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April 6, 2001

COMMENT

e-mail to secretary@cftc.gov

Commodity Futures Trading Commission
Attn: Office of the Secretariat
Three Lafayette Centre
1155 21st Street, NW
Washington, DC 20581

RE: Regulatory Reinvention

The Minneapolis Grain Exchange ("MGE") would like to take this opportunity to respond to the Commodity Futures Trading Commission's ("CFTC" or "Commission") proposed rules on the above referenced matter published in the March 9, 2001 Federal Register.

The MGE applauds the Commission's willingness and efforts to streamline the current regulatory process and adapt to the changes brought about by the Commodity Futures Modernization Act of 2000. The MGE believes the Commission's proposed rules implement the intent as well as the spirit of the law. The MGE has found a number of proposals that it enthusiastically supports. For example, the MGE appreciates the flexibility given to a contract market to offer new products for trade by certification and subsequently choose to request Commission approval. Additionally, the proposal to cut the review time of certain contract market rules to 45 days, half the time permitted under the Commodity Exchange Act ("CEAct"), is welcomed as being conscious of the needs of the contract markets. However, there are also a number of Commission proposals that the MGE believes can be modified to better serve the public and the industry. The MGE's specific concerns are addressed below.

I. Labeling

The CFTC recommendations and proposals that a designated contract market and a registered derivatives transaction execution facility ("DTF") label certain rules and products as approved can be confusing and unwieldingly to both the contract market and the public. As proposed, if a product and its terms and conditions are approved by the Commission, a contract market and a DTF may label the product in its rules as "Listed for trading pursuant to Commission approval." This brings up the question as to whether a product can be approved without submitting for approval the trade rules. If not, then would any approved rules also need to be labeled as "Approved by the Commission"? If a product can be approved for trading without approved rules, it seems somewhat unusual that the first phrase would be listed in a contract market's rulebook governing trading. The typical

reader of the rulebook would likely conclude the rules are also approved. Additionally, one could also assume that contract rules can be approved without having the product and the terms and conditions approved. In summary, it appears rules can have either phrase, both phrases or no phrases attached to them. Furthermore, what is a contract market to do with any current rules that have been submitted by certification and labeled as such under previous Commission regulations? Has the old certification phrase been superceded by the new proposed phrases? Must the old certification phrase now be removed? Situations will undoubtedly arise where a rule is approved and then added to a current rulebook with rules that have previously been certified. Under the Commission's proposals, the approved rule will have to be labeled. It seems logical that after a few years a contract market's rulebook will have the different labels scattered throughout.

If the purpose of the labeling is to inform the public that the CFTC has approved certain rules and/or products, the public may instead become confused as to what the labels intend to convey and why only some rules are labeled. Therefore, the benefit to the public has been diminished. Is an unapproved rule any less enforceable than an approved rule? Will the public be prompted to ask why the contract market didn't submit the rule for approval? When contracts entered into cannot be voided if a product or rule may be in violation of the CEAct, why should a market participant place much weight on either label? Because of the seemingly inevitable confusion or limited knowledge that labeling will convey to the public, the MGE concludes that labeling serves no real benefit other than to show the public that the CFTC remains an oversight agency. The MGE recommends the labeling requirements be dropped and believes there will not be an adverse affect upon the public.

II. Contract Market Core Principles

After reviewing the proposals implementing all of the core principles, the Exchange would encourage the CFTC to judiciously exercise or otherwise restrain its proposed authority to request information from a contract market under the listed core principles. The large number of core principles (18) for a contract market leads the MGE to question whether its reporting responsibilities or obligations to the CFTC will be effectively reduced when compared to its reporting obligations under its currently approved surveillance programs. If the reporting burdens or requirements to demonstrate compliance with the principles will be the same or similar to recent experiences, such as those dealing with rule enforcement reviews, then a contract market will have limited gains in pursuit of the stated goal of becoming more globally competitive by reducing and streamlining the regulatory burdens.

III. Contract Market Core Principle 9

While the CEAct Section 5(d)(1) allows a contract market reasonable discretion in establishing the manner in which it complies with the core principles, Core Principle 9 is a good example where the MGE is concerned the proposed application guidance and acceptable practice overreach in the goal of a competitive, open and efficient market. The proposals essentially require a contract market to hire outside CFTC approved personnel

to periodically test an electronic trading system. This safe harbor requirement is not likely to be efficient or cost-effective. If a contact market has qualified staff or is licensing a software program from a company already doing self-testing, the additional benefit provided by a third party will be minimal. The Exchange also sees little benefit of disclosing self-testing or outside testing results to the public. In fact, the Exchange believes there is the real possibility of disclosing proprietary or confidential information that can be used by the public to compromise security on an electronic trading platform. At a minimum, any potential system deficiencies should first be brought to the attention of the contract market not the public. While the MGE does not recommend that DTFs also be subject to the same outside testing requirement, the MGE believes it is discriminatory to a contract market if it must comply with this proposal when a DTF does not. Commercial, sophisticated and large traders deserve the same sort of assurance that trading at either a DTF or contract market is competitive, open and efficient. Under the current global environment, contract markets are looking for means to remain competitive with non-regulated exchanges. The proposed application guidance as it pertains to independent review and public disclosure, and the proposed acceptable practice under Core Principle 9 do not appear to be more likely to benefit the pubic than it is to interfere with and thereby reduce the competitiveness of a contract market.

IV. DTF Disclosure

While the CEAct, as amended, has limited the usefulness of this comment, the MGE again raises the concern that a DTF and traders on a DTF can have a significant cost and information advantage over a contract market trading a similar commodity. The MGE does not believe the small trader or the public should be discriminated against. For example, where a similar commodity trades on both a contract market and a DTF, commercial or sophisticated traders will have the advantage and ability to trade on information disclosed by a contract market and private information not disclosed to the public by a DTF. Direct and indirect manipulation on a contract market by those trading on a DTF becomes more likely. Additionally, a contract market could potentially become the source for obtaining a commodity or the place to dump a commodity by a party with the ability to leverage on both a contract market and a DTF. The regulatory burden to a board of trade operating as a contract market (that is not also the DTF trading the same or similar commodity) will rise if it must try to obtain data from outside sources to monitor such parties. Disclosure of large positions by a DTF or the CFTC will be of assistance in the monitoring that may be required, but does not eliminate the need for surveillance or the associated costs which will be passed along to contract market users. Disclosure of additional information may also be necessary. The CFTC's proposal to implement Section 5a(d)(5) of the CEAct by suggesting disclosure of some pricing and trade volume data is a good start but may not be sufficient. Public disclosure by DTFs of pricing information, trade volume and open interest should be the norm not the exception.

V. Proposed Regulation 37.3(a)

The MGE is also concerned that the Commission's proposal under Regulation 37.3(a) will be too difficult to meet. The proposal allows for a DTF to petition the Commission to allow eligible traders to trade a commodity. The problem arises where new, thinly traded or unusual commodities may have limited data to meet the demonstration requirement. Furthermore, a board of trade may wish to offer for trade a commodity which has extremely sophisticated or unusual terms that the general public may not be familiar with or may be of a contract size too large for most traders. In such a case, the better choice to introduce the product would be a DTF. However, success of the contract could be determined by those that meet the eligible trader requirement but not the eligible commercial entity requirement. The MGE believes the proposal should focus more on the self-regulatory record of the board of trade than the proposed emphasis on market characteristics.

VI. DTF Rules

As proposed, a board of trade that already qualifies as a designated contract market will need only to notify the Commission of its intent to operate as a DTF, and file a copy of its rules along with a certification. If the board of trade currently has general trade, enforcement and disciplinary rules that can apply to both contract markets and DTFs, a board of trade should not have to create separate rulebooks for both market categories. The proposals are not clear as to what would be acceptable to the Commission. Congressional intent as well as common sense should lead to the conclusion that a streamlined approach be followed. A duplicate set of rules is not efficient. Rules that specifically define the terms and conditions of a commodity traded on a DTF, as well as rules unique to trading the DTF-based contract, could be identified within a board of trade's rulebook as pertaining to the DTF market. The MGE believes these rules can be contained within one board of trade rulebook without confusion to the public. Using the same or one single rulebook would be consistent with the principle mentioned in CEAct Section 5a(b)(4)(B) that when the same electronic trading system is being used for a contract market and a DTF, then the board of trade must simply identify where the trading is taking place.

If there are any questions regarding these comments, please contact me at (612) 321-7123.

Sincerely,

Kent R. Horsager

Kent Horsager
President