



April 25, 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 March 24, 2011 Federal Register Vol. 76, No. 57.

MGEX is both a Designated Contract Market ("DCM") and Derivatives Clearing Organization ("DCO") and 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").

#### Background

The Commission's decision to reopen the comment period is prudent considering the material correction to the language of proposed §39.19(c)(1)(iv) that was originally published on January 20, 2011 in Federal Register Vol. 76, No. 13 (the "Original NPRM"). The correction expands the scope of the aforementioned proposed rule to "End-of-day positions for each clearing member, by customer origin and house origin; and for customer origin, separately, the gross positions of each beneficial owner."<sup>1</sup> As the Exchange stated in its comment letter to the Original NPRM, MGEX supports a core principle approach over a prescriptive approach for CFTC regulations. In this comment letter, MGEX will primarily focus on the correction which, unfortunately, appears to make the Original NPRM even more prescriptive, costly and burdensome.

---

<sup>1</sup> 76 Fed. Reg. 16587, 16588 (Mar. 24, 2011).

## Overview

Since MGEX takes its risk management program seriously and is constantly looking to make improvements, the Exchange can support certain proposed rule changes to margin and overall risk management procedures. However, the Exchange is not supportive of the proposed correction requiring DCOs to reach beyond the gross accounts of their clearing members since it appears it would result in additional and significant costs for market participants, Futures Commission Merchants (“FCMs”), clearing members and DCOs while providing what appears to be minimal benefit. Additionally, the significant costs resulting from compliance with this corrected proposed rule could lead to further consolidation in the industry at the FCM, clearing member and DCO levels. This is a realistic possible unintended consequence of such a prescriptive and costly regulation. Therefore, the Exchange would recommend the CFTC evaluate and conduct a sufficient cost/benefit analysis prior to moving forward with final rules on the topic.

## End-of-Day Reporting

In general, FCMs and clearing members do not have the information or access to the information of each potential beneficial account holder within an omnibus account, commodity pool or other such combined account. Therefore, absent having that information it is impracticable to require FCMs and clearing members report such beneficial account owner end-of-day positions to a DCO.

However, even if omnibus accounts, commodity pools and similar combined accounts are interpreted by the CFTC to be exempt from the beneficial account end-of-day reporting requirements, the proposed correction may lead to an unintended domino effect. As alluded to above, adopting the proposed corrected rule may result in consolidation and, therefore, more omnibus accounts which will end up creating less transparency than is currently available. Further, such consolidation and increased omnibus accounts may cause there to be fewer clearing members at each DCO which, in turn, may decrease the capitalization available to DCOs and increase risk to the remaining clearing members.

In addition, requiring DCOs to report end-of-day positions for each clearing member, by customer origin and house origin, and for customer origin, separately, the gross positions of each beneficial owner will require extensive programming and procedural costs to implement for clearing members and each DCO. This reporting would require each DCO and clearing member to determine a format which is acceptable to both parties. Further, each DCO would then have to reformat this information into a format required by the CFTC. Considering the CFTC has not provided sufficient reason for requiring the data to be sent to the DCO, MGEX does not support the proposed correction to the Original NPRM because it is inefficient, costly and there appears to be other means or systems already in place which might be used in order for the CFTC to obtain the information it is seeking.

### Alternative to End of Day Reporting

As mentioned above, the Exchange does not support any requirement for end-of-day reporting to DCOs from each individual account owner. However, if the Commission requires end-of-day reports from individual account owners, the CFTC should consider adopting a modified version of the existing framework used for large traders, such as CFTC Form 102. In this approach, the clearing members send the data directly to the CFTC, thus removing the DCOs as the middleman while improving efficiency and reducing costs. The CFTC can directly obtain the information it believes will allow the Commission's surveillance staff to aggregate positions across related beneficial accounts while causing the least amount of additional burden on market participants, FCMs, clearing members and DCOs.

### Lack of Cost/Benefit Analysis

The CFTC did not provide any estimates of the cost for the additional collection of information based on the changes proposed under this corrected NPRM. In the Original NPRM, the CFTC estimated the burden to be 50 hours per year per respondent for the additional reporting requirements at an annual cost of \$500 per respondent (50 hours x \$10). Even if the CFTC maintains that the costs enumerated in the Original NPRM meant to include the costs associated with the correction, MGEX believes these estimates – both in hours and cost – are extremely low. The CFTC does not appear to account for the costs to implement a system; collect, forward and format data; monitor and enforce compliance; and document compliance with the proposed rulemaking. Clearly the costs are not limited to reporting to the CFTC for many of the proposed rulemakings and, if fact, reporting may be the least expensive facet. Further, should the CFTC adopt the proposed corrected rulemaking as is, or relatively unchanged, the Exchange requests and recommends a prolonged implementation period given the depth and scope of the potential changes necessary.

### Conclusion

The Exchange thanks the Commission for the opportunity to comment on the correction to the original 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