



March 18, 2024

Mr. Christopher 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: Protection of Clearing Member Funds Held by Derivatives Clearing Organizations**

Dear Mr. Kirkpatrick:

Minneapolis Grain Exchange, LLC (“**MGEX**”) appreciates the opportunity to comment on the Commodity Futures Trading Commission’s (“**CFTC**” or “**Commission**”) notice of proposed rulemaking titled Protection of Clearing Member Funds Held by Derivatives Clearing Organizations (“**Proposal**”).<sup>1</sup> As explained further below, MGEX fully supports the Proposal to extend safeguards currently afforded to funds of customers of FCM Clearing Members (“**Customer Funds**”) under the Commodity Exchange Act (“**CEA**”) and regulations thereunder to funds of FCM Clearing Members (“**Proprietary Funds**”).<sup>2</sup> MGEX would also support further regulation to help ensure Proprietary Funds are afforded substantially similar safeguards to those currently received by Customer Funds under the CEA and regulations thereunder. MGEX also respectfully requests the Commission consider specific additional revisions to current regulations and one exemptive order to help ensure clearing members and customers of all DCOs that are subject to the Commission’s heightened risk management standards may benefit from the additional safeguards provided by access to a Federal Reserve Bank account.

**I. Introduction**

MGEX is a wholly-owned subsidiary of Miami International Holdings, Inc. (“**MIH**”), the corporate holding company for a global exchange group that operates regulated markets for the listing,

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<sup>1</sup> Protection of Clearing Member Funds Held by Derivatives Clearing Organizations, 89 Fed. Reg. 286 (Jan. 3, 2024).

<sup>2</sup> The Proposal also would allow a DCO to hold Customer Funds and Proprietary Funds at the central bank of a money center country (as defined in 17 CFR 1.49) and would require a modified acknowledgment letter from that central bank. This comment does not address that part of the Proposal.

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trading, and clearing<sup>3</sup> of commodity derivatives markets and the listing and trading of equity and equity derivative markets.<sup>4</sup> MGEX is regulated by the CFTC as a Subpart C Derivatives Clearing Organization (“**DCO**”) and Designated Contract Market (“**DCM**”). Through its DCO, MGEX currently provides clearing services for products listed and traded on its own DCM for fourteen entities<sup>5</sup> and products listed and traded on Bitnomial Exchange, LLC for four entities.<sup>6</sup> All FCM Clearing Members are permitted to clear on their own behalf and for their customers; as a result, MGEX holds both Proprietary Funds and Customer Funds in the course of performing its function as a DCO.

## **II. Current Regulatory Treatment of Customer Funds**

The CEA and CFTC regulations thereunder place certain requirements on FCMs regarding Customer Funds, including: (i) segregating Customer Funds from their own funds; (ii) depositing Customer Funds in an account clearly marked as such; (iii) obtaining written acknowledgement letters from depository institutions; (iv) limiting the investment of Customer Funds to certain explicitly authorized instruments; and (v) creating requirements for authorized depositories.<sup>7</sup> These particular safeguards also apply to DCOs that receive and hold Customer Funds deposited by FCM clearing members.<sup>8</sup>

As noted in the Proposal, these safeguards exist primarily as a function of the customer-FCM relationship and do not apply to Proprietary Funds, whether the source of such funds is an FCM or corporate clearing member of a clearinghouse providing traditional, intermediated clearing, or from natural persons that are members of a clearinghouse operating a Non-Intermediated Clearing Model. The CEA and regulations thereunder contain some safeguards for Proprietary Funds, but they are less specific than the requirements imposed on entities holding Customer Funds. For example, DCOs are required to establish standards and procedures that protect and ensure the safety of Proprietary Funds and are required to hold Proprietary Funds in a manner which minimizes the risk of loss or of delay in the access by the DCO to such funds.<sup>9</sup>

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<sup>3</sup> MIH’s other DCO, the LedgerX (“**LX**”), has filed its own comment in response to the Proposal. The LX comment is consistent with this comment and also addresses issues that pertain to LX but not to MGEX.

<sup>4</sup> MIH is fourteenth largest global derivatives exchange group by executed volume in 2023 and the fastest growing exchange group for U.S. multi-listed options since 2016 (compiled from source data available at theocc.com). See FIA ETD Tracker, Volume by Exchange, available at [https://www.fia.org/fia/etd-tracker?utm\\_campaign=0223&utm\\_content=FIA%20ETD%20Tracker&utm\\_term=&utm\\_medium=DAETD&utm\\_source=FIAEmail](https://www.fia.org/fia/etd-tracker?utm_campaign=0223&utm_content=FIA%20ETD%20Tracker&utm_term=&utm_medium=DAETD&utm_source=FIAEmail).

<sup>5</sup> Thirteen of these entities are clearing FCMs; one is a non-FCM permitted to clear only for its own account. See MGEX Clearing Member List, available at <https://www.miaxglobal.com/markets/us-futures/mgex/membership>.

<sup>6</sup> Each of these entities are clearing FCMs. See id.

<sup>7</sup> See generally 17 CFR 1.20, 22.5, and 30.7.

<sup>8</sup> See generally 17 CFR 1.20(g) (general requirements), 39.15(b) (segregation of Customer Funds), and 22.3(b)(1) (treatment of cleared swaps Customer Funds).

<sup>9</sup> See 7 U.S.C. 7a-1(c)(2)(F); 17 CFR 39.15.

### III. Proposal

The Proposal would apply several of the regulatory safeguards for the treatment of Customer Funds to Proprietary Funds. Under the Proposal, DCOs would be required to:

- invest Proprietary Funds only as permitted for investment of Customer Funds and bear all losses associated with the investment of Proprietary Funds;
- account for Proprietary Funds separately from its own funds and hold Proprietary Funds in accounts named to clearly identify the funds as belonging to clearing members;
- maintain in accounts holding Proprietary Funds financial resources sufficient in the aggregate to cover the total value owed to clearing members;
- obtain from any depository (other than Federal Reserve Banks) holding Proprietary Funds a written acknowledgement that the funds belong to the DCO's clearing members and cannot be used by the DCO for any other purpose;<sup>10</sup>
- limit commingling of Proprietary Funds to other Proprietary Funds;
- limit the use of Proprietary Funds only as belonging to the clearing member that deposited the funds;
- calculate the amount of funds owed for each type of segregated account in which it holds Customer Funds or Proprietary Funds and reconcile the total amount (aggregate across all clearing members) for each type of segregated account with the amount for each type of segregated account held across all depositories by noon of each business day on balances held as of the close of business on the previous business day; and
- report to the Commission any discrepancies in the amount of Proprietary Funds or Customer Funds that it holds for each clearing member and any of the daily reconciliations that would be required by the Proposal ("**Reconciliation Reporting Requirement**").

The Commission's customer protection regime is a critical component of vibrant and sound commodity derivatives markets. MGEX agrees that strengthening safeguards for Proprietary Funds, particularly in light of the development of clearing models in which natural persons can become direct members, is an important step to safeguarding all funds held by DCOs and one that aligns with the current practices of many DCOs that have implemented comparable protections. MGEX applauds the Commission for taking this step and fully supports the overall goal of the Proposal. This comment addresses a couple areas of the Proposal that MGEX believes would benefit from additional clarity and also provides responses on several aspects of the Proposal where the Commission requested specific comment.

First, proposed Regulation 39.15(f)(1) would require a DCO to "at all times maintain" in the segregated proprietary accounts resources sufficient to cover the total value of funds "owed" to all clearing members. MGEX requests the Commission to provide additional clarity on the meaning of "owed" in this context. Second, under proposed Regulation 39.15(g) and as summarized above, a DCO must conduct a daily reconciliation for each type of segregated account (Customer Funds for futures positions, Customer Funds for swaps positions, and

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<sup>10</sup> Commercial banks would be required to provide the acknowledgement letter in the form of a template provided by the Commission; central banks of a money center country would be permitted to provide their own written acknowledgement stating that (i) the bank was informed that the funds deposited with it are Proprietary Funds, and (ii) that the bank agrees to respond to requests from the Commission for information about the account, including the account balance.

Proprietary Funds) that a DCO holds for clearing members across all depositories. MGEX respectfully requests the Commission offer a more detailed explanation of how DCOs should prepare these reconciliations, particularly since the Commission is considering requiring DCOs to report its daily reconciliation to the CFTC.

With respect to specific comments requested by the Commission, MGEX notes the CFTC asked whether “classification of guaranty fund contributions as proprietary funds inhibit DCOs’ current guaranty fund programs.” DCOs that clear positions on margin and maintain guaranty funds<sup>11</sup> have a narrow but legitimate use of Proprietary Funds: in the event of a clearing member default, whether originating in a clearing member proprietary or customer segregated account, DCOs will deploy financial resources to cover any losses associated with the default according to a pre-established order (“**Default Waterfall**”). It is common for a Default Waterfall to include use of non-defaulting clearing member funds – in other words, Proprietary Funds – that are part of the DCO’s guaranty fund to the extent other financial resources have been exhausted and a loss remains. MGEX believes the Commission’s explicit statement that a DCO may use Proprietary Funds for this purpose is sufficient and that the Proposal does not inhibit a DCO’s use of Proprietary Funds for such purpose.

The Commission also requested specific comment whether it should expand the Reconciliation Reporting Requirement so that the daily calculation and reconciliation required by the Proposal would be reported to the Commission daily irrespective of whether there was a discrepancy between the calculation and the amount of Proprietary Funds or Customer Funds that the DCO holds for each clearing member. MGEX does not believe the Commission should impose a Reconciliation Reporting Requirement when no discrepancy exists, as it would provide the Commission with no additional information than under the Proposal (where the Commission should know that no discrepancy exists by virtue of the DCO not filing a report).

#### **IV. Federal Reserve Bank Account Access**

The Dodd-Frank Act explicitly permits entities that are deemed systemically important financial market utilities to hold Proprietary Funds and Customer Funds in an account maintained at a Federal Reserve Bank.<sup>12</sup> Eight entities have been deemed systemically important to date.<sup>13</sup>

The CFTC holds DCOs that are systemically important financial market utilities (“**SIDCOs**”) to enhanced risk management standards.<sup>14</sup> The CFTC also permits DCOs that are not deemed systemically important financial market utilities to opt-in to these SIDCO enhanced risk management standards by electing to be subject to Subpart C of Part 39 (“**Subpart C DCOs**”).<sup>15</sup>

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<sup>11</sup> Guaranty fund deposits are referred to as “security deposits” in the MGEX Rulebook.

<sup>12</sup> Section 804(a)(1) of the Dodd-Frank Act.

<sup>13</sup> See “Appendix A: Designation of Systemically Important Financial Market Utilities,” available at <https://home.treasury.gov/system/files/261/here.pdf>.

<sup>14</sup> Section 805(a) of the Dodd-Frank Act enables the Commission to prescribe regulations for SIDCOs. These enhanced risk management requirements on SIDCOs are in Subpart C of Part 39 of the Commission’s regulations. See 17 CFR 39.30 – 39.49.

<sup>15</sup> 17 CFR 39.31(a).

MGEX has opted-in to such requirements and is currently a Subpart C DCO.<sup>16</sup> As a result, the substantive risk management standards applicable to MGEX are identical to those applicable to SIDCOs.

Each of the SIDCOs have been granted access to at least one account at a Federal Reserve Bank for Proprietary Funds and Customer Funds. Federal Reserve Bank account access undeniably reduces the risk of loss of Proprietary Funds and Customer Funds. As the Commission noted in the Proposal, DCOs “face lower credit and liquidity risk with a deposit at a Federal Reserve Bank than it would with a deposit at a commercial bank”<sup>17</sup> and “central banks are often the safest place to deposit customer funds.”<sup>18</sup> Furthermore, since these accounts are superior to commercial bank accounts, the CFTC requires SIDCOs that have access to these accounts to use them “where practical”<sup>19</sup> and “as a policy matter seeks to facilitate use of [these] accounts.”<sup>20</sup>

MGEX believes it should be eligible for a Federal Reserve Bank account given it meets the same enhanced risk management standards as SIDCOs regulated by the CFTC and expanding access would reduce systemic risk related to the interconnectedness of DCOs and banks while strengthening customer protections. MGEX recognizes the Board of Governors of the Federal Reserve ultimately will determine whether to permit Federal Reserve Bank account access to Subpart C DCOs. However, the CFTC could help facilitate the desired outcome by revising current regulations and an exemptive order regarding Federal Reserve Bank accounts to explicitly reference Subpart C DCOs. These regulations are: (i) 17 CFR 1.20(g)(2), which currently permits a DCO to deposit customer funds with a Federal Reserve Bank *if the DCO is a SIDCO*, and 17 CFR 39.33(d)(5), which provides that a *SIDCO* with access to Federal Reserve Bank Accounts shall use such accounts “where practical.” Similarly, the CFTC’s 2016 conditional order exempting Federal Reserve Banks that provide account access from certain sections of the CEA is explicitly limited to accounts provided for entities *that have been deemed systemically important*.<sup>21</sup> Given the Commission’s interest in “promot[ing] the use of Federal Reserve Bank accounts by DCOs when possible,”<sup>22</sup> MGEX requests that the Commission consider revising each of these to explicitly reference Subpart C DCOs in addition to SIDCOs.

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<sup>16</sup> ICE Clear U.S., Nodal, and The Options Clearing Corporation have also opted-in to the SIDCO requirements. OCC has been deemed systemically important by virtue of its securities options business and thus maintains a Federal Reserve Bank account. ICE Clear U.S. and Nodal do not maintain Federal Reserve Bank accounts.

<sup>17</sup> Proposal at 289.

<sup>18</sup> Id.

<sup>19</sup> 17 CFR 39.33(d)(5).

<sup>20</sup> Proposal at 289.

<sup>21</sup> Order Exempting the Federal Reserve Banks from Sections 4d and 22 of the Commodity Exchange Act, 81 Fed. Reg. 53467 (Aug. 12, 2016).

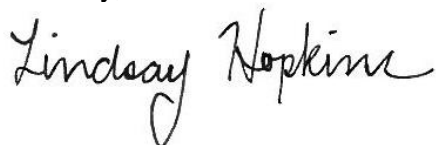
<sup>22</sup> Proposal at 290.

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**V. Conclusion**

MGEX appreciates the opportunity to comment on the Proposal and fully supports the Commission's goal of establishing comprehensive safeguards for Proprietary Funds held by DCOs. MGEX also respectfully requests the Commission's consideration of its comments to the Proposal, including the risk management benefits that would ensue from Subpart C DCO access to Federal Reserve Bank accounts and hopes the Commission considers amending any final rule by including the minor but important changes we request to help facilitate that outcome, should the Board of Governors of the Federal Reserve authorize it.

Sincerely,

A handwritten signature in black ink that reads "Lindsay Hopkins". The signature is written in a cursive, flowing style.

Lindsay R. Hopkins  
VP & Senior Counsel

cc: Honorable Chairman Rostin Behnam  
Honorable Commissioner Christy Goldsmith Romero  
Honorable Commissioner Kristen N. Johnson  
Honorable Commissioner Summer K. Mersinger  
Honorable Commissioner Caroline D. Pham