rebound quickly the following day. In a stable market, risk generally lessens and margin might be reduced accounting for the material drop. Consequently, a ten percent decrease might occur in either a stable or volatile market. Therefore, it is best not to burden the DCO or the Commission with filing or reviewing financial reports that might have already self-corrected before any meaningful review can be accomplished or have a non-risk related purpose.

At a minimum, a day-to-day decrease needs to be much higher than ten percent. While a quarter-to-quarter drop may represent a trend and, therefore, the material decrease

¹ Keynote Address by Commissioner Scott D. O'Malia, Title VII of the Dodd-Frank Act: 732 Pages and Counting (Jan. 25, 2011).

² 75 Fed. Reg. 78185, 78188 (Dec. 15, 2010).

threshold could be lower than the daily decrease percentage, the quarter-to-quarter drop should also be higher than ten percent.

Event-Specific: Change in Ownership or Corporate or Organizational Structure

MGEX agrees with the purpose in providing the Commission with advance notice of a change in ownership, corporate or organizational structure. However, MGEX believes advance notice must never be subject to public disclosure due to the potential confidential nature of the event. This should be automatic; no DCO should have to also petition for §145.9 protection at the same time. While it is understandable to make the information public for the after-the-fact confirmation report, it is counterintuitive to make the information public during the timeframe while a change is being discussed and negotiated.

Event-Specific: Rule Enforcement

Proposed rule §39.19(c)(4)(xiii) requires DCOs to report to the CFTC every initiation of a rule enforcement action against a clearing member and every time a sanction is imposed on a clearing member within two business days. Regarding the latter requirement, MGEX believes that entering disciplinary information into the National Futures Association (“NFA”) BASIC system already meets the requirement, both in content and timing. Alternatively, MGEX believes a monthly log of sanctions should be sufficient. Monthly reporting may streamline the process for both the Commission and the DCO.

Regarding the former requirement, MGEX believes that the CFTC is asking for information that is neither relevant nor necessary and may be premature. Many investigations are initiated unrelated to financial risk; they may be simply routine investigations. Additionally, an action being initiated by its own terms means guilt has not yet been determined. Consequently, there could be damage to the investigated entity’s reputation or business, or the case could be compromised should it become public. Many cases are opened and even actions commenced that result in no violation. Therefore, MGEX respectfully submits that the Commission remove this requirement altogether. Alternatively, the Commission may request a monthly log of all closed investigations which contain very basic information, such as name and general reason for the investigation. Furthermore, staff within the Divisions of Clearing and Intermediary Oversight and Market Oversight are already routinely informed or aware of ongoing or potential actions.

Recordkeeping Requirements

Proposed Rule §39.20(a)(4) requires a DCO to maintain records of all rules and procedures. MGEX, being a combined DCO/DCM, interprets this section to allow MGEX to maintain a combined set of rules and procedures for both its DCO and DCM business.

Public Information

Proposed rule §39.21(c) requires each DCO disclose to the CFTC and to the public seven enumerated items. MGEX believes that a DCO's margin methodology and financial resource package should not be among the required publicly disclosed items; rather, they should be confidential. The margin methodology is intellectual property and subject to change as determined necessary by a DCO to alleviate risks the DCO is most familiar with given familiarity with products cleared. Further, a DCO's margin methodology and financial resource package do not directly correlate to market participants' decisions to invest or trade, and, therefore, are not necessary to disclose. On the contrary, providing margin methodologies could potentially be harmful to the marketplace as it could lead to market manipulation or disruptive trading practices by a market participant who might attempt to influence the margin level. In the alternative, regarding the financial resource package, the CFTC may require that it be made available to clearing members upon request and upon signing confidentiality agreement as required by the DCO. Financial statements and annual reports are often already provided to members and clearing members of a DCO. These parties have legitimate claims to the value of such information.

Information Sharing

Proposed rule §39.22 requires each DCO to enter into an information sharing agreement for purposes of carrying out the risk management program of the DCO. MGEX supports this rule in theory but the requirement needs further clarity before MGEX can make meaningful comment. Clarity regarding items such as who is overseeing the sharing, what deficiencies exist now that need to be corrected, whether current information sharing agreements can be modified or expanded, what information needs to be shared, etc. is required. From a high level perspective, MGEX opposes sharing confidential information such as proprietary intellectual property.

Burden

The CFTC estimates the average cost of completing the annual report requirement to be a whopping \$482,110 per year for a DCO. This amount is extremely excessive, particularly when most of it does not appear to be required by the Dodd-Frank Act. Further, the total cost of compliance with this proposed rulemaking may well be substantially higher as the projected costs do not account for other reporting costs the Commission did not address and does not including building any reporting methods, forms or programs, let alone the allocation of labor resources. As noted earlier, the Commission's aggregate costs for daily reporting appear woefully short, particularly if programming is necessary to match CFTC specifications.

Further, as a combined DCO/DCM, MGEX expects that it would only be necessary to file all information or report only once and not for each business.

Increasing the cost of doing business for the DCO means such costs may be passed once more to market participants. This rulemaking does not guarantee increased market participation or improve legitimate risk management and hedging activity. Further, the additional costs only create barriers to entry and decreased DCO

competition. All of these unintended consequences are not consistent with the Congressional intent of passing the Dodd-Frank Act.

Given the vast number of varied requirements being proposed by the CFTC, the total burden across the board is becoming unwieldy and excessive. In addition to this rulemaking, there are others affecting DCOs from conflicts of interest, fitness standards, and governing requirements; additional data gathering, recordkeeping, and reporting proposals; new financial standards, stress testing, and capital minimums; required new committees, risk and regulatory employee positions and annual reporting; as well as added initiatives under the OCR and large trader programs; initiatives being discussed surrounding user IDs assignment and tracking, to name but a few. While taking each item by itself may not be overly burdensome or costly, when these initiatives are aggregated, the additional costs to DCMs, DCOs, FCMs and market participants may far outweigh any potential benefits. Therefore, the Exchange respectfully requests the CFTC to re-evaluate and prioritize what rulemakings are truly necessary in order to oversee regulated markets that have functioned well for many decades.

Conclusion

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
Jesse Marie Bartz, Assistant Corporate Secretary, MGEX
Eric J. Delain, Legal Advisor, MGEX
James D. Facente, Director, Market Operations, Clearing & IT, MGEX