



May 12, 2020

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: Position Limits for Derivatives

Dear Mr. Kirkpatrick:

The Minneapolis Grain Exchange, Inc. (“MGEX” or “Exchange”) thanks the Commodity Futures Trading Commission (“CFTC” or “Commission”) for the opportunity to submit comments on the CFTC’s proposed rules implementing federal speculative position limits. Position limits is one area that MGEX has commented on repeatedly. MGEX previously submitted comments on position limits 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, February 28, 2017, and September 30, 2017.

MGEX is both a Subpart C Derivatives Clearing Organization (“DCO”) and a Designated Contract Market (“DCM”) and has been the primary marketplace for North American Hard Red Spring Wheat (“HRSW”) since its inception in 1881. Position limits has been a topic of much industry debate, particularly since passage of the Dodd-Frank Wall Street Reform and Consumer Protection Act (“Dodd-Frank”)¹. As the Commission appropriately points out, it is important to focus on derivatives that are vital to price discovery and distribution of the underlying commodity so that any excessive speculation may have a small impact.² Position limits can have a profound impact on the commodities industry generally and agricultural commodities, in particular, HRSW.

Overall, MGEX broadly supports the proposed rules. Specifically, MGEX supports the Commission’s decision to increase spot month position limits for the core referenced futures contracts, as well as maintain spot month parity between the legacy wheat contracts. MGEX also supports the expanded list of enumerated *bona fide* hedge transactions, the delegation of authority to exchanges to grant non-enumerated hedge exemptions subject to the Commission’s proposed review period, and the grandfathering of existing *bona fide* hedge positions from federal limits. For physically-settled contracts that are not subject to federal position limits as well as the 16 new core referenced futures contracts, MGEX supports the Commission’s decision to grant the exchanges discretion to set non-spot month hard limits or accountability levels. While MGEX broadly supports the proposed rules, there are several

¹ H.R. 4173, Pub. L. No. 111-203, 124 Stat. 1376 (July 21, 2010).

² See *Position Limits for Derivatives, Proposed Rule*, 85 Fed. Reg. 11596, 11597 (February 27, 2020).

provisions that we respectfully recommend the Commission change or provide clarification to enhance market participant certainty with regulations prior to the adoption of final position limits rules.

Definitions – Proposed Rule 150.1

MGEX generally supports the definition of *bona fide* hedging for contracts subject to federal limits and supports most of the Commission's other proposed definitions. However, the Commission should allow the definition of *bona fide* hedging to include broader commodity market functions and purposes, including the promotion of risk management activity and price discovery. Risk management positions are not speculative positions. The Commission should not replace "normally" with "always" in the statutory text so it can use the definition of *bona fide* hedging transaction as an indirect means to impose position limits on non-speculative transactions.

The Commodity Exchange Act's ("CEA") statutory definition of a *bona fide* hedging position encompasses the reduction of all risks that affect the value of a cash-market position, including time, location, quality, execution and logistics, counterparty credit, weather, sovereign, pandemic, government policy (e.g., an embargo), and other risks that affect price. The Commission noted its intention to replicate this standard with the new *bona fide* hedging definition in 150.1, with one significant difference in that the word "risk" be solely limited to "price risk," justifying this codification in part because the Commission has historically applied its interpretation of risk solely as price risk when such matters pertain to *bona fide* hedging. MGEX respectfully disagrees with the interpretation that *bona fide* hedging should only be used to reduce price risk. Market participants should be permitted to hedge any legitimate risk incurred while conducting commercial business as reflected by the CEA's statutory definition. Therefore, MGEX recommends the Commission remove the qualifier of "price" for risk in its interpretation of the Economically Appropriate Test under the definition of *bona fide* hedging. Alternatively, MGEX believes market participants should be able to apply for non-enumerated hedge exemptions in order to hedge risks that fall outside the scope of "price risk."

MGEX supports the Commission's expansion of the list of enumerated hedges; however, MGEX recommends this list be moved from Appendix A of Part 150 to the definitions section of the rule text.

MGEX recommends that the Commission adds to the enumerated list hedging activity that reduces the risk of an unpriced (single-sided) sale or purchase to the list of enumerated *bona fide* hedging transactions. For example, a merchant may agree to sell or purchase a commodity [at a floating price] several months in the future without knowing where, when, and at what price they will source supply or make a sale when they enter into the contract.

Additionally, MGEX recommends the Commission revise the definition of "entity." Specifically, the definition should not cross-reference the CEA's definition of "person" because this definition should not apply to individuals.

Federal Speculative Position Limits – Proposed Rule 150.2

Legacy agricultural contracts have had a well-functioning position limits framework prior to Dodd-Frank and MGEX supports keeping this framework in place for the legacy contracts.

Spot Month Wheat Parity

MGEX supports the proposed federal spot month limit at 1,200 for each of the three legacy wheat contracts, recognizing the importance for spot month parity as it will be applied to all three of the abovementioned wheat contracts.

10, 2.5 Percent Formula

The Commission is seeking to codify limits outside of the spot month at 10 percent of open interest for the first 25,000 contracts, with a marginal increase of 2.5 percent after. MGEX does not agree with this approach. MGEX has in the past and will continue to reiterate that a formulaic approach is too rigid and inflexible. The Commission needs to be flexible in the future and should not preclude further limits or discussion. However, MGEX supports maintaining partial wheat parity by keeping the existing non-spot month limits for HRSW and CBOT KC Hard Red Winter Wheat at 12,000.

Exemptions from Federal Position Limits – Rule 150.3

Bona Fide Hedging

MGEX does not have concerns regarding the proposed request process for non-enumerated hedges. However, the CFTC should ensure and clarify that the 10-day review would only need to occur on initial exemption requests, not renewals, provided that the strategy and type of exemption sought by the market participant has not changed.

Gross Hedging

MGEX generally supports the proposed acceptance of gross hedging. However, the Commission should remove the proposal that exchanges be required to document their justification for allowing gross hedging so long as the market participant complies with conditions one, two, and three.³ Having a special condition for gross hedging is unnecessary if an exchange is reviewing *bona fide* hedge exemption requests to ensure such exemption reduces risk, whether that be on a net or gross basis is irrelevant.

Pre-Existing Positions

MGEX supports the adoption of an exemption for pre-existing positions. However, as proposed, there are varying degrees of exemptive relief depending on whether a transaction is a futures contract or swap, when the transaction was executed, and whether the position would be subject to spot or non-spot month limits. The variability of the exemptive relief makes it operationally challenging for market participants to rely upon the relief.

³ *Id.* at 11613 (“(1) the manner in which the person measures risk is consistent over time and follows a person’s regular, historical practice¹¹⁷ (meaning the person is not switching between net hedging and gross hedging on a selective basis simply to justify an increase in the size of his/her derivatives positions); (2) the person is not measuring risk on a gross basis to evade the limits set forth in proposed § 150.2 and/or the aggregation rules currently set forth in § 150.4; (3) the person is able to demonstrate (1) and (2) to the Commission and/or an exchange upon request.”).

MGEX echoes the Futures Industry Association's comment letter recommendations that the Commission streamline the pre-existing position exemption to create two categories of pre-existing positions: pre-existing swaps positions and pre-existing futures positions. Specifically, as it relates to MGEX, pre-existing futures positions should include futures positions held prior to the effective date of the final position limits rule and be exempt from non-spot month limits, provided that a participant does not increase its non-spot month position after the effective date of the final position limits rule. For each of these exemptions, the Commission should clarify that a participant is not *required* to rely upon the exemption which would let a participant elect to rely upon the pre-existing position exemption so its pre-existing positions would net against all other referenced contract positions in the market participant's portfolio.

MGEX also asks the Commission to simplify the application of federal limits to pre-enactment, transition period, and pre-existing conditions. As an exchange, MGEX has the power to grant exemptions so the Commission must be clear on the timing and parameters of general hedge exemption relief already granted or positions already in place.

Future Adjustments from Non-Enumerated to Enumerated Hedging List

MGEX supports the Commission's proposed process to recognize non-enumerated hedges as *bona fide* hedge transactions. It is prudent to recognize that hedging practices will continually evolve in response to ever changing and dynamic commodity markets. MGEX expects that over time, the Commission and exchanges will review and grant non-enumerated hedge exemptions of similar nature. Accordingly, it is likely these repetitive non-enumerated *bona fide* hedging practices will be viewed as commonly accepted practices industry-wide in the future. Rather than requiring that these applications perpetually continue through the non-enumerated hedge exemption process, MGEX recommends that the Commission codify a way to move commonly granted non-enumerated hedge exemptions to the list of enumerated *bona fide* hedging transactions or position.

Conclusion

MGEX appreciates all the Commission's efforts with position limits and for the opportunity to comment. Please contact MGEX with any questions or if we can provide additional information.

Sincerely,



Elizabeth Schenfisch
Associate Corporate Counsel

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