



January 3, 2010

Mr. David Stawick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

Via Electronic Mail

SUBJECT: RIN 3038-AD07

Dear Mr. Secretary:

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 matter published in the November 2, 2010 Federal Register Vol. 75, No. 211.

MGEX is both a Designated Contract Market ("DCM") and Derivatives Clearing Organization ("DCO"). MGEX appreciates the continued efforts the Commission has put forth to address the requirements placed upon it by Title VII of the Dodd-Frank Wall Street Reform and Consumer Protection Act ("Dodd-Frank Act"). However, in relation to some of its proposed rulemaking regarding Part 40, MGEX believes that the Commission has moved beyond the requirements of the Dodd-Frank Act and, if adopted as proposed, would create a heavy ongoing burden on both the Commission and DCMs that is both unnecessary and unwarranted. Therefore, MGEX respectfully submits the following comments and recommendations.

**Unnecessary Collection of Information and
Minimizing the Burden on Registered Entities**

In this release, the Commission projects that it will require registered entities to exhaust an additional 8,300 hours per year to comply with the proposed rulemaking to Part 40. This number alone is sufficient evidence the CFTC is placing an undue burden on the industry. MGEX estimates that the additional submission requirements for new product listings will more than double the time spent because of the need to create an excessively detailed documentary trail just to ensure we will be able to demonstrate compliance with the due diligence requirements. The legal certification requirement will also add costs that may not be necessary, particularly if the product is unrelated to any other product traded elsewhere. Furthermore, requiring the same exhaustive due diligence and detailed documentary trail for what might be a small change to a term and

condition is also excessive. In another rulemaking proposal, the Commission wishes to codify a requirement that DCMs be proactive in changing terms and conditions if necessary to achieve goals such as convergence. Adding a significant documentary trail and costs to every contract change does not encourage swift changes.

Current core principles and guidelines, as well as recordkeeping and submission standards provide sufficient flexibility, and simultaneously provide the marketplace adequate protections. Therefore, wholesale changes to the core principles and processes are excessive at this time. While MGEX understands that oversight is required and mandated by Congress under the Dodd-Frank Act in some areas, the Commission should be striving to meet those requirements as efficiently as possible. In addition, MGEX recommends the following:

Fees and Trading Incentives:

MGEX is opposed to the proposed change to 40.6(d)(2)(v). The requirement that incentive programs and fee changes associated with market maker and other trading incentives be submitted for approval is overstepping the bounds of CFTC oversight and enters into the business judgment of the registered entities. This overstepping will inhibit the registered entities from being able to effectively negotiate with market makers who can provide the marketplace benefits such as liquidity and pricing opportunities. Further, making the terms and fees of these agreements potentially available to the public introduces unnecessary complications. For example, not all incentive programs are exactly alike as a DCM may have multiple market makers in different contracts, months and strikes. These incentive programs serve different needs. The proposal is impractical for registered entities and can result in rancor within the marketplace. Further, the Commission's proposal will negatively impact new product contracts that might need incentives to help improve liquidity. In turn, the proposal could lead to less product innovation and fewer risk management opportunities for the public.

In addition, the need for this requirement is baseless as registered entities have nothing to gain by creating "unnecessary anti-competitive effects." The reality is quite the opposite – registered entities have an intrinsic incentive to create a competitive and liquid market. There is no reason to encumber the registered entities with additional requirements that have little value while dampening or interfering in the business judgment ability of a registered entity.

Therefore, MGEX recommends that the proposed rulemaking revert to its current reading, or at least remove the objectionable language. Alternatively, at the minimum, the CFTC should not require the details of the programs and fee structure to be public. As noted above, the public value from the posting and impact to the marketplace is more likely to be negative than positive.

Exempted Provisions:

MGEX also recommends that the Commission further expand the exempted provisions of 40.6(d)(3) to reduce the extensive burden on registered entities and itself while at the same time implementing the Dodd-Frank Act. While many items could be added to the exemption list, a recent example demonstrates why the exemption list should be broad,

not narrow. Specifically, MGEX recommends that the Commission exempt from certification changes in trading hours to adjust for holidays. While the Commission allows registered entities, under 40.6(d)(3)(ii)(C), to declare holidays, it does not exempt the declaration of changing trading hours due to holidays. It is not necessary that such changes wait 10 days to be effective.

Further, immaterial changes to any terms and conditions of contracts should be included under 40.6(d)(3). With the addition of 40.6(a)(7)(viii), there is increased oversight of changes to the terms and conditions of products. Consequently, there should be an exemption from certification or filing for non-material changes in addition to the non-substantive exemption provided under 40.6(d)(2)(i) – which should also be covered under 40.6(d)(3). The CFTC need not oversee every change but should rather seek to offset some of the additional requirements. Non-material changes should not need 10 days for implementation.

Margins:

As noted in the release, the CFTC's role is not to set margins. However, exercising the authority to amend a registered entity's rules relating to margins can become a proxy for setting margins. Section 736 of the Dodd-Frank Act amended the Commodity Exchange Act to give the CFTC authority to specify changes with respect to margin requirements provided that the Commission's "rules, regulations or orders (i) are limited to protecting the financial integrity of a DCO, (ii) are designed for risk management purposes to protect the financial integrity of transactions, and (iii) do not set specific margin amounts." MGEX believes DCMs and DCOs are best qualified to set margins. Further, these entities have an extensive historical record for doing this well. Therefore, the broadest latitude possible should be given to these entities via application of the core principles.

Public Documents:

While a requirement such as posting any submissions to the CFTC on a website appears easy to comply with, it should not be a blanket requirement due to potential unintended consequences. There may be circumstances where early public disclosure is detrimental, such as for competitive concerns where CFTC rules may not offer sufficient confidentiality. A better option is requiring public posting of non-emergency rules or rule amendments prior to implementation as opposed to concurrent with the CFTC filing.

Conclusion

The Exchange thanks the Commission for the opportunity to comment on the notice of proposed rulemaking. If there are any questions regarding these comments, please contact me at (612) 321-7169 or lcarlson@mgex.com. Thank you for your attention to this matter.

Regards,

A handwritten signature in cursive script, appearing to read "Layne G. Carlson", followed by a long horizontal flourish.

Layne G. Carlson
Corporate Secretary

cc: Mark G. Bagan, CEO, MGEX
Jesse Marie Bartz, Asst. Corporate Secretary, MGEX
Eric J. Delain, Legal Advisor, MGEX
James D. Facente, Director, Market Operations, Clearing & IT, MGEX