



**U.S. COMMODITY FUTURES TRADING COMMISSION**

Three Lafayette Centre  
1155 21st Street, NW, Washington, DC 20581  
Telephone: (202) 418-5000

Division of Clearing and Risk

Don Byron  
Head of Global Industry Operations  
Futures Industry Association

Tim Maher  
Chief Compliance Officer, Clearing  
CME Group

Kara Dutta  
Assistant General Counsel  
Intercontinental Exchange, Inc.

James D. Facente  
Director of Market Operations, Clearing & IT  
Minneapolis Grain Exchange, Inc.

Dan Busby  
Chief Clearing & Settlement Services Officer  
Options Clearing Corporation

**Re: Request for Temporary No-Action Relief from the Reporting Requirements in Commission Regulation 39.19(c)(1)**

Dear Ms. Dutta and Messrs. Byron, Maher, Facente, and Busby:

This is in response to your letter dated November 6, 2020 (“Letter”), to the Division of Clearing and Risk (“Division”) of the Commodity Futures Trading Commission (“Commission”). In the Letter, you request that the Division confirm that it will not recommend that the Commission take enforcement action against Chicago Mercantile Exchange Inc., ICE Clear Credit LLC, ICE Clear Europe Limited, ICE Clear US, Inc., ICE NGX Canada Inc., Minneapolis Grain Exchange, Inc., Options Clearing Corporation, and similarly situated derivatives clearing organizations (“DCOs”) for failing to comply with the reporting requirements set forth in Regulation 39.19(c)(1)(i)(B) and (C), as recently amended by the Commission.

**I. Background**

Regulation 39.19 implements section 5b(c)(2)(J) of the Commodity Exchange Act, which requires each DCO to provide the Commission with all information that the Commission determines to be necessary to conduct oversight of the DCO. Specifically, Regulation 39.19 sets forth certain daily, periodic, and event-based reporting requirements. As relevant here, Regulation 39.19(c)(1)(i) requires a DCO to report to the Commission on a daily basis initial

margin, variation margin, cash flow, and position information for each clearing member, by house origin and by each customer origin.

The Commission recently amended Regulation 39.19(c)(1)(i) to also require that a DCO report initial margin, variation margin, cash flow, and position information by individual customer account.<sup>1</sup> The Commission also adopted several other amendments to the daily reporting requirements of Regulation 39.19(c)(1)(i).<sup>2</sup> Although the amendments became effective on February 26, 2020, DCOs were not required to comply with them until January 27, 2021.

To facilitate compliance by DCOs with the daily reporting requirements in Regulation 39.19(c)(1), and to ensure that the required information is reported to the Commission in a form and manner that permits the Commission to access the information, the Division maintains and disseminates to all DCOs a guidebook that provides instructions and technical specifications for daily reporting under Regulation 39.19(c)(1).<sup>3</sup> The guidebook is revised and updated periodically, usually as a result of ongoing dialog and consultation between the Division and DCOs intended to ensure the most effective and efficient transmission of the required information.

## **II. Requested Relief**

The Letter describes certain operational and technological issues that DCOs and market participants have identified regarding DCOs' ability to comply with the amended requirements in Regulation 39.19(c)(1)(i)(B) and (C), that DCOs report variation margin and cash flow information for futures and options positions by individual customer account. In light of these concerns, the Letter requests no-action relief from compliance with those requirements.

The Division has reviewed and considered the issues raised in the Letter and finds that they do not lend themselves to prompt resolution before the January 27, 2021 compliance date. The Division requires additional time to consider and address these issues, and it anticipates that resolving them may require additional engagement with DCOs.

---

<sup>1</sup> Derivatives Clearing Organization General Provisions and Core Principles, 85 Fed. Reg. 4,800 (Jan. 27, 2020) (amending Regulation 39.19(c)(1), along with other provisions in Part 39 of the Commission's regulations).

<sup>2</sup> The other amendments to Regulation 39.19(c)(1)(i) include the requirement that a DCO provide any legal entity identifiers and internally-generated identifiers within each customer origin for each clearing member, to the extent that the DCO has this information. The Commission also specified that, when reporting end-of-day positions, a DCO must report the positions themselves (*i.e.*, the long and short positions), as well as risk sensitivities and valuation data that the DCO generates, creates, or calculates in connection with managing the risks associated with such positions.

<sup>3</sup> The U.S. Commodity Futures Trading Commission Part 39 Reporting Requirements for Derivatives Clearing Organizations, Guidebook for Daily Reports, v.0.9.2, Dec. 2017.

Additionally, the Division is in the process of updating the guidebook to include additional instructions and technical specifications to address the recent amendments to the daily reporting requirements and other issues and questions that have been raised since the last version of the guidebook was completed. The Division typically updates the guidebook to address all outstanding issues on a comprehensive basis rather than updating it on a piecemeal basis. Therefore, the Division finds that delaying the compliance date would allow additional time to resolve the issues identified in the Letter and to update the guidebook as needed.

### **III. Grant of No-Action Relief**

Based on the facts presented in the Letter and those facts summarized above, the Division will not recommend that the Commission take enforcement action against any DCO for failing to comply with the requirements in Regulation 39.19(c)(1) as amended, so long as that DCO continues to comply with the prior version of Regulation 39.19(c)(1). Such relief shall expire on January 27, 2022.

### **IV. Conclusion**

The position taken herein concerns enforcement action only and does not represent a legal conclusion with respect to the applicability of any provision of the Commodity Exchange Act or the Commission's regulations. In addition, the Division's position does not necessarily reflect the views of the Commission or any other division or office of the Commission. Because this position is based upon the representations contained in the Letter, it should be noted that any different, changed, or omitted material facts or circumstances may require a different conclusion or render this letter void. Finally, as with all no-action letters, the Division retains the authority to condition further, modify, suspend, terminate, or otherwise restrict the terms of the no-action relief provided herein, in its discretion.

Should you have any questions, please do not hesitate to contact August A. Imholtz III, Special Counsel, at [aimholtz@cftc.gov](mailto:aimholtz@cftc.gov).

Sincerely,

Clark Hutchison  
Director