

# MGE MINNEAPOLIS GRAIN EXCHANGE

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James H. Lindau  
President &  
Chief Executive Officer

February 23, 2000

Certified Mail

**COMMENT**

Ms. Jean A. Webb  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, NW  
Washington, DC 20581

RE: Proposed Revision of the Commission's Procedure for the Review of Contract Market Rules

Dear Ms. Webb:

The Minneapolis Grain Exchange ("MGE" or "Exchange") would like to take this opportunity to respond to the Commodity Futures Trading Commission's ("Commission" or "CFTC") request for comments on the above referenced matter published in the November 26, 1999 Federal Register.

As a proponent of reducing burdensome regulation, the MGE strongly supports the Commission's proposal to revise its procedures for the review of contract market rules and rule amendments. Additionally, the MGE believes that the proposal to exempt contract markets from the rule review requirements of Section 5a(a)(12)(A) of the Commodity Exchange Act will provide the Exchange with greater flexibility. The MGE agrees with the Commission that the proposed Regulation 1.41(z) process should be available solely to contract markets which are designated in at least one non-dormant contract. Furthermore, the Commission's proposed Regulation 1.41(z) is logical in light of recently adopted Regulation 5.3 which permits exchanges to list contracts for trading, and any subsequent amendments, without Commission approval. The MGE believes that streamlining the rule approval process is necessary in order to permit exchanges to quickly respond to changing technologies, evolving market realities and global economic competition.

The Commission requested comment on whether proposed Regulation 1.41(z) should be the only process available to adopt rules or whether the proposed regulation should be an alternative to the current rule approval process. The Commission stated its concern that market participants may be confused about the regulatory history of a rule because they

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102 Grain Exchange Building  
400 South 4th Street  
Minneapolis, MN 55415-1413  
tel: (612) 321-7123  
fax: (612) 321-7121  
e-mail: jlindau@mgex.com

won't know whether the new or amended exchange rule was formally reviewed and approved by the Commission. While approval by the Commission is important to some market participants, other practical issues are equally or more significant, such as how an exchange rule may affect the market participants and whether the rule change is necessary. However, in order to streamline the approval process, the MGE recommends utilizing proposed Rule 1.41(z) as the exclusive process to adopt rule changes. This would be the simplest means to eliminate any potential public confusion. The Exchange has no interest in documenting, identifying and publishing in its rulebook each change that was or was not submitted to the Commission. Furthermore, legal certainty of exchange rules is necessary. Identifying rules that have or have not been submitted to the CFTC for approval opens the door for liability lawsuits based on the failure to get CFTC approval. If legal certainty is granted within Regulation 1.41(z), then public confusion over the approval process is not an issue.

The Exchange does not believe it is necessary for the Commission to retain authority under Regulation 1.41(z) to stay or suspend an exchange rule. If such authority is established, the threshold must be extremely high. The effectiveness of a rule change adopted pursuant to Regulation 1.41(z) should not be suspended pending a hearing unless there is sufficient evidence that material harm will be suffered by market participants. If sufficient evidence is lacking, suspension of a rule should not be effective until a hearing has been completed and a decision rendered to suspend the rule. The benefit of the doubt should always be in favor of the exchange that adopted the rule. Suspension by the CFTC of an adopted rule should be rare because the potential ramifications of a suspension could be detrimental to a contract, as well as the exchange.

The Commission also requested comment on whether the Regulation 1.41(z) process should be available for rule changes that may affect contracts with open interest. As a self-regulatory organization, the MGE always considers the plausible ramifications a rule change will have on contracts, whether or not there is open interest. When there is a reasonable possibility that a rule change will directly impact present or future position holders, the Exchange will first notify its membership. Notice may include an official posting, news release and/or a ballot. This has proved to be very effective in the past. Additionally, those with open positions may be contacted directly. Furthermore, the MGE has not considered effecting a rule change in a contract month with open interest if the change would impact the contract's pricing mechanism. As necessary, further or alternative notification methods will be utilized. Therefore, the MGE does not believe codification of a notification method or an inflexible rule standard is needed in our situation.

Comments on emergency rules were also requested by the Commission. As it pertains to the MGE, emergency rules are by their nature extremely unusual and temporary. The owners of the Exchange have approved rules addressing when an emergency condition exists and what authority may be exercised. Therefore, the CFTC has sufficient documentation available to differentiate between an emergency rule at the Exchange and

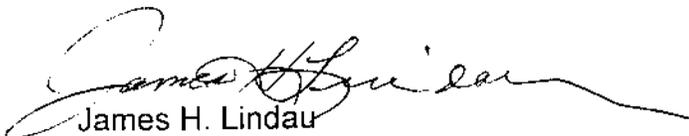
Ms. Jean A. Webb  
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any other rule that may be adopted. Furthermore, any emergency rule adopted by the MGE would have to be identified as such in our notification to the CFTC. Whether that notification is pursuant to Regulations 1.41(f), 1.41(g) or proposed 1.41(z), the CFTC would be able to identify an emergency rule at the MGE. Any abuse by the MGE, or any other exchange for that matter, of its emergency rule making powers should not be difficult to uncover. Therefore, the MGE is not convinced the Commission should be concerned that it will be unable to differentiate an emergency rule from any other rule. If the CFTC has any immediate questions about a rule notification, it should simply first contact the exchange to inquire.

Finally, the Commission requested comment on whether proposed rules implementing a new electronic trading system at an existing contract market should be processed under Regulation 1.41(z). The MGE does not believe it is necessary to treat an electronic trading system any different from an open outcry trading system under Regulation 1.41(z). This is particularly true if the contract market using the electronic trading system already has self-regulatory surveillance programs in place and a proven history to administer and enforce such programs.

If there are any questions regarding this submission, please contact Mark G. Bagan, Vice President, Market Regulation, at (612) 321-7166. Thank you for your attention to this matter.

Sincerely,

  
James H. Lindau