September 13, 2019

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

VIA ONLINE SUBMISSION

Re: Notice of Proposed Rulemaking for Derivatives Clearing Organization General Provisions and Core Principles, RIN Number 3038-AE66[1]

Dear Secretary Kirkpatrick:

The Minneapolis Grain Exchange, Inc. ("MGEX" or "Exchange"), a designated contract market ("DCM") and Subpart C derivatives clearing organization ("DCO"), would like to thank the Commodity Futures Trading Commission ("Commission" or "CFTC") for the opportunity to respond to the Commission's request for public comment on the proposed amendments to 17 CFR Parts 1, 39, and 140 published in the May 16, 2019 Federal Register Vol. 84, No. 95.

MGEX commends and fully supports the Commission on its decision to review its rules, regulations, and practices to make them simpler, less burdensome, and less costly. As a whole, the Exchange believes the proposed amendments to regulations applicable to DCOs generally further the Project KISS objectives and appreciates the clarifications made to certain provisions and the codification of existing relief and guidance. There are a few proposed amendments, however, that MGEX encourages the Commission to evaluate further as they may have unintended consequences that undermine the intent of the KISS initiative.

The recommendations and comments provided below are intended to promote a simpler and more effective regulatory framework while not weakening the critical protections implemented by the Commission.

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1 Derivatives Clearing Organization General Provisions and Core Principles (hereinafter "DCO Core Principles Proposal"), 84 Fed. Reg. 22226.

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Compliance with Core Principles – §39.10

Proposed Regulation 39.10(d) would require a DCO to have a program of enterprise risk management intended to identify and assess all potential risks the enterprise faces as a whole.[2] MGEX recognizes the value a robust enterprise risk management program provides in ensuring the integrity of DCOs and the financial markets. In addition, we appreciate and agree with the Commission that overly prescriptive standards and methodologies should be avoided in order to allow DCOs to develop programs that work best for their specific risks and unique needs.

As proposed, a DCO's enterprise risk management program should encompass areas including "systemic, cyber, legal, credit, liquidity, concentration, general business, operational, custody and investment, conduct, financial, reporting, compliance, governance, strategic, and reputational risks."[3] While the Exchange agrees a DCO should assess and manage these risks, it notes that many of these risks are already being separately addressed. For example, MGEX maintains a comprehensive cyber security program as required by Regulation 39.18 and its Recovery and Wind-down Plan covers risks such as liquidity, business, operational, custody, and investment. Developing a new enterprise risk management program that separately addresses each of these risks would consequently be duplicative and result in potentially conflicting procedures. MGEX therefore recommends that the Commission explicitly grant DCOs the flexibility to incorporate by reference existing plans and procedures into the enterprise risk management program.

The Commission specifically requested comment regarding whether a DCO's chief risk officer should be allowed to simultaneously serve as its enterprise risk officer, the individual with the "full responsibility and authority to manage the DCO's enterprise risk management function."[4] To promote Project KISS objectives, MGEX urges the Commission to permit a DCO's chief risk officer to also fulfill the role of its enterprise risk officer. Considering existing chief risk officer responsibilities of administering similar risk management programs, the Exchange believes that the chief risk officer may be the most adept individual to manage an enterprise-wide risk management framework. Allowing such would also prevent fragmenting risk management oversight responsibilities while being less time-consuming and less costly for smaller sized DCOs like MGEX. Finally, while the Exchange appreciates that the Commission views the independence of the enterprise risk officer as critical, it would be effectively impossible for smaller DCOs to have a fully independent employee or officer, thereby furthering the need for flexibility in who can fulfill such role.

Lastly, given the extensive nature of an enterprise risk management program and the work that will be involved in developing such, MGEX respectfully requests that the Commission grant a longer time period for compliance to allow DCOs adequate time to implement the program.

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[2] DCO Core Principles Proposal, *supra* note 1, at 22232.
[3] *Id.*
[4] *Id.*

Financial Resources – §39.11

The Commission has proposed to revise or clarify a number of aspects of §39.11, most of which MGEX believes will be beneficial, and it is thus only seeking clarification on one point. The Commission proposed to revise §39.11(f)(1)(ii) to require that the financial statement filed each quarter with the CFTC be that of the DCO specifically and not the parent company. In discussing its intent, the Commission noted the difficulty in accurately assessing the financial strength of the DCO itself when it is "part of a complex corporate structure."[5] As a single legal entity with both DCM and DCO operations, MGEX does not interpret this proposal to necessitate any changes in its financial statement reporting, which currently show revenue and expenses from all sources and not just the DCO. However, given the narrower language of the proposal and the Commission's stated purpose, MGEX would appreciate confirmation or clarification on this point. Furthermore, the Exchange urges the Commission to limit application of any new requirement to those DCOs who are part of a complex corporate structure. Requiring DCOs who are a subsidiary in a simple corporate structure to compile and submit separate financial statements would result in increased expenses while providing no material benefit.

Risk Management – §39.13

Similar to §39.11, the Commission has proposed amendments to several areas of §39.13, a couple of which MGEX believes warrant further consideration. The proposed amendments to §39.13(g)(8)(i)(B) would require a DCO to have rules that require its clearing members to provide reports to the DCO each day setting forth end of day gross positions of each beneficial owner within each customer origin of the clearing member. MGEX notes, however, that while futures commission merchants ("FCMs") know and have a relationship with their customers, clearing members do not necessarily have such a relationship. A rule requiring clearing members to report customer level information is therefore impractical, and attempting to apply this requirement at the FCM-level would similarly be problematic as certain FCMs with omnibus accounts may not have a relationship with the clearing member's DCO. In recognition of these inherent problems, MGEX encourages the Commission to maintain current reporting requirements and avoid adopting requirements that work for swaps to the clearing of futures and options. Requiring DCOs not clearing swaps to add an additional layer of reporting would impose significant complexities and costs.

Default Rules and Procedures – §39.16

In recognition of the crucial importance of default rules and procedures, MGEX appreciates the Commission evaluating potential improvements to the DCO requirements set forth in §39.16. The Exchange has provided a few comments on the proposed regulations below but would also like to reiterate our continued belief in the importance of flexibility when it comes to managing a potential default. For that reason, MGEX urges the Commission to regulate through general principles that take into account the different characteristics of various DCOs rather than prescriptive standards.

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[5] *Id.* at 22234.

Proposed Regulation 39.16(c)(1) would require a DCO to have a default committee convene in the event of a default involving substantial or complex positions to help identify market issues with any action the DCO is considering."[6] This proposed default committee would also be required to include clearing members. To promote Project KISS objectives, MGEX urges the Commission to permit a DCO's pre-existing risk or risk management committee to also serve as the default committee. Allowing this type of dual-purpose committee would offer smaller entities with less complex product offerings a more immediate and efficient implementation, while avoiding the potential difficulty in finding sufficient clearing member participant interests to fill two separate committees.

As proposed, Regulation 39.16(c)(2)(ii) would require that a DCO have default procedures requiring the immediate posting of public notice on the DCO's website in the event of a declaration of default. The Commission requested comment as to whether the timing of the announcement would potentially impact the DCO's market and ability to manage the default. The Exchange generally agrees that public notice of a default is vital for promoting the integrity and stability of financial markets, however, MGEX suggests the Commission give DCOs some discretion with respect to the timing of posting such notice, which would allow the DCO to take into consideration the nature of the default and any circumstances warranting flexibility.

Lastly, the Commission requested comment as to "whether the Commission should require DCOs to take into consideration other indicators of active participation in a market, such as open interest, volume, and/or other criteria" as it relates to Regulation 39.16(c)(2)(iii)(C).[7] The Exchange believes DCOs already have ample tools to handle these situations that take into consideration various factors. For example, items such as security deposits and various forms of margin take different risk factors into consideration. These other factors should therefore be left to the DCO to realize and manage as the need arises. Furthermore, more prescriptive requirements could have unintended consequences on an exchange, clearing members or FCMs, and/or market participants.

As the Exchange believes the primary concern with clearing member participation is their ability to manage the risk of taking on positions, MGEX does not think the Commission needs to require DCOs to consider other indicators, including those examples listed.

Reporting – §39.19

Having reviewed the Commission's proposed clarifications and additions to DCO reporting requirements, MGEX believes such amendments are generally appropriate, and its comments are therefore limited to three points. First, the Commission has proposed to revise §39.19(c)(1)(i) to require a DCO to report margin, cash flow, and position information by individual customer account. Because not all DCOs calculate variation on an individual customer account basis, a requirement to report margin and cash flow based on individual accounts is problematic. Reporting position information by individual customer account would similarly pose issues as DCOs would be forced to write rules that would apply to FCMs with omnibus accounts that may not otherwise have a

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[6] *Id.* at 22239.
[7] *Id.* at 22240.

relationship with the DCO. These changes would not be simple, and the undertaking associated with making them is significant, as even the Commission recognizes an expected five-fold increase in hours.[8] The Exchange therefore strongly urges the Commission to maintain the current daily reporting requirements (by house origin and customer origin), which provide the CFTC sufficient information for an effective surveillance program while not being overly burdensome.

Second, to be better able to assess the financial strength of a DCO that is part of a large corporate structure, the Commission has proposed to revise §39.19(c)(3)(ii) to require the audited year-end financial statements to be that of the DCO. As discussed in the Financial Resources section above, MGEX would appreciate clarification that the Commission's intent is only to prevent the filing of a parent company's financial statements rather than to require a DCO that is part of a single legal entity to isolate its finances.

Lastly, although the Exchange understands the rationale for requiring a DCO to provide CFTC notice before accepting a new product for clearing in proposed §39.19(c)(4)(xxvi), MGEX suggests the Commission reconsider the 30-calendar day notice requirement. The Commission referenced the comparable notice requirement in §40.2 applicable to DCMs and swap execution facilities ("SEFs") that list new products when adding this provision,[9] however, that regulation only requires DCMs and SEFs to submit the certification by the open of business on the business day preceding the product's listing.[10] To make reporting more efficient for registered entities while also ensuring the CFTC receives the information they need to oversee DCOs, MGEX recommends that the Commission revise the minimum notice deadline in proposed §39.19(c)(4)(xxvi) to match that of §40.2.

Public Information – §39.21

MGEX supports the Commission's goal of ensuring the general public is able to locate relevant information regarding a DCO. Regulation §39.21(c)(4) requires a DCO to disclose the size and composition of its financial resource package that would be available in the event of a clearing member default, and the proposed changes to this regulation would require a DCO to update such information on a quarterly basis and post it concurrently with the DCO's submission of its quarterly report. MGEX agrees with the Commission that updating this information on a quarterly basis seems reasonable. However, all DCOs subject to the Subpart C requirements[11] are already making this data, and much more, available each quarter through the Public Quantitative Disclosure Standards for central counterparties required to be published under Regulation §39.37.[12]

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[8] *Id.* at 22250.
[9] *Id.* at 22242.
[10] *See* §40.2(a)(2).
[11] I.e., systemically important DCOs ("SIDCOs") and Subpart C DCOs.
[12] Current Regulation §39.37 requires SIDCOs and Subpart C DCOs to publicly disclose its responses to the Disclosure Framework for Financial Market Infrastructures published by the Committee on Payment and Settlement Systems and the Board of the International Organization of Securities Commissions (the "Disclosure Framework"). Principle 23 of the Disclosure Framework requires the publication of certain quantitative disclosures, and the Public Quantitative Disclosure Standards sets forth the expected standards. *See* Committee on Payments and Market Infrastructures & Board of International Organization

MGEX therefore respectfully recommends the Commission explicitly acknowledge that a DCO's publication of the Quantitative Disclosure Standards fulfills the requirement of Regulation §39.21(c)(4). Requiring a DCO to update such information in multiple places on its website would be unnecessarily duplicative and contradict the premise of the KISS initiative. Moreover, having all quantitative information readily accessible in one location on a DCO's website increases the ease for market participants to find such information.

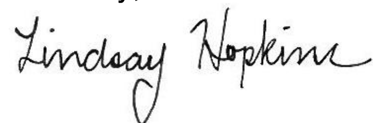
Financial Resources for SIDCOs and Subpart C DCOs – §39.33

The Commission has proposed to require SIDCOs with access to deposit accounts and related services at a Federal Reserve Bank to use such services where practical in §39.33(d)(5). In proposing this addition, the Commission noted that this requirement "would further enhance a SIDCO's financial integrity and management of liquidity risk."[13] MGEX agrees with this statement but notes that it further evidences the need for broader access to Federal Reserve accounts. Although the Exchange recognizes that the CFTC itself cannot grant other DCOs the ability to have accounts at a Federal Reserve bank, MGEX urges the Commission to advocate for such in the future. Allowing broader access would not only lower the credit and liquidity risks faced by DCOs under the CFTC's jurisdiction, it would also advance the Commission's goal of enhancing the protection of customer funds and help mitigate the disparity or competitive disadvantage that otherwise results based on a DCO's size or systemic importance.

Conclusion

The Exchange would like to reiterate its appreciation for the KISS initiative, and the work undertaken as part of this project, and thanks the Commission for the opportunity to comment on the above matters. MGEX supports the Commission's objective of clarifying and simplifying rules and processes when possible and believes the recommendations made herein would promote this goal as well. Please feel free to contact me at 612-321-7143 or lhopkins@mgex.com with any further questions.

Sincerely,



Lindsay Hopkins

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of Securities Commissions Public Quantitative Disclosure Standards for Central Counterparties (Feb 2015), available at https://www.bis.org/cpmi/publ/d125.pdf. MGEX recognizes the proposed amendment to Regulation §39.37 would make this requirement explicit.

[13] DCO Core Principles Proposal, *supra* note 1, at 22246.