



U.S. COMMODITY FUTURES TRADING COMMISSION

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Division of Clearing and Risk

December 22, 2021

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Minneapolis Grain Exchange, Inc.

Dan Busby
Chief Clearing & Settlement Services Officer
Options Clearing Corporation

**Re: Extension of 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:

By letter dated December 31, 2020 (CFTC Letter No. 21-01), the Division of Clearing and Risk (“Division”) of the Commodity Futures Trading Commission (“Commission”) provided time-limited no-action relief to derivatives clearing organizations (“DCOs”), stating that the Division would 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). The relief is set to expire on January 27, 2022. The Division is hereby extending the relief in its entirety through June 27, 2022. The Division also is extending a discrete portion of that relief for an additional year. Specifically, the Division is extending through January 27, 2023 relief from the amended reporting requirements in Regulation 39.19(c)(1)(i)(B) and (C), so long as DCOs continue to comply with the prior version of Regulation 39.19(c)(1)(i)(B) and (C).

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) previously required 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.

In 2020, the Commission amended Regulation 39.19(c)(1)(i) to add the new requirement that a DCO report on a daily basis initial margin, variation margin, cash flow, and position information by individual customer account, in addition to the existing requirement that a DCO report this information by house origin and individual customer origin.¹ In that rulemaking, the Commission also adopted several other amendments to the daily reporting requirements of Regulation 39.19(c)(1)(i).² Although the amendments became effective on February 26, 2020, DCOs were not required to comply with them until January 27, 2021.

By letter dated November 6, 2020 (“Letter”), a group of DCOs, along with the Futures Industry Association, requested no-action relief from the new requirement in Regulation 39.19(c)(1)(i)(B) and (C) that DCOs report variation margin and cash flows by individual customer account.³ The Letter described certain operational and technological issues that DCOs and market participants identified regarding DCOs’ ability to comply with the amended requirements in Regulation 39.19(c)(1)(i)(B) and (C). To give the Division time to consider the issues raised in the Letter, the Division issued CFTC Letter 21-01, which provided no-action relief from the daily reporting requirements of Regulation 39.19(c)(1) as amended, so long as DCOs continue to comply with the prior version of Regulation 39.19(c)(1).

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).⁴ The guidebook is revised and updated

¹ 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).

² 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.

³ The request was made on behalf of 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 DCOs.

⁴ The U.S. Commodity Futures Trading Commission Guidebook for Part 39 Daily Reports, v.1.0.0, Sept. 10, 2021.

periodically, often as a result of ongoing dialog and consultation between the Division and DCOs, and is intended to ensure the most effective and efficient transmission of the required information. The granting of the no-action relief also gave the Division time to revise the guidebook to address the new requirements of Regulation 39.19(c)(1).

On September 16, 2021, the Division released an updated version of the guidebook that, with one exception, incorporates the amended daily reporting requirements in Regulation 39.19(c)(1), as well as other updates and revisions. The Division understands that DCOs will need time beyond January 27, 2022, to begin reporting in accordance with in the latest version of the guidebook.

II. Grant of No-Action Relief

Based on the 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 June 27, 2022.

Further, because the Division requires additional time to study issues associated with the requirements that DCOs report variation margin and cash flows by individual customer account, 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)(B) and (C) as amended, so long as that DCO continues to comply with the prior version of Regulation 39.19(c)(1)(B) and (C). Such relief shall expire on January 27, 2023.

III. 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.

Sincerely,

Clark Hutchison
Director