



March 24, 2017

Mr. Christopher J. Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street NW  
Washington, DC 20581

**VIA ONLINE SUBMISSION**

Re: Technical Amendments to Rules on Registration and Review of Exchange Disciplinary, Access Denial or Other Adverse Actions, RIN 3038-AE15

Dear Secretary Kirkpatrick:

The Minneapolis Grain Exchange, Inc. (“MGEX” or “Exchange”), a Designated Contract Market (“DCM”) and Derivatives Clearing Organization, 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 January 23, 2017 Federal Register Vol. 82, No. 13 (the “Rulemaking”).

**Introduction**

MGEX appreciates the Commission’s efforts to update and modernize regulations pertaining to the registration and review of exchange disciplinary, access denial, or other adverse actions.<sup>1</sup> As the Commission notes, some of the Rulemaking is ministerial in nature, and other portions are labeled “accommodating” or “substantive”.<sup>2</sup> While MGEX is generally supportive of this Rulemaking, MGEX is offering suggested changes on some of the substantive components. Specifically, MGEX believes that proposed § 9.13 should be modified to ensure that an exchange has flexibility over how it publishes notices of actions on its website, and to allow removal of such postings for exceptional circumstances. Additionally, MGEX seeks guidance that proposed § 9.13 will only apply to actions that were finalized after the effective date of any final rulemaking. Finally, MGEX believes that proposed §§ 9.11(c) and (d) should be modified to allow for delivery of notice to be complete via e-mail. These suggestions are addressed in more detail below.

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<sup>1</sup> This comment letter will use the term “action” to refer to “exchange disciplinary, access denial, or other adverse action”.

<sup>2</sup> Rulemaking at 7740.

I. **The Commission should make changes to proposed § 9.13 to ensure that an exchange has flexibility over how it posts notices as well as the discretion to remove notices due to exceptional circumstances.**

Under current § 9.13, an exchange must publish certain disciplinary actions in a “conspicuous place on its premises to which its members and the public regularly have access for a period of five consecutive business days.” This rule, as the Commission observes, was “published in 1987, at a time when futures trading occurred primarily in person in the exchange’s trading pits and on exchange premises.”<sup>3</sup> Today, however, most trading occurs electronically. To ensure that posting of such notices continues to serve its intended purpose,<sup>4</sup> the Commission has proposed to modernize § 9.13 so that such notices be posted on the exchange’s website to which its members, market participants, and the public regularly have access.

MGEX agrees with the Commission that an exchange ought to publish notices of certain disciplinary actions on its website, and believes that an exchange should have flexibility over how it fulfills this obligation. As the Commission observes, “many DCMs have already adopted more modern methods to publicize notices of disciplinary action” and that “[s]ome DCMs currently maintain records of disciplinary actions on their Web sites”.<sup>5</sup> MGEX requests that proposed § 9.13 be modified to ensure that an exchange has flexibility over the format, style, and location of the notice on its website, as well as any ancillary website functionality relating to the publication of such notices (e.g., indexing or search function). Exchanges should be permitted to publish notices as it best sees fit, so long as the exchange, at minimum, publishes such notices on its website.<sup>6</sup> Relatedly, an exchange should be able to archive notices on its website after a reasonable period of time. MGEX believes that archived notices should be accessible, but that an exchange should have the discretion to maintain them separately on its website.

In addition, MGEX foresees that there may be situations where removing a notice from its website would be appropriate, and requests that exchanges are provided with this discretion.<sup>7</sup>

Additionally, MGEX believes that any final rulemaking should not be applied retroactively to final exchange actions. As such, MGEX requests guidance that proposed § 9.13 will be limited to disciplinary actions that were finalized after the effective date of any final rulemaking.

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<sup>3</sup> Rulemaking at 7743.

<sup>4</sup> MGEX agrees with the Commission that there is value in making such postings, including educating market participants and deterring misconduct. *Id.*

<sup>5</sup> *Id.*

<sup>6</sup> MGEX acknowledges that proposed § 9.13 appears to provide an exchange with flexibility over posting notices on its website, but believes that additional guidance would be beneficial.

<sup>7</sup> For instance, the regulatory environment or exchange rules could change over time such that certain notices no longer provide educational or informative value. Indeed, having notices that are predicated on antiquated rules may actually confuse members, market participants, or the public.

**II. The Commission should allow for e-mail transmission of notices under proposed §§ 9.11(c) and (d).**

MGEX supports the Commission's general approach taken in this Rulemaking to modernize permitted methods of communication. For instance, under proposed § 9.11(c), an exchange would only have to verify that information has been entered into NFA's BASIC system instead of mailing a notice to the Commission. In addition, under proposed 9.12(b), an exchange may simply e-mail notice of an early effective date of a disciplinary action instead of mailing it (or, under the current regulation, by use of telegram). These changes reduce the burden to exchanges, albeit in nominal ways.

MGEX requests that the Commission make a similar update to proposed §§ 9.11(c) and (d) to allow an exchange to use e-mail to make "delivery of the notice," in addition to in person delivery or by mail. Not only would this align with other aspects of this Rulemaking, but it would be consistent with how MGEX routinely communicates with members or market participants. That is, email has become a predominant means of communication between MGEX and a party subject to an investigation or disciplinary action. Accordingly, it seems appropriate to allow that email be a permitted method of delivering a notice under §§ 9.11(c) and (d).

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If you have any questions or concerns regarding this letter, please feel free to contact me at (612) 321-7141 or [awysopal@mgex.com](mailto:awysopal@mgex.com). Thank you for your attention to this matter.

Sincerely,



Adam Wysopal  
Associate Corporate Counsel

cc: Mark G. Bagan, President & CEO, MGEX  
Layne G. Carlson, Treasurer & Corporate Secretary, MGEX