

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-88285; File No. SR-CFE-2020-002)

February 26, 2020

Self-Regulatory Organizations; Cboe Futures Exchange, LLC; Notice of Filing of Proposed Rule Change Relating to Exchange Jurisdiction

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on February 14, 2020 Cboe Futures Exchange, LLC (“CFE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I and II below, which Items have been prepared by CFE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. CFE also has filed this proposed rule change with the Commodity Futures Trading Commission (“CFTC”). CFE filed a written certification with the CFTC under Section 5c(c) of the Commodity Exchange Act (“CEA”)² on February 14, 2020.

I. Self-Regulatory Organization’s Description of the Proposed Rule Change

The Exchange proposes to clarify and amend CFE’s rule provisions relating to Exchange jurisdiction. The scope of this filing is limited solely to the application of the proposed rule change to security futures that may be traded on CFE. Although no security futures are currently listed for trading on CFE, CFE may list security futures for trading in the future. The text of the proposed rule change is attached as Exhibit 4 to the filing but is not attached to the publication of this notice.

¹ 15 U.S.C. § 78s(b)(7).

² 7 U.S.C. § 7a-2(c).

II. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CFE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CFE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization’s Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

CFE Rule 308 (Consent to Exchange Jurisdiction) governs the Exchange’s jurisdiction. Rule 308(c) currently provides that any Person initiating or executing a transaction on or subject to the rules of the Exchange directly or through an intermediary, and any Person for whose benefit such a transaction has been initiated or executed, expressly consents to the jurisdiction of the Exchange and agrees to be bound by and comply with the rules of the Exchange in relation to such transactions, including, but not limited to, rules requiring cooperation and participation in investigatory and disciplinary processes. The cover page to the CFE Rulebook repeats this language from Rule 308(c). CFE’s rules refer to any Person subject to Rule 308(c) as a Market Participant.

CFTC Regulation 38.151(a)³ provides that prior to granting any member or market participant access to its markets, a designated contract market (“DCM”) must require that the member or market participant consent to its jurisdiction. CFE originally adopted Rule 308(c) in

³ 17 C.F.R. § 38.151(a).

order to comply with CFTC Regulation 38.151(a).⁴

The proposed rule change clarifies and amends CFE's rule provisions relating to Exchange jurisdiction.

First, CFE proposes to revise CFE Rule 308(c) and amend the cover page of the CFE Rulebook to clarify that any futures commission merchant, broker-dealer, introducing broker, associated person, or foreign Person performing a similar role, that charges a commission or fee in connection with a transaction on or subject to the rules of the Exchange also expressly consents to the Exchange's jurisdiction (and thus is a Market Participant under CFE rules).

The proposed rule change furthers the Exchange's compliance with CFTC Regulation § 38.151(a)⁵ by clarifying the scope of the Exchange's jurisdiction in relation to intermediaries. Between when a customer enters an order and its actual execution, the order may be routed through multiple different broker-dealers, futures commission merchants, or introducing brokers before execution. The language of the proposed rule change clarifies that if there is a third party involved in the order routing process that receives a commission, it is still subject to the Exchange's jurisdiction even if that party is a not a customer of the ultimate execution firm. The proposed rule change was developed by the Joint Compliance Committee, and the Exchange understands that other DCMs also are adopting proposed rule changes that contain the same or similar language.⁶

⁴ Id.

⁵ Id.

⁶ The Joint Compliance Committee ("JCC") is a voluntary, cooperative organization comprised of members who are self-regulatory organizations registered under the CEA. The JCC operates through its members to protect market integrity within and across the members' markets. It provides a forum to share information and ideas on regulatory topics of interest, as well as identify issues within the industry or elsewhere that may impact their markets, members, or self-regulatory responsibilities. CFTC staff

Second, CFE is proposing to amend the definition of the term “Person” included in Chapter 1 of the CFE Rulebook. CFE’s rules currently define “Person” to mean “any natural person, association, partnership, limited liability company, joint venture, trust or corporation.” CFE proposes to amend this definition to add “sole proprietorship” to the list included in the definition and to add “any other type of entity or organization” to the end of this list to make clear that the definition of “Person” encompasses other potential types of entities or organizations that may not be specifically enumerated in the current list under the definition. These proposed changes serve to clarify the meaning and scope of the term “Person” as used throughout CFE’s rules, including in particular within CFE’s rule provisions relating to Exchange jurisdiction.

Third, CFE is proposing to revise Rule 308 to delete current Rule 308(e)(i). Rule 308(e)(i) provides that every Person in the chain of custody of an order submitted to CFE that is not a CFE Trading Privilege Holder (“TPH”) or Authorized Trader of a TPH, commencing with the original initiation of the order until its receipt by CFE, shall be deemed to be a Market Participant. This provision was recently added to CFE’s rules and was intended to provide the same type of clarification as is intended by the provision that CFE is now adding to Rule 308(c) in conjunction with the same or similar proposed rule changes being made by other DCMs. To further consistency with the jurisdictional rules of other DCMs and to avoid any potential ambiguity that may be created by having two differently worded provisions intended to accomplish the same result, CFE is deleting Rule 308(e)(i). Because CFE is deleting Rule 308(e)(i), CFE is changing the rule number for current Rule 308(e)(ii) to Rule 308(e)(i) and is

representing the CFTC Division of Market Oversight Market Compliance Section also participate in JCC meetings.

changing the rule number for current Rule 308(e)(iii) to Rule 308(e)(ii) without changing the text of either rule provision.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(1)⁸ and 6(b)(5)⁹ in particular, in that it is designed:

- to enable the Exchange to enforce compliance by its Market Participants with the provisions of the rules of the Exchange,
- to prevent fraudulent and manipulative acts and practices,
- to promote just and equitable principles of trade,
- to remove impediments to and perfect the mechanism of a free and open market and a national market system,
- and in general, to protect investors and the public interest.

The Exchange believes that the proposed rule change would strengthen CFE's ability to carry out its responsibilities as a self-regulatory organization by providing further clarity and guidance with regard to provisions of the Exchange's rules that relate to trading conduct by Market Participants. In particular, the proposed rule change would clarify the definition of Person for purposes of, among other things, applying CFE's rule provisions relating to Exchange jurisdiction and would further clarify when intermediaries become subject to the Exchange's jurisdiction. Accordingly, the proposed rule change enhances the Exchange's ability to enforce

⁷ 15 U.S.C. § 78f(b).

⁸ 15 U.S.C. § 78f(b)(1).

⁹ 15 U.S.C. § 78f(b)(5).

compliance with its rules and to protect the market and participants in the market from abusive practices. In addition, the Exchange believes that the proposed rule change will promote just and equitable principles of trade because it would apply equally to all Market Participants.

B. Self-Regulatory Organization's Statement on Burden on Competition

CFE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, in that the proposed rule change will enhance CFE's ability to carry out its responsibilities as a self-regulatory organization. The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory in that it would apply equally to all Market Participants.

C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change will become operative on March 2, 2020. At any time within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.¹⁰

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

¹⁰ 15 U.S.C. § 78s(b)(1).

Electronic comments:

- Use the Commission's Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CFE-2020-002 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-CFE-2020-002. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that

you wish to make available publicly. All submissions should refer to File Number SR-CFE-2020-002, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.¹¹

J. Matthew DeLesDernier
Assistant Secretary

¹¹ 17 CFR 200.30-3(a)(73).