



August 24, 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: Electronic Trading Risk Principles notice of proposed rulemaking, RIN 3038-AF04

Dear Secretary Kirkpatrick:

The Minneapolis Grain Exchange, Inc. (“MGEX” or “Exchange”) 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 notice of proposed rulemaking published in the July 15, 2020 Federal Register Vol. 85, No. 136 (“NPRM”).

Introduction

MGEX, a Designated Contract Market (“DCM”) and Subpart C Derivatives Clearing Organization, shares the Commission’s desire to address the potential risk of a DCM’s trading platform experiencing a disruption or system anomaly due to electronic trading. Even though MGEX believes there are some improvements or adjustments that could be made to the NPRM, the NPRM is a significant improvement on the Commission’s previous RegAT proposed rulemakings.¹

MGEX requests the Commission consider making refinements to the NPRM prior to issuing and voting on a final rulemaking. As detailed below, MGEX believes that:

1. The Commission should continue with its principles-based approach to broadly define “market disruption” and “system anomalies” associated with electronic trading and ensure the reasonableness standard is approached with ample

¹ The term “RegAT” refers to Regulation Automated Trading, Notice of Proposed Rulemaking, published in the December 17, 2015 Federal Register Vol. 80, No. 2015, as well the Regulation Automated Trading, Supplemental Notice of Proposed Rulemaking, published in the November 25, 2016 Federal Register Vol. 81, No. 227.

discretion.

2. The Commission should reasonably accept that DCMs may differ in the rules they establish based on the unique and different markets and products that are provided across various DCMs and platforms.
3. The Commission should ensure “rules” as defined in the NPRM includes non-rules such as policies, procedures, protocols, controls, etc.

Additionally, MGEX would note support for the following:

4. MGEX agrees with the Commission that the controls outlined in Acceptable Practices for Core Principle 2 provide appropriate effectiveness in preventing market disruption in today’s market.
5. MGEX agrees with the Commission’s approach of notification in cases of “significant disruption” as it provides DCMs with some discretion to interpret events for the unique and different markets and products that are provided across various DCMs and platforms.

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

- 1. The Commission should continue with its principles-based approach to broadly define “market disruption” and “system anomalies” associated with electronic trading and the ensure reasonableness standard is approached with ample discretion.**

As stated by the Commission, the “Risk Principles attempt to balance the need for flexibility in a rapidly-changing technological landscape with the need for an unambiguous regulatory requirement that DCMs establish rules governing electronic orders, as well as on market participants themselves, to prevent and mitigate market disruptions and system anomalies associated with electronic trading activities.”² To strike this balance, MGEX believes it’s appropriate for DCMs to “have established and implemented rules and pre-trade risk controls that are reasonably designed to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading.”³ To that end, MGEX believes it is important that the Commission is not prescriptive in defining “market disruption” or “system anomaly.” Being overly prescriptive in further defining those terms would impose additional burdens on DCMs, while limiting DCMs’ discretion to cater their rules to the DCM’s individual markets and/or products. Even more harmful would be over-prescriptive rules that restrict DCMs from taking the best course of action.

Additionally, the Commission has stated that “[t]he Commission interprets ‘reasonably designed’ to mean that a DCM’s rules and risk controls are objectively reasonable.”⁴ As

² NPRM at 42763.

³ *Id.*

⁴ *Id.*

such, MGEX believes it is necessary for DCMs to have ample discretion in determining what a “market disruption” or “system anomaly” is for each individual market, asset class, product, or otherwise. Each DCM will need discretion to ensure the rules are “objectively reasonable” to address a “market disruption” or “system anomaly” associated with electronic trading activities for their markets and/or products.

Lastly, MGEX considers the general definitions of “market disruption” and “system anomalies” stated in the NPRM to be acceptable, with the caveat that each DCM operates differently. Consequently it’s important for the Commission to recognize such during its rule enforcement reviews. Moreover, the adoption and implementation of “rules governing market participants subject to its jurisdiction to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading” is likely to vary across DCMs as each handles unique and different markets, asset classes, and products.

2. The Commission should reasonably accept that DCMs may differ in the rules they establish based on the unique and different markets and products that are provided across various DCMs and platforms.

The Commission notes that it “does not believe that a lack of uniformity between DCMs’ rules and risk controls renders a particular DCM’s rules or risk controls *per se* unreasonable.”⁵ MGEX would note that although there may be a high degree of rule and risk consistency across DCMs, the Commission should expand upon this standard to clarify that “lack of uniformity” is more than just not “*per se* unreasonable.” Rather, a more advisable approach is to not reference “lack of uniformity” but denote that each DCMs’ rules and risk controls should be presumed “reasonable” for that particular DCM’s market and/or products.

The Commission well knows that MGEX’s market and products differ from other DCMs; and each DCM, despite holding the same designation, differs from one another. As such, referencing “uniformity” unnecessarily links differing markets and/or products that may require substantially different rules, risk controls, or other measures. That being said, the Commission is aware of the significant work DCMs do to align their rules, standards, and controls among themselves, where appropriate to provide clarity to the marketplace. However, it is preferable to allow DCMs to independently align such rules, standard, and controls outside of any standard the Commission has set. This approach and standard (i.e. a “reasonableness” standard) would empower DCMs to collaborate and align with other DCMs where possible, but gives DCMs broader discretion to cater to their individual markets and products. As a result, DCMs will be able to innovate and come up with unique rules or solutions for their individual markets and products rather than simply aligning with an industry standard that may not fit a DCMs exact need.

⁵ *Id.* at 42765.

3. The Commission should ensure “rules” as defined in the NPRM includes non-rules such as policies, procedures, protocols, controls, etc.

The Commission states for Risk Principle 1 that “a DCM must adopt and implement rules governing market participants subject to its jurisdiction to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading.”⁶ MGEX is interpreting “rules” to mean “Rules” as defined in CFTC Regulation § 40.1.⁷ As such, a DCM would not be limited to only have and publish formal “rules” in its Rulebook, but also adopt resolutions, policies, advisories, protocols, or otherwise to address said “market disruptions or system anomalies.” Notwithstanding the forgoing, the Commission should clarify that “rules” includes instruments such as “procedures,” “controls,” and other instruments listed in the definition under Regulation § 40.1.

4. MGEX agrees with the Commission that the controls outlined in Acceptable Practices for Core Principle 2 provide appropriate effectiveness in preventing market disruption in today’s market.

The Commission asked if DCMs consider the controls listed in the Acceptable Practices for Core Principle 2 will be effective in preventing market disruptions in today’s markets. MGEX believes the controls provide DCMs with sufficient coverage in mitigating market disruption in today’s market. However, MGEX also believes that discretion is paramount for DCMs to be effective in preventing market disruption for each DCMs unique market and/or products. A one-size-fits-all list of controls likely will not provide DCMs sufficient discretion to effectively prevent market disruption when certain controls may be more effective for one DCM than another, controls not listed may also provide a more effective prevention tool for a certain DCM market and/or product, or controls today may not be effective to address future disruptions.

5. MGEX agrees with the Commission’s approach of notification in cases of “significant disruption” as it provides DCMs with some discretion to interpret events for the unique and different markets and products that are provided across various DCMs and platforms.

The Commission provides that “a DCM must promptly notify the Commission staff of a significant disruption to its electronic trading platform(s) and provide timely information on the causes and remediation.”⁸ MGEX agrees with the Commission’s qualifying term “significant” to the disruption notification requirement. MGEX believes this threshold requirement provides DCMs with necessary discretion to interpret a disruption in line with

⁶ *Id.* at 42766.

⁷ CFTC Regulation § 40.1 provides that “*Rule* means any constitutional provision, article of incorporation, bylaw, rule, regulation, resolution, interpretation, stated policy, advisory, terms and conditions, trading protocol, agreement or instrument corresponding thereto, including those that authorize a response or establish standards for responding to a specific emergency, and any amendment or addition thereto or repeal thereof, made or issued by a registered entity or by the governing board thereof or any committee thereof, in whatever form adopted.”

⁸ *Id.* at 42768.

the CFTC's stated threshold (i.e. "where the ability of other market participants to execute trades, engage in price discovery, or manage their risks is materially impacted by a malfunction of a market participant's trading system."⁹)

If you have any questions or concerns regarding this letter, please feel free to contact me at (612) 321-7128 or psparby@mgex.com. Thank you for your attention to this matter.

Sincerely,



Peter D. Sparby
Associate Corporate Counsel

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

⁹ *Id.* at 42769.