June 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-AD23

Dear Mr. Secretary:

The Minneapolis Grain Exchange, Inc. ("MGEX" or "Exchange"), a Designated Contract Market ("DCM") and Derivatives Clearing Organization ("DCO"), would like to thank the Commodity Futures Trading Commission ("CFTC" or "Commission") for the additional time to provide comments on the above referenced matter originally published in the October 26, 2010 Federal Register Vol. 75, No. 206.

MGEX, which currently offers for trade and clears contracts in the realm of agricultural commodities as the term is proposed to be defined by the Commission in its rulemaking, reiterates its positions contained in the original comment letter dated November 26, 2010. However, the Exchange would like to take this opportunity to highlight some of its concerns.

A. Commodity-Based Contracts

The "MGEX Indexes," consisting of the Hard Red Spring Wheat Index (HRSI), Hard Red Winter Wheat Index (HRWI), Soft Red Winter Wheat Index (SRWI), National Corn Index (NCI) and National Soybean Index (NSI) electronically trade as futures and options and are financially settled. There are fundamental differences between traditional agricultural commodities and the MGEX Indexes. Specifically, the MGEX Indexes settle financially as opposed to delivery and they offer predictable basis and guaranteed convergence between cash and futures markets. Because of these fundamental distinctions between the MGEX Indexes and traditional agricultural commodity contracts, the MGEX Indexes should remain outside the definition of agricultural commodities.

(1) Financially Settled Indexes are Excluded Commodities

Rather than being treated as an agricultural commodity, financially settled indexes such

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as the MGEX Indexes should be categorized as an excluded commodity. The MGEX Indexes, much like interest rates and other listed excluded commodities, are basically impossible for any party to control. While the price of each MGEX Index is a reflection of the actual commodity, the index does not purchase or sell any units of the physical commodity. Therefore, it neither pushes up nor pulls down the price of the reflected commodity.

Additionally, similar to the listed excluded commodities of section 1a(13)(i), MGEX Indexes do not have a future delivery as required under section 1.3(e) of the Act. Therefore, lack of a future delivery further advances the claim that they are excluded commodities as it shows they are more similar to interest rates than the physical commodities.

(2) The Commission's Definition of Agricultural Commodities is Overreaching

The Commission states that permitting indexes to be an excluded commodity would "frustrate the requirement in the Dodd-Frank Act that swaps in agricultural commodities be permitted only pursuant to a §4(c) order of the Commission." The CFTC appears concerned that by allowing the MGEX Indexes to be excluded from the definition of agricultural commodities, then swaps based upon the price of MGEX Indexes are not agricultural swaps which would permit gaming and the evasion of the intended Dodd-Frank limitations on agricultural swaps. However, this theoretical concern does not change the fact that MGEX Indexes fit under the plain language definition of an excluded commodity. Additionally, to date vast majority of commenter's supported the equal treatment of agricultural swaps (including trade options) under the same regulatory scheme as other categories of swaps. As such, it should first be determined whether all swaps—including, agricultural, non-agricultural, and index based—will all be treated the same prior to this definition being finalized as it may become moot.

(3) All Financially Settled Indexes Should be Held to the Same Standard

MGEX believes that the Commission should treat all commodity based indexes the same. Whether an index is based solely in one commodity, or half in one and half in another commodity provides for minimal real world implication. Therefore, the intent of the Commission would just as easily be frustrated with barring more than fifty percent in a single underlying agricultural commodity.

B. Category Two Determinations

Further, the Commission's example in the proposed rulemaking used to define "used primarily" does not appear to provide for legal certainty. It will be difficult to apply any changes to commodities that trade in the futures market and have open interest, often years out, as contracts are by their very nature future looking.

Please see the original comment letter for further guidance as to the opinions of MGEX regarding these as well as other matters of this proposed rulemaking. Further, if MGEX has not reiterated within this letter previous comments made in the original comment letter, it does not diminish the Exchange's comments made in the original comment letter unless otherwise noted above.

The Exchange thanks the Commission for the opportunity to comment again on the proposed rulemaking. If there are any questions regarding our original comments, please contact me at (612) 321-7169 or lcarlson@mgex.com. Thank you for your attention to this matter.

Regards,

Layne G. C

Layne G. Carlson
Corporate Secretary

cc: Mark G. Bagan, CEO, MGEX
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November 26, 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-AD23

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 October 26, 2010 Federal Register Vol. 75, No. 206.

MGEX is both a Designated Contract Market ("DCM") and Derivatives Clearing Organization ("DCO") which currently offers for trade and clears contracts in the realm of agricultural commodities as the term is proposed to be defined by the Commission in its rulemaking.

<u>Proposed Definition of an Agricultural Commodity</u>

The Commission proposed definition of an agricultural commodity include:

> (1) Enumerated agricultural commodities in the Commodity Exchange Act ("Act") §1a;
>
> (2) All other commodities that are, or once were, or are derived from, living organisms, including plant, animal and aquatic life, which are generally fungible, within their respective classes, and are used primarily for human food, shelter, animal feed, or natural fiber;
>
> (3) Tobacco, products of horticulture, and such other commodities used or consumed by animals or humans as the Commission may by rule, regulation, or order designate after notice and opportunity for hearing; and
>
> (4) Commodity-based contracts based wholly or principally on a single underlying agricultural commodity.

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Comments Regarding the Proposed Definition

MGEX commends the Commission for its extensive analysis of the term "agricultural commodity" and understands the need for the term to be defined, particularly given how the term is presently defined which is by defining what it is not. However, MGEX believes the proposed definition of agricultural commodity expands the definition beyond that necessary to accomplish its purpose, and beyond the intended and current definition of a commodity under section 1a(4) of the Act. Specifically, the Exchange believes that category four need not be included in the definition for reasons which will be articulated below.

A. Commodity-Based Contracts

MGEX, as the Commission pointed out in the Federal Register, has five indexes based on cash bids: Hard Red Spring Wheat Index ("HRSI"), Hard Red Winter Wheat Index ("HRWI"), Soft Red Winter Wheat Index ("SRWI"), National Corn Index ("NCI") and National Soybean Index ("NSI") (the "MGEX Indexes"). The MGEX Indexes futures and options trade electronically and are financially settled. All the MGEX Indexes provide price discovery based on country origin cash grain bids which can be located throughout the nation.

The MGEX Indexes provide end-users, growers, hedgers, and speculators another means of access to the underlying agricultural commodities without the many risks associated with traditional delivery contracts, particularly physical delivery contracts. Since the MGEX Indexes settle financially as opposed to delivery, there is no cost for storage or delivery. This model makes for an additional and more efficient tool to mitigate risk. Further, because the MGEX Indexes settle financially, they offer predictable basis and guaranteed convergence between cash and futures markets which are needed to make good merchandising and hedging decisions. They ensure convergence because they are financially settled to a spot index of country origin bids obtained by a reliable and audited third party. These fundamental distinctions between the MGEX Index contracts which are financially settled and delivery of a physical commodity on a commodity like the MGEX Hard Red Spring Wheat contract are material enough that should allow for the MGEX Indexes, and similarly financially settled indexes, to remain outside the definition of an agricultural commodity.

(4) Financially Settled Indexes are Excluded Commodities

Rather than being treated as an agricultural commodity, financially settled indexes, such as the MGEX Indexes, appear more similar to those commodities that are considered an "excluded commodity." As the Commission notes, section 1a(13)(iii) of the Act provides that "any economic or commercial index based on prices, rates, values, or levels that are not within the control of any party to the relevant contract, agreement, or transaction" is an excluded commodity.

MGEX Indexes, much like interest rates and other listed excluded commodities, are basically impossible for any party to control. While the price of each MGEX Index is a reflection of the actual commodity, the index does not purchase or sell any units of the physical commodity. Therefore, it neither pushes up nor pulls down the price of the reflected commodity. This is akin to the Dow Jones Index; it reflects the movement of the underlying stocks but does not itself drive the fluctuation of price. Some indexes may be active participants in the market of the underlying commodity or security and, as such, maybe be appropriate to regulate as an agricultural commodity. However, indexes like the current MGEX Indexes do not influence the price of the underlying commodity. Therefore, the only way to control the price of the index would be for a party to manipulate the collective of all the spot prices. There are too many spot price locations (thousands) with independent ownership for any single entity to control the market or calculated Index price. Therefore, MGEX Indexes and similar financially settled indexes appear to have more attributes akin to an excluded commodity and should not automatically be labeled an agricultural commodity as proposed by the Commission.

It is of further note that the MGEX Indexes, similar to the listed excluded commodities of section 1a(13)(i), do not have a future delivery as required under section 1.3(e) of the Act. Section 1.3(e) states, in part, that a commodity involves "contracts for future delivery" which "are presently or in the future dealt in." Lack of a future delivery further advances the claim that they are excluded commodities as it shows they are more similar to interest rates than the physical commodities. Therefore, since financially settled indexes do not involve future delivery of a physical commodity, they should be an excluded commodity rather than an agricultural commodity.

(5) The Commission's Definition of Agricultural Commodities is Overreaching

The Commission states that permitting indexes to be an excluded commodity would "frustrate the requirement in the Dodd-Frank Act that swaps in agricultural commodities be permitted only pursuant to a §4(c) order of the Commission." However, indexes are not typical swaps and the definition of an excluded commodity should be applied as it is written and not unduly limited by excluding contracts as proposed by the Commission in category four. As the Dodd-Frank Act requires swaps be regulated then the Commission should specifically regulate swaps transactions, be it index based or otherwise. The Commission should not define the term agricultural commodity so broadly that it captures more than is necessary or required by law.

Including financially settled indexes like the MGEX Indexes in the definition of agricultural commodities is not an efficient method of regulating swaps. Since the MGEX Indexes are financially settled on a regulated derivatives clearing organization, the swap market is not involved. Further, the benefit that position limits may provide the physical agricultural commodities market does not apply to financially settled indexes that have the attributes of MGEX Indexes. Position limits may be beneficial in assisting the convergence of the cash value and futures market values during the futures contract delivery period. However, since the MGEX Indexes are settled financially and require no delivery, there is no issue with convergence to regulate. Again, MGEX Indexes are not swaps. Therefore, the MGEX Indexes should not be considered agricultural commodities but rather excluded commodities.

(6) All Financially Settled Indexes Should be Held to the Same Standard

Additionally, MGEX believes that the Commission should treat all commodity based indexes the same. Whether an index is based solely in one commodity, or half in one and half in another commodity provides for minimal real world implication. A sophisticated investor can implement formulas to adjust for proportional indexes, be it a fifty-fifty split or some other amount. As long as the investors know what the proportions are, they can replicate it. Therefore, the intent of the Commission would just as easily be frustrated with barring more than fifty percent in a single underlying agricultural commodity.

B. Category Two Determinations

MGEX also would like to comment briefly on the Commission's peaches example when defining "used primarily." It seems that the CFTC's determination could be made on a crop-by-crop or season-by-season basis when the CFTC stated "if 50% of the peaches harvested, plus one, are used for human food." This determination could lead to a slippery slope of managing the use for each crop. This does not appear to provide for legal certainty, particularly if the determination is subject to change. However, it will be difficult to apply any changes to commodities that trade in the futures market and have open interest, often years out, as contracts are by their very nature future looking. In general, the definition of an agricultural commodity should be as simply construed as possible.

<u>Conclusion</u>

In summary, the Commission's proposed category four to the definition of an agricultural commodity is not necessary. It is too broad and inconsistent with the physical description provided in categories one, two and three. 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. C

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