



September 30, 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”) – Reporting

Dear Secretary Kirkpatrick:

The Minneapolis Grain Exchange, Inc. (“MGEX” or “Exchange”) would like to thank the Commodity Futures Trading Commission (“CFTC” or “Commission”) for the opportunity to respond to the CFTC’s request for public comment through the “Keep It Simple Stupid” or KISS Initiative. Position limits can have a profound impact on the commodities industry generally and agricultural commodities like North American Hard Red Spring Wheat (“HRSW”) in particular. MGEX has previously submitted comments on position limits for derivatives from prior Federal Register publications by letters dated March 28, 2011, February 10, 2014, August 1, 2014, January 22, 2015, March 30, 2015, July 13, 2016, November 8, 2016 and February 28, 2017. Moreover, MGEX has submitted a dedicated letter on the substantive issues of position limits under Project KISS – Miscellaneous. This comment letter addresses the recordkeeping, reporting, tracking, and publishing components of the most recent position limits Reproposal.<sup>1</sup>

MGEX is both a Subpart C Derivatives Clearing Organization (“DCO”) and a Designated Contract Market (“DCM”), and has been the primary marketplace for HRSW since its inception in 1881. Position limits have been a topic of much industry debate, particularly since passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”)<sup>2</sup>. MGEX values the KISS initiatives emphasis on simplicity, modernization, and controlling the cost of compliance. In the latest Reproposal of the position limits rulemaking there was the inclusion of significant recordkeeping, reporting,

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<sup>1</sup> See *Position Limits for Derivatives, Reproposal*, 81 Fed. Reg. 96, 704 (Dec. 30, 2016).

<sup>2</sup> H.R. 4173, Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010).

and tracking obligations. These new requirements in some cases are unnecessary and other cases harmful to the industry.

### **Recordkeeping Requirements of DCMs**

The Reproposal adds significant recordkeeping requirements for DCMs engaged in the process of granting hedge exemptions. All three procedures outlined for DCM processed exemption applications, § 150.09, § 150.10, and § 150.11, include provisions for DCMs to “keep full, complete, and systematic records...of **all** activities relating to the processing of such applications and the dispositions thereof”<sup>3</sup>. This requirement to keep all records is further elaborated to include all “records of **oral** and written communications between such [DCM]...and such applicant in connection with such application”<sup>4</sup>.

While MGEX believes the written recordkeeping requirements in the Reproposal are overly broad, MGEX is particularly concerned about the technological, financial and practical effects of recording and preserving **all oral** communications with hedge exemption applicants.

Acquiring the necessary technology to record all oral communications would involve significant investment in technology not currently used by MGEX in the ordinary course of business. Such technology may not be compatible with current systems and may result in a domino effect requiring multiple changes and subsequent investment in technological devices and internal procedures. MGEX is also concerned that after expending significant resources to comply with this requirement, technological or format changes on the CFTC’s end might require ongoing costs and investment. MGEX also questions the practical value of recording such oral communications and whether after all of the expense any reasonable benefit will be derived.

Moreover, MGEX is concerned that the practical effect of this requirement to record all oral communications will have a chilling effect on the free-flow of information between market participants and the Exchange. If market participants or Exchange staff believe that they are subject to unexpected second guessing or word by word dissection of their communications it could stifle frank and full communication. Additionally, in order to evaluate the merits of a hedge exemption request, information, often of a proprietary and confidential nature, needs to be communicated openly and freely by the applicant. If this oral communication is subject to a larger review it could hurt the marketplace.

These recordkeeping requirements may harm the industry by stifling the flow of information between applicants and DCMs. Moreover, there is not a demonstrable need to record this information. MGEX supports eliminating of these recordkeeping requirements pending an actual finding that there would be a benefit that could outweigh the high cost of implementing this regulation.

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<sup>3</sup> See Reproposal at 96975 and CFTC proposed regulation § 150.09(b)(1) (emphasis added), *See Also*, Reproposal at 96978 and CFTC proposed regulation § 150.10(b)(1), Reproposal at 96980 and CFTC proposed regulation § 150.11(b)(1).

<sup>4</sup> See Reproposal at 96976 and CFTC proposed regulation § 150.9(b)(1)(ii), (emphasis added), *See Also*, Reproposal at 96978 and CFTC proposed regulation § 150.10(b)(1)(ii), Reproposal at 96980 and CFTC proposed regulation § 150.11(b)(1)(ii).

## Reporting Requirements for DCMs

The Reproposal dramatically increases the reporting burdens for DCMs by adding weekly and monthly reporting requirements. MGEX's commentary on this increase has been a common theme throughout the various position limits proposals. MGEX is concerned that reporting will merely be another recordkeeping and reporting burden. If a DCM wants to grant non-enumerated bona fide hedge exemptions such entity would be required to "submit to the Commission a report for each week as of the close of business on Friday showing...information"<sup>5</sup>. In addition to this weekly report, DCMs "shall submit to the Commission, no less frequently than monthly, any report such [DCM]...requires to be submitted by an applicant to such [DCM]...pursuant to the rules...of this section."<sup>6</sup>

These additional weekly and monthly reporting requirements involve gathering, compiling, and reporting a potentially significant amount of information at a cost to DCMs. Additionally, MGEX is concerned that the costs associated with these reports are difficult to fully quantify as the Reproposal does not establish guidelines for the submissions but states that such weekly and monthly reports should be submitted "as specified by the Commission on the Forms and Submissions page at [www.cftc.gov](http://www.cftc.gov)"<sup>7</sup>. Furthermore, such submissions should use "the format, coding structure, and electronic data transmission procedures approved in writing by the Commission."<sup>8</sup>

Since the Reproposal is not final, no guidance is available on the CFTC's website regarding the format, coding, structure, or transmission procedures for these weekly and monthly reports which means the cost of compliance is unknown. However, DCMs, including MGEX, will need to establish additional internal procedures to collect the necessary information and will need to comply with unknown technical specifications. Different types of format or coding specifications can have substantial cost differentials for DCMs. The uncertainty of these costs is concerning for MGEX as is the reality that the format and reporting specifications are likely to change in the future, further increasing the costs to DCMs.

It is also important to note that there are numerous industry concerns regarding the definition of bona fide hedging and the limited examples of hedging that is enumerated

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<sup>5</sup> See Reproposal at 96976 and CFTC proposed regulation § 150.9 (c)(1) (Information required by § 150.9 (c)(1) include: (A) The date of disposition, (B) The effective date of the disposition, (C) The expiration date of any recognition, (D) Any unique identifier assigned by the designated contract market or swap execution facility to track the application, (E) Any unique identifier assigned by the designated contract market or swap execution facility to a type of recognized non-enumerated bona fide hedging position, (F) The identity of the applicant, (G) The listed commodity derivative contract to which the application pertains, (H) The underlying cash commodity, (I) The maximum size of the commodity derivative position that is recognized by the designated contract market or swap execution facility as a non-enumerated bona fide hedging position, (J) Any size limitation established for such commodity derivative position on the designated contract market or swap execution facility, and (K) A concise summary of the applicant's activity in the cash markets for the commodity underlying the commodity derivative position; and (ii) The summary of any nonenumerated bona fide hedging position published pursuant to paragraph (a)(7) of this section, or revised, since the last summary submitted to the Commission.

<sup>6</sup> See Reproposal at 96976 and CFTC proposed regulation § 150.9 (c)(2).

<sup>7</sup> See Reproposal at 96976 and CFTC proposed regulation § 150.9 (c)(3)(i).

<sup>8</sup> See Reproposal at 96976 and CFTC proposed regulation § 150.9 (c)(3)(ii).

(versus non-enumerated). It is vital that these other concerns be addressed otherwise the burdens of the recordkeeping requirements for the non-enumerated bona fide hedging position applications could be exacerbated by a larger reliance of industry participants on non-enumerated hedge exemptions. Such increased activity would place additional human and financial burdens on DCMs.

These same weekly and monthly reports as well as their associated costs are also required for DCMs processing spread exemption applications<sup>9</sup> and bona fide hedge exemptions for those enumerated circumstances outlined in § 150.11.<sup>10</sup>

Introducing additional weekly and monthly reports does not support the KISS initiative but more importantly is completely unnecessary for the CFTC to fulfill its statutory obligations under Dodd-Frank. Leaving the hedge exemption process in place, particularly for legacy agricultural contracts, and in the discretion of the exchange will not only simplify the exchange's reporting requirements but will enhance the predictability, reliability, and consistency of commercial end users managing their risk through bona fide hedges. The reporting requirements have been introduced absent a need for their inclusion in a position limits framework and accordingly should be set aside.

### **Tracking Requirements for DCMs**

One of the components of the weekly reports discussed above is for a DCM to include "any unique identifier assigned by the [DCM]...to track the application"<sup>11</sup> as well as "any unique identifier assigned by the [DCM]...to a type of recognized non-enumerated bona fide hedging position"<sup>12</sup> These provisions appear to require that unique identifiers be used by DCMs. Such a requirement to track, via unique identifier, both the application for a hedge exemption and the type of recognized position is concerning to MGEX.

This requirement could mean significant changes to clearing processes as well as surveillance programming used by DCMs. Tracking the application within a department is one thing, collating that information to market activity via software will entail programming costs and may be technologically impractical or prohibitively costly.

MGEX requests that the requirement as proposed to track the information outlined in § 150.9 (c)(1)(i)(D)-(E), § 150.10 (c)(1)(i)(D)-(E), and § 150.11 (c)(1)(i)(D)-(E) be eliminated. As with other elements of the Reproposal there is no demonstrable need to track, via unique identifier, hedge exemption applications.

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<sup>9</sup> See Reproposal at 96978 and CFTC proposed regulation § 150.10(c).

<sup>10</sup> See Reproposal at 96979 and CFTC proposed regulation § 150.11 (c).

<sup>11</sup> See Reproposal 96976 and CFTC proposed regulation § 150.9 (c)(1)(i)(D), See Also, Reproposal at 96978 and CFTC proposed regulation § 150.10 (c)(1)(i)(D) (analogous provision for non-enumerated hedge exemptions), Reproposal at 96980 and CFTC proposed regulation 150.11(c)(1)(i)(D) (analogous provision for spread exemptions).

<sup>12</sup> See Reproposal 96976 § 150.9 (c)(1)(i)(E), See Also, Reproposal at 96978 and CFTC proposed regulation § 150.10 (c)(1)(i)(E) (analogous provision for non-enumerated hedge exemptions), and Reproposal at 96980 and CFTC proposed regulation § 150.11(c)(1)(i)(E) (analogous provision for spread exemptions).

## **Publishing Requirements for DCMs**

If a DCM elects to process non-enumerated or spread hedge exemptions under § 150.9 and § 150.10 respectively, or certain enumerated exemptions in § 150.11, there are new publication requirements. For example, “After recognition of each unique type of derivative position as a non-enumerated bona fide hedging position, based on novel facts and circumstances, a [DCM]...shall publish on its Web site, on at least a quarterly basis, a summary describing the type of derivative position and explaining why it was recognized as a non-enumerated bona fide hedging position.”<sup>13</sup>

MGEX questions whether this new publication requirement will be as beneficial to the industry as the CFTC believes. MGEX suspects it will cause confusion or conflict, and may even have the effect of increasing the overall cost of compliance.

Publishing summaries of hedge exemptions (either non-enumerated bona fide hedges or spread exemptions) will not serve the market well. When an applicant is applying for an exemption, proprietary and confidential information, including hedging strategy and trading strategy, is communicated by the applicant to the DCM. Such information is proper for a DCM to have in order to evaluate the application and make a determination on the exemption. However, publishing this information would be improper and potentially lead to market disruption. Those who apply for bona fide hedging exemptions are those commercial entities that qualify. Providing their trading information and/or ‘novel fact and circumstances’ that might warrant an exemption could improperly or even inadvertently provide commercial, non-commercial, or speculative market participants with proprietary or sensitive information.

It is also important to note that each contract is different and the level of information a party could distill from a summary might depend on the size of the market, the ratio of commercial/speculative parties, or other commercial realities of the contract. MGEX’s market for HRSW has significant participation of commercial entities and the information gleaned from publishing even general summaries might lead to unintended consequences, even disruption or manipulation of the market for HRSW.

It is possible for the summaries of hedge exemptions to provide less detail (and less proprietary information); however, such a practice could produce confusion or conflict in the marketplace. A market participant could see a summary posted and be confused as to why one exemption was granted while theirs was not. The DCM may have very strong reasons for granting one exemption and not another but due to proprietary or confidential information this may not appear on the website. Additionally, a party could see a summary posted and believe, erroneously, that conduct they wish to engage in should qualify under the same grounds as the summary. The DCM may disagree and deny the hedge exemption. Either of these scenarios leads to unnecessary conflict and confusion in the marketplace.

MGEX is also concerned that while the cost of complying with the requirement may not be initially excessive, creating the summaries and posting them to a web site does entail

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<sup>13</sup> See Reproposal at 96975 and CFTC proposed regulation § 150.9(a)(7), See *Also*, Reproposal at 96978 and CFTC proposed regulation § 150.10(a)(7) (analogous provision for spread exemptions).

technological and personnel costs. Additionally, MGEX is concerned there is nothing in the regulations about phasing out information. Under a plain reading of the requirement, this information on hedge exemptions will need to be posted in perpetuity on a web site. These quarterly reports are in addition to the weekly and monthly reports being created and submitted to the CFTC on hedge exemptions.

MGEX requests that the requirements in § 150.09 (a)(7) and § 150.10 (a)(7) to publish summaries of hedge exemptions be eliminated. This publication requirement is a solution without a problem and need not be included in the position limits rulemaking.

MGEX appreciates the opportunity to comment as a part of the KISS initiative and supports decreasing and eliminating unnecessary rules (final or proposed). Please feel free to contact MGEX with any further questions.

Sincerely,

A handwritten signature in blue ink that reads "Emily Spott". The signature is written in a cursive style with a large initial "E" and a small "Spott" at the end.

Emily M Spott  
Associate Corporate Counsel

cc: Mark G. Bagan, Minneapolis Grain Exchange, Inc., President & CEO  
Layne G. Carlson, Minneapolis Grain Exchange, Inc., Chief Regulatory Officer