



September 29, 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: CFTC Requests Public Input on Simplifying Rules (“Project KISS”) – Miscellaneous

Dear Secretary Kirkpatrick:

The Minneapolis Grain Exchange, Inc. (“MGEX”) would like to thank the Commodity Futures Trading Commission (“Commission”) for its Project KISS initiative, as set forth in a May 3, 2017 news release.<sup>1</sup> MGEX appreciates an opportunity to respond to the Commission’s request for public input.

### **Introduction**

MGEX, a Designated Contract Market (“DCM”) and Subpart C Derivatives Clearing Organization is concerned that the Commission has been utilizing Rule Enforcement Reviews (“RERs”) for purposes other than reviewing compliance with core principles, preventing market manipulation and customer and market abuses, and ensuring the recording and safe storage of trade information. Specifically, MGEX believes that RERs have been used, in part, to make policy or for edification. MGEX suggests that this is not an appropriate or efficient way for the Commission to make policy or gain knowledge. As such, MGEX requests that the Commission evaluate its RER policies, including how it is using RERs and the purpose of conducting RERs.

MGEX thanks the Commission in advance for reviewing this comment letter.

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<sup>1</sup> <http://www.cftc.gov/PressRoom/PressReleases/pr7555-17>.

**1. The Commission should evaluate how it is utilizing RERs and change policies, if needed, to ensure that RERs are properly limited.**

As background, the Commission describes the RER process as “regular reviews of each DCM’s ongoing compliance with core principles through the self-regulatory programs operated by the exchange in order to enforce its rules, prevent market manipulation and customer and market abuses, and ensure the recording and safe storage of trade information.”<sup>2</sup> The RER process also applies to DCOs.

MGEX believes that the Commission has gone beyond the original purpose for RERs by using them, in part, to enact policy or for gaining knowledge. MGEX does not deny that the Commission has the authority to recommend or require remediation if a DCM or DCO is found to be out of compliance with an existing regulatory obligation. But, it appears that RERs have been used to augment existing requirements or create new requirements, and by doing so new policy has been established. Likewise, MGEX perceives that RERs are often a vehicle for acquiring knowledge.

Using an RER to establish policy or for edification purposes is not optimal. It can prolong and complicate a RER, which can make it more burdensome and costly for a DCM or DCO. Further, since an RER report is typically public, other DCMs or DCOs often try to interpret findings, particularly when they appear to be more about policy than the auditing of Core Principles. This can create confusion for other DCMs or DCOs, market participants, and the public.

MGEX recognizes that sometimes new policy is needed and that the Commission does need to rely on exchanges and others to understand market operations. But, there are better avenues available for this. For instance, interpretative guidance and policy statements could be issued to clarify existing requirements.<sup>3</sup> Alternatively, the Commission could pursue a rulemaking. Further, MGEX believes that public hearings, industry group meetings such as JCC or JAC, and off-the-record conversations between DCMs/DCOs and the Commission are more efficient and cost effective means for information to be obtained. These mediums likely encourage better information sharing since they are more conciliatory when compared to a RER.

MGEX believes that if RERs adhere to their original intent, relationships between the Commission and exchanges will likely improve, better policy making will occur, and there will be superior shared understanding of DCM or DCO operations. Importantly, this would also likely enable the Commission to streamline the RER process. In turn, this could reduce the resources used by both the Commission and a DCM or DCO during an RER, as well improve the turnaround time from the start of the review and the publication of the RER report.

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<sup>2</sup> <http://www.cftc.gov/IndustryOversight/TradingOrganizations/DCMs/dcmruleenf>

<sup>3</sup> Ideally, this would occur after receiving additional input from the industry.

Accordingly, MGEX asks the Commission to review its existing RER policies and make changes, if necessary. MGEX believes that conducting an RER solely for ensuring compliance with core principles, while using different forums for policy making and education, will be a more effective use of resources and benefit the Commission, exchanges, market participants, and the public.

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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