



August 8, 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-AD53

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 this opportunity to respond to the Commission's request for comment on the above referenced matter published in the June 7, 2011 Federal Register Vol. 76, No. 109.

MGEX is a membership-based organization and, therefore, has an interest in these proposed rulemakings on behalf of its members; specifically the additional requirements under §1.35 of the proposed rule.

If adopted, proposed §1.35 will require each member of a DCM, among other entities, to retain and be able to produce "all oral and written communications provided or received concerning quotes, solicitations, bids, offers, instructions, trading, and prices, that lead to the execution of transactions in a commodity interest or cash commodity, whether communicated by telephone, voicemail, facsimile, instant messaging, chat rooms, electronic mail, mobile device or other digital or electronic media."<sup>1</sup> Further, "[e]ach transaction record shall be maintained as a separate electronic file identifiable by transaction and counterparty." *Id.*

There are several pitfalls with adopting §1.35 as proposed. First, the language is overbroad and vague. For example, it is unclear whether internal communications (not involving customers or other external parties) would fall under the retention requirements. Further, the scope of the communication which leads to an executed trade needs additional clarification. It is implausible to be able to link all oral communication which does not directly result in the execution of a transaction because

---

<sup>1</sup> 76 Fed. Reg. 33066, 33072 (June 7, 2011).

parties can have a communication that does not lead to an executed transaction for hours, days, weeks, or even longer and may include many different individuals. Members might have no indication of whether there was a trade executed in connection with the recorded communication. However, the proposed rulemaking does not include a knowledge requirement or even a reasonable efforts standard to connect communications to an executed transaction. Furthermore, what constitutes a full transaction record is not defined in the statute. Considering that a complete transaction record will need to be kept in a separate electronic file identifiable by transaction and counterparty, it should be well defined.

The proposed rulemaking is also duplicative, costly and potentially impractical. It is duplicative in that each set of communication – be it oral or written – needs to be preserved and cataloged, even if the substance of the written and oral versions are identical. Further, the proposed rulemaking requires that each transaction record be preserved in a separate electronic file identifiable by transaction and counterparty. It is unclear whether one electronic file is required and indexed by each counterparty and transaction, or whether a separate electronic file is required for each counterparty and transaction. Further the interplay with proposed §1.31 might require both an electronic and paper copy of the same information. It would also be extremely costly, if not impossible, to link all communication that leads to an executed transaction on an on-going basis. Instead, the CFTC could require this linking on an as-needed basis if there is reason to think improper activity took place in association with a transaction. Lastly, while technology has evolved and continues to evolve, mobile communication devices still lack the ability to record data in the systematic manner in which the CFTC seems to require in its proposal.

Finally, MGEX believes that there are members who may not trade enough to justify the extreme costs related to the proposed data collection. As a result, these members may effectively be pushed off exchanges based on a cost/benefit analysis. MGEX suggests having a threshold before requiring these heavy burdens apply to these low volume members. Often this membership sect will include end users and other small entities who can take advantage of the benefits of membership but are not heavy traders. These members are still valuable parts of the Exchange and memberships should not be reserved only for those whose high trading volumes can justify the extreme data collection and retention costs associated with this proposed rulemaking.

MGEX respectfully recommends that the Commission reconsider including §1.35 in this proposed rulemaking and instead issue it as a stand alone rule which includes the above suggestions or submit this topic to the Technology Advisory Committee for its consideration.

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

Regards,

A handwritten signature in cursive script that reads "Layne G. Carlson". The signature is written in black ink and includes a long, sweeping horizontal stroke at the end.

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