



## CFTC Regulation 39.19(c)(1)(i)(B)-(C)

November 6, 2020

### By Electronic Mail

Clark Hutchison  
Director, Division of Clearing and Risk  
Commodity Futures Trading Commission  
1155 21<sup>st</sup> Street NW  
Washington, D.C. 20581

**Re: Request for No-Action Relief from Certain Reporting Requirements in CFTC Regulation 39.19(c)(1)(i)(B)-(C)**

Dear Mr. Hutchison:

Pursuant to Regulation 140.99, the CME Group Inc. (“CME”),<sup>1</sup> Intercontinental Exchange, Inc. (“ICE”),<sup>2</sup> Minneapolis Grain Exchange, Inc. (“MGEX”),<sup>3</sup> and Options Clearing Corporation (“OCC”),<sup>4</sup> as well as the Futures Industry Association (“FIA”),<sup>5</sup> on behalf of its membership, request that the U.S. Commodity Futures Trading Commission (“CFTC” or “Commission”) Division of Clearing and Risk (“DCR”) issue no-action relief regarding certain of the reporting requirements in Regulation 39.19(c)(1)(i)(B)-(C). CME, ICE, MGEX, and OCC each operate, directly or through subsidiaries, one or more derivatives clearing organizations (“DCOs”) registered with the CFTC and request this relief on behalf of themselves and similarly situated DCOs (collectively, “Impacted DCOs”). FIA’s membership includes firms that are registered with the CFTC as futures commission merchants (“FCMs”) and in this capacity serve as clearing

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<sup>1</sup> Chicago Mercantile Exchange Inc. is registered as a derivatives clearing organization and a wholly-owned subsidiary of CME.

<sup>2</sup> ICE joins this letter on behalf of its subsidiaries, which operate four registered derivatives clearing organizations: ICE Clear Credit LLC, ICE Clear Europe Limited, ICE Clear US, Inc, and ICE NGX Canada Inc.

<sup>3</sup> Minneapolis Grain Exchange, Inc. is registered as a derivatives clearing organization and designated contract market with the CFTC.

<sup>4</sup> OCC, founded in 1973, is the world’s largest clearing organization for equity derivatives and the sole clearing agency for all U.S. equity options exchanges. OCC operates under the jurisdiction of both the CFTC (as a DCO for certain commodity futures and options on commodity futures) and the Securities and Exchange Commission. As a systemically important financial market utility, OCC is also subject to oversight by the Board of Governors of the Federal Reserve System.

<sup>5</sup> The Futures Industry Association is the leading global trade organization for the futures, options and centrally cleared derivatives markets, with offices in Brussels, London, Singapore and Washington, D.C. FIA’s membership includes clearing firms, exchanges, clearinghouses, trading firms and commodities specialists from more than 48 countries, as well as technology vendors, lawyers and other professionals serving the industry. FIA’s mission is to support open, transparent and competitive markets; protect and enhance the integrity of the financial system; and promote high standards of professional conduct. As the principal members of derivatives clearinghouses worldwide, FIA’s clearing firm members play a critical role in the reduction of systemic risk in global financial markets.

members on one or more registered DCOs, including the DCOs operated by CME, ICE, MGEX, and OCC. The Impacted DCOs are subject to the reporting requirements in Regulation 39.19(c)(1)(i)(B)-(C). FCM clearing members will need to furnish certain information that will enable the Impacted DCOs to comply with Regulation 39.19(c)(1)(i)(B)-(C)'s reporting requirements. The Impacted DCOs and FIA's FCM clearing members thus each have an interest in Regulation 39.19(c)(1)(i)(B)-(C) operating as intended and not imposing undue burdens on firms.

### **Regulation 39.19(c)(1)(i)(B)-(C)**

On January 27, 2020, the CFTC published final rules amending its Part 39 DCO rules.<sup>6</sup> The final rules revised Regulation 39.19(c)(1)(i)(B)-(C) to read:

*Reporting requirements.* Each registered derivatives clearing organization shall provide to the Commission or other person as may be required or permitted by this paragraph . . . the information specified as follows:

(1) *Daily reporting.* (i) A derivatives clearing organization shall compile as of the end of each trading day, and submit to the Commission by 10:00 a.m. on the next business day, a report containing the following information related to all positions other than fully collateralized positions:

. . . .

(B) Daily variation margin, separately listing the mark-to-market amount collected from or paid to each clearing member, by house origin and by each customer origin, and by each individual customer account;

(C) All other daily cash flows relating to clearing and settlement including, but not limited to, option premiums and payments related to swaps such as coupon amounts, collected from or paid to each clearing member, by house origin and by each customer origin, and by each individual customer account . . . .

Prior to the amendments, Regulation 39.19(c)(1)(i)(B)-(C) had required a DCO to report to the CFTC on a daily basis variation margin and other cash flow information for each of its clearing members, by house origin and by each customer origin. As amended, the regulation also requires each DCO to report the variation margin and other cash flow information by individual customer account. DCOs must comply with these reporting requirements by January 27, 2021.<sup>7</sup>

### **Regulation 39.19(c)(1)(i)(B)-(C) Will Require Impacted DCOs to Obtain Additional New Customer Information from Clearing Members**

In amending Regulation 39.19(c)(1)(i)(B)-(C), the CFTC indicated that it did not intend to impose new reporting requirements on DCOs. For example, the Commission stated in the rulemaking's preamble "that the changes to § 39.19(c)(1)(i) to require reporting of information 'by each individual customer account'

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<sup>6</sup> *Derivatives Clearing Organization General Provisions and Core Principles*, 85 Fed. Reg. 4800 (Jan. 27, 2020).

<sup>7</sup> *Id.* at 4800.

are meant to reflect the information that DCOs currently report.” It went on to state, “Ultimately, the changes to § 39.19(c)(1)(i) are not intended to require DCOs to report any information that they do not currently have, or do not currently report, subject to any operational or technological limitations that have been discussed with Commission staff.”<sup>8</sup>

Notwithstanding this clarifying language in the preamble, CME, ICE, MGEX and OCC do not currently report daily variation margin or other cash flows at the individual customer account level to the CFTC as set forth in Regulation 39.19(c)(1)(i)(B)-(C) for futures, options on futures or swaps. Indeed, CME, ICE, MGEX, and OCC do not currently have mechanisms in place to collect such information for futures and options on futures from their respective clearing members, nor do they expect that they could implement these mechanisms without imposing significant new reporting and/or account registration requirements on clearing members. Additionally, to the extent that the CFTC expects CME, ICE, MGEX and OCC to do anything other than relay information received from clearing members, the requirements set forth in Regulation 39.19(c)(1)(i)(B)-(C), would impose significant costs and burdens on DCOs. CME, ICE, MGEX and OCC would need to implement systems, processes and controls designed to accurately report variation margin and daily cash flows at the individual customer account level for futures and options on futures, which would inevitably increase the cost of clearing and distract DCOs from their vital mission of assuring the financial integrity of the market. CME, ICE, MGEX, and OCC expect that the same is true for other Impacted DCOs with respect to futures and options on futures.

Given that DCOs do not currently receive reports from their clearing members that include daily variation margin or other cash flows at the individual customer account level for futures and options on futures, the new reporting obligations under Regulation 39.19(c)(1)(i)(B)-(C) would result in DCOs collecting the data solely for purposes of satisfying these regulatory obligations. In the normal course of a DCO’s operations, actual payment obligations for variation margin and other cash flows for futures and options on futures are not calculated at the individual customer account level; instead, they are calculated and collected at the customer origin-level on a net basis, per clearing member. Thus, the reporting of variation margin and other cash flows at the customer origin-level for futures and options on futures is consistent with the industry practice for determining the related payment obligations and captures the current exposure a DCO faces in relation to its clearing members’ customers. Due to the impact of variation margin netting on DCO’s current exposures, the value of reporting variation margin and other cash flows for DCOs at the individual customer account level for futures and options is limited. This limited benefit contrasts with what the CME, ICE, MGEX, and OCC understand to be significant burdens on their and other Impacted DCOs’ clearing members of having to collect this new information, as described further below.<sup>9</sup> CME, ICE, MGEX, and OCC do not wish to impose such burdens on clearing members where the benefit is unclear and when the CFTC indicated in its final rule release that it did not intend to establish new reporting requirements.<sup>10</sup>

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<sup>8</sup> *Id.* at 4818.

<sup>9</sup> We note that this netting logic does not hold true for the reporting of customer initial margin requirements, since initial margin requirements are calculated and collected for each individual customer account on a gross basis. In this case, the reporting of initial margin requirements at the individual customer account is consistent with calculation of initial margin payment obligations for clearing members’ customers. More specifically, the initial margin requirements of each individual customer account are indicative of the potential future exposure the DCO faces to its clearing members’ customers.

<sup>10</sup> *See* 85 Fed. Reg. at 4818.

**Regulation 39.19(c)(1)(i)(B)-(C) Will Require FCM Clearing Members to Report New Information at Substantial Costs to the Firms**

Because Impacted DCOs do not currently report or collect the daily variation margin and other cash flow information at the individual account level for futures and options as required by amended CFTC Regulation 39.19(c)(1)(i)(B)-(C), they will have to issue rules requiring their respective clearing members to furnish this information. As a result, the new reporting requirements in CFTC Regulation 39.19(c)(1)(i)(B)-(C) will fall equally, if not more so, on FCM clearing members.

Like DCOs, clearing members do not currently have mechanisms in place to furnish the required daily variation margin and cash flow information by individual customer account for futures and options on futures, nor do they expect that they could implement these mechanisms to furnish such information to DCOs without incurring substantial upfront and ongoing costs.

Although it is difficult to predict the costs with specificity in the absence of DCO rules implementing CFTC Regulation 39.19(c)(1)(i)(B)-(C), clearing members have informed FIA that they would likely incur significant costs, including but not limited to:

- Upfront costs associated with upgrading back-office books and records and reporting systems in support of the new reporting requirements.
- In addition to these direct technology costs, firms would have to allocate resources when engaging with their back-office vendors to ensure the accuracy and reliability of the data through testing of the new reporting requirements and regression testing to confirm that existing reporting capabilities are not negatively impacted.
- Clearing members would likely incur additional ongoing costs associated with dedicating resources to ensure the accuracy and reliability of the data.
- Clearing firms would likely incur upfront costs associated with analyzing policies and procedures related to how they structure client accounts, with the possibility of significant additional upfront and ongoing costs of changing client account structures in a way that would allow them to look through an omnibus account to report the margin and cash flow information by individual customer account.
- Clearing firms expect additional incremental costs resulting from the added complexity of having to independently implement new reporting requirements for each Impacted DCO where they are a clearing member.
- Furthermore, clearing firms expect additional costs related to the complexity of upgrading multiple systems upstream of their books and records and reporting systems, such as “KYC” and account static data management systems.

These challenges for clearing members are not materially mitigated by the statement in the preamble “that the requirement to report information ‘by each individual customer account’ does not require a DCO to mandate that its clearing members look through an omnibus account that the clearing member carries for another registrant to ascertain the customers of that registrant.”<sup>11</sup> The final rule text of revised Regulation 39.19(c)(1)(i)(B)-(C) provides that daily variation margin and other cash flow information must be reported,

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<sup>11</sup> *Id.*

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Commodity Futures Trading Commission  
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in each case, “by each individual customer account.” On its face, the rule text would require a clearing member to look through an omnibus account to the individual customer accounts therein.

### **Requested Relief**

In light of the significant costs and limited benefits associated with reporting individual customer level variation margin and other cash flows for futures and options to the CFTC, CME, ICE, MGEX, and OCC, on behalf of themselves and other Impacted DCOs, and FIA, on behalf of its membership, request that DCR confirm that it will not recommend that the CFTC initiate an enforcement action against a DCO for a violation of the requirements in Regulation 39.19(c)(1)(i)(B)-(C) with respect to futures and options positions.

Pursuant to the requested relief, DCOs would continue to include in their daily reports data on the daily variation margin and other cash flows for futures and options, separately listing the related payment amounts collected from or paid to each clearing member, by house origin and by each customer origin, without providing data at the level of each individual customer account required under amended Regulation 39.19(c)(1)(i)(B)-(C). In effect, we are requesting that a DCO not be held in violation of Regulation 39.19(c)(1)(i)(B)-(C) if it continues to comply with the regulation as it was worded prior to the publication of the Part 39 final rules in January 2020 with respect to futures and options on futures positions.

We note that we are not requesting this relief for swaps as we believe the Impacted DCOs either already have access to or will be readily able to obtain the information that will be required to be reported at the individual customer account level for swaps positions in in Regulation 39.19(c)(1)(i)(B)-(C), as amended.

We respectfully submit that the daily reporting structure as reflected in the requested relief strikes an appropriate balance between providing the CFTC with sufficient information to carry out its regulatory objectives and not imposing undue burdens on DCOs and FCM clearing members. It also appears to be closer to what the CFTC intended to effect in the recent Part 39 amendments, reading the rule text together with the interpretive statements in the preamble.

\* \* \*

Thank you for your consideration of this request. If you have any questions or need any additional information, please contact Don Byron, Head of Global Industry Operations and Execution, FIA, at [dbyron@fia.org](mailto:dbyron@fia.org) or 202.772.3025.

The undersigned hereby certify that the material facts set forth in this letter are true and complete to the best of our knowledge, information, and belief. We further certify that if any material representation made in this letter ceases to be true and complete, we will ensure that staff is informed promptly in writing of all materially changed facts and circumstances.

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Director, Division of Clearing and Risk  
Commodity Futures Trading Commission  
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Sincerely,



Don Byron  
Head of Global Industry Operations  
FIA



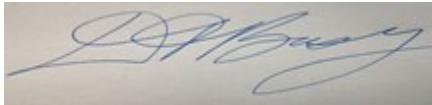
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OCC

cc: The Honorable Heath P. Tarbert, Chairman  
The Honorable Brian D. Quintenz, Commissioner  
The Honorable Rostin Behnam, Commissioner  
The Honorable Dan M. Berkovitz, Commissioner  
The Honorable Dawn DeBerry Stump, Commissioner  
Eileen Donovan, Deputy Director, DCR  
William Heitner, Associate Director, DCR  
Abigail Knauff, Special Counsel, DCR