

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-73385; File No. SR-CFE-2014-003)

October 17, 2014

Self-Regulatory Organizations; CBOE Futures Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Exchange of Contract for Related Position Transactions and Minor Rule Violations

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> notice is hereby given that on October 1, 2014 CBOE Futures Exchange, LLC (“CFE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change described in Items I, II, and III 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”)<sup>2</sup> on October 1, 2014.

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

The Exchange proposes to amend two rules related to Exchange of Contract for Related Position (“ECRP”) transactions and minor rule violations, respectively. The only security futures currently traded on CFE are traded under Chapter 16 of CFE’s Rulebook which is applicable to Individual Stock Based and Exchange-Traded Fund Based Volatility Index security futures. 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.

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

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<sup>1</sup> 15 U.S.C. 78s(b)(7).

<sup>2</sup> 7 U.S.C. 7a-2(c).

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

The purpose of the proposed CFE rule amendments included as part of this rule change is to amend: (i) CFE Rule 414 (Exchange of Contract for Related Position) to clarify that any parties to or Authorized Reporters for an ECRP transaction are obligated to comply with the requirements set forth in Rule 414; and (ii) CFE Rule 714 (Imposition of Fines for Minor Rule Violations), referred to herein sometimes as “Minor Rule Violation Rule,” to add new categories of rules for which the Exchange may impose summary fines for violations of the applicable rule(s) as well as to clarify the application of minor rule violation categories that contain more than one CFE Rule subsection. The rule amendments included as part of this rule change are to apply to all products traded on CFE, including both non-security futures and security futures. CFE is making these rule amendments in conjunction with other rule amendments to CFE Rule 714 that are not required to be submitted to the Commission pursuant to Section 19(b)(7) of the Act<sup>3</sup> and thus are not included as part of this rule change.

ECRP Transactions

CFE is proposing to amend CFE Rule 414 (Exchange of Contract for Related Position) to clarify the obligations and responsibilities of parties to and Authorized Reporters for ECRP

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<sup>3</sup> 15 U.S.C. 78s(b)(7).

transactions. Rule 414(h) currently provides that each Trading Privilege Holder (“TPH”) that executes an ECRP transaction must designate at least one Authorized Reporter, which reports the ECRP transaction to the Exchange. The Amendment clarifies that both the parties to and Authorized Reporters for an ECRP transaction are obligated to comply with the requirements set forth in Rule 414, and any of these parties or Authorized Reporters may be held responsible by the Exchange for noncompliance with those requirements.

#### Minor Rule Violation Rule

CFE is proposing to amend CFE Rule 714 (Imposition of Fines for Minor Rule Violations) to add new categories of rules for which the Exchange may impose summary fines for violations of the applicable rule(s). Rule 714(f) currently provides for ten categories of Exchange rule violations that are considered minor rule violations for purposes of Rule 714 and corresponding summary fine schedules. The proposed CFE rule amendment would (i) identify nine new categories of rules for which the Exchange may impose summary fines for violations of the applicable rule(s), (ii) enumerates the specific rule(s) within each category, and (iii) sets forth a summary fine schedule for violations of the rule(s) within each category.<sup>4</sup> Below are general descriptions of areas covered by the nine categories:

- Account Designation in Orders
- Order Form Preparation and Recordkeeping for Orders Which Cannot Be Immediately Entered into the CBOE System
- Notification Provisions for Position Accountability

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<sup>4</sup> The proposed number of offenses leading up to a CFE Business Conduct Committee referral and the proposed fine amounts vary depending on the nature of the underlying violative conduct. This is because CFE regards violations of certain rule provisions under the Minor Rule Violation Rule to be more serious relative to violations of other rule provisions under the Minor Rule Violation Rule.

- Reporting Requirements for Reportable Positions
- Exchange of Contract for Related Position Transaction Order Marking and Reporting Requirements
- Block Trade Order Marking and Reporting Requirements
- Provision of Books and Records

The Exchange will have the ability to impose fines for the new violation types covered in the Minor Rule Violation Rule both for matters that are currently pending for which a statement of charges has not yet been issued under CFE Rule 704(b) (Charges) and for future matters. Subsection (c) of the Minor Rule Violation Rule currently provides that any Person against whom a fine is imposed pursuant to the Minor Rule Violation Rule may contest the determination in accordance with the procedure described in that subsection, which includes the ability to have the fine reviewed by a Business Conduct Committee Panel. The Exchange believes that these violations are suitable for incorporation into the Exchange's Minor Rule Violation Rule because they are generally technical in nature. Further, CFE will be able to carry out its regulatory responsibility more quickly and efficiently by incorporating these violations into its Minor Rule Violation Rule. CFE may, whenever it determines that any violation of a rule covered in the Minor Rule Violation Rule is intentional, egregious or otherwise not minor in nature, proceed under the Exchange's formal disciplinary rules.<sup>5</sup>

CFE is proposing to make the following modifications to CFE Rule 714 with the number of offenses being calculated on a rolling twelve (12) month period (with the exception of the first category discussed below where the number of offenses will be calculated on a rolling twenty-four (24) month period):

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<sup>5</sup> See CFE Rule 714(d).

### Account Designation in Orders

CFE is proposing to modify its Minor Rule Violation Rule to cover violations of requirements for Account Designation in Orders. Specifically, the Exchange is proposing to modify the Minor Rule Violation Rule to add CFE Rule 403(a)(viii), which requires that each Order must contain information about account designation. A first offense will result in the issuance of a letter of caution. The second offense will be subject to a \$2,500 fine. The third offense will be subject to a \$10,000 fine. Subsequent offenses will be referred to CFE's Business Conduct Committee.

### Order Form Preparation and Recordkeeping for Orders Which Cannot Be Immediately Entered into the CBOE System

CFE is proposing to modify its Minor Rule Violation Rule to cover violations of requirements for Order Form Preparation and Recordkeeping for Orders Which Cannot Be Immediately Entered into the CBOE System (*i.e.*, CFE's trading system). Specifically, the Exchange is proposing to modify the Minor Rule Violation Rule to add CFE Rule 403(b), which sets forth preparation and recordkeeping requirements relating to orders which cannot be immediately entered into the CBOE System. A first offense will result in the issuance of a letter of caution. The second offense will be subject to a \$2,500 fine. The third offense will be subject to a \$10,000 fine. Subsequent offenses will be referred to CFE's Business Conduct Committee.

### Notification Provisions for Position Accountability

CFE is proposing to modify its Minor Rule Violation Rule to cover violations of requirements for Notification Provisions for Position Accountability.

First, the Exchange is proposing to modify the Minor Rule Violation Rule to add CFE Rule 412A(c), which provides notification requirements for all-expirations-combined position accountability levels. A first offense will result in the issuance of a letter of caution. The second

offense will be subject to a \$7,500 fine. The third offense will be subject to a \$15,000 fine. Subsequent offenses will be referred to CFE's Business Conduct Committee.

Second, the Exchange is proposing to modify the Minor Rule Violation Rule to add CFE Rule 412A(d), which provides notification requirements for position accountability levels for expiring contracts. A first offense will result in the issuance of a letter of caution. The second offense will be subject to a \$7,500 fine. The third offense will be subject to a \$15,000 fine. Subsequent offenses will be referred to CFE's Business Conduct Committee.

At the present time, the security futures listed for trading on CFE are all subject to position limits instead of position accountability. However, it is possible that CFE could amend its rules in the future to apply position accountability instead of position limits to one or more security futures.

#### Reporting Requirements for Reportable Positions

CFE is proposing to modify its Minor Rule Violation Rule to cover violations of Reporting Requirements for Reportable Positions.

First, the Exchange is proposing to modify the Minor Rule Violation Rule to add CFE Rule 412B(a), which requires TPHs to report to the Exchange reportable positions and related information relating to Exchange Contracts that TPHs are required to report to the CFTC pursuant to CFTC regulations. A first offense will result in the issuance of a letter of caution. The second offense will be subject to a \$7,500 fine. The third offense will be subject to a \$15,000 fine. Subsequent offenses will be referred to CFE's Business Conduct Committee.

Second, the Exchange is proposing to modify the Minor Rule Violation Rule to add CFE Rule 412B(b), which requires any Person that is not a TPH and that is required to report to the CFTC pursuant to CFTC regulations reportable positions and related information relating to

Exchange Contracts to report the foregoing reportable positions and related information to the Exchange. A first offense will result in the issuance of a letter of caution. The second offense will be subject to a \$7,500 fine. The third offense will be subject to a \$15,000 fine. Subsequent offenses will be referred to CFE's Business Conduct Committee.

Exchange of Contract for Related Position Transaction Order Marking and Reporting Requirements

CFE is proposing to modify its Minor Rule Violation Rule to cover violations of ECRP Order Marking and Transaction Reporting Requirements.

First, the Exchange is proposing to modify the Minor Rule Violation Rule to add CFE Rule 414(f), which requires every TPH that handles, executes, clears, or carries ECRP transactions or positions to identify and mark as such by appropriate symbol or designation all ECRP transactions or positions and all orders, records, and memoranda pertaining thereto. A first offense will be subject to a \$2,500 fine. The second offense will be subject to a \$10,000 fine. Subsequent offenses will be referred to CFE's Business Conduct Committee.

Second, the Exchange is proposing to modify the Minor Rule Violation Rule to add CFE Rule 414(i), which sets forth notification requirements for a party that executes an ECRP transaction. A first offense will result in the issuance of a letter of caution. The second offense will be subject to a \$7,500 fine. The third offense will be subject to a \$15,000 fine. Subsequent offenses will be referred to CFE's Business Conduct Committee.

Third, the Exchange is proposing to modify the Minor Rule Violation Rule to add CFE Rule 414(j), which requires a party that executes an ECRP transaction to include certain information when notifying the Exchange of an ECRP transaction. A first offense will result in the issuance of a letter of caution. The second offense will be subject to a \$7,500 fine. The third

offense will be subject to a \$15,000 fine. Subsequent offenses will be referred to CFE's Business Conduct Committee.

#### Block Trade Order Marking and Reporting Requirements

CFE is proposing to modify its Minor Rule Violation Rule to cover violations of Block Trade Order Marking and Reporting Requirements.

First, the Exchange is proposing to modify the Minor Rule Violation Rule to add CFE Rule 415(a)(i)(A), which requires that each buy or sell order underlying a Block Trade must state explicitly that it is to be, or may be, executed by means of a Block Trade. A first offense will be subject to a \$2,500 fine. The second offense will be subject to a \$10,000 fine. Subsequent offenses will be referred to CFE's Business Conduct Committee.

Second, the Exchange is proposing to modify the Minor Rule Violation Rule to add CFE Rule 415(g), which sets forth notification requirements for a party to a Block Trade. A first offense will result in the issuance of a letter of caution. The second offense will be subject to a \$7,500 fine. The third offense will be subject to a \$15,000 fine. Subsequent offenses will be referred to CFE's Business Conduct Committee.

Third, the Exchange is proposing to modify the Minor Rule Violation Rule to add CFE Rule 415(h), which requires a party to a Block Trade to include certain information when notifying the Exchange of a Block Trade. A first offense will result in the issuance of a letter of caution. The second offense will be subject to a \$7,500 fine. The third offense will be subject to a \$15,000 fine. Subsequent offenses will be referred to CFE's Business Conduct Committee.

#### Provision of Books and Records

CFE is proposing to modify its Minor Rule Violation Rule to cover violations of requirements for Provision of Books and Records. Specifically, the Exchange is proposing to

modify the Minor Rule Violation Rule to add both CFE Rule 502, which sets forth CFE's general inspection, delivery, and retention requirements for books and records, as well as other CFE rules allowing CFE to request books and records in specific circumstances. For each business day late past the due date of the Exchange's request for books and records up until 15 business days late, the TPH will be subject to a \$1,000 per business day. After 15 business days late, the TPH will be referred to CFE's Business Conduct Committee.

#### Clarification

CFE is proposing to modify CFE Rule 714(e) to clarify how the Exchange will apply minor rule violation categories listed that contain more than one Rule subsection. For these categories, the applicable fine schedule will apply separately with respect to violations of each of those Rule subsections. Therefore, if conduct violates only one of those Rule subsections, it would be considered an offense with respect to that subsection but not with respect to the other Rule subsection(s) to which the fine schedule also applies. For example, if the same fine schedule applies to Rule subsection (a) and Rule subsection (b) and conduct violates only Rule subsection (a) for the first time in a twelve-month rolling period, that conduct would be considered a first offense under the schedule with respect to Rule subsection (a). A later violation in that period of Rule subsection (b) would be considered a first offense under the schedule with respect to Rule subsection (b). If conduct violates more than one of those Rule subsections for the first time in a twelve-month rolling period, it would be considered an offense with respect to each of those subsections. For example, if the same fine schedule applies to Rule subsection (a) and Rule subsection (b) and the same conduct violates both Rule subsection (a) and Rule subsection (b) for the first time in a twelve-month rolling period, that would be considered a first offense under the schedule with respect to Rule subsection (a) and a first

offense under the schedule with respect to Rule subsection (b). If the first offense is to receive a fine under the schedule, that fine amount would be assessed twice, once in relation to Rule subsection (a) and also once in relation to Rule subsection (b). Each Rule subsection listed in the Minor Rule Violation Rule is intended to address a different type of misconduct.

CFE is also making technical, non-substantive changes to Rule 714 that pertain solely to formatting.

## 2. Statutory Basis

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

- to prevent fraudulent and manipulative acts and practices,
- to promote just and equitable principles of trade,
- to foster cooperation and coordination with persons engaged in facilitating transactions in securities,
- 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, and
- to provide a fair procedure for the disciplining of members.

The Exchange believes that the proposed rule change will strengthen its ability to carry out its responsibilities as a self-regulatory organization by clarifying that CFE may hold any

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<sup>6</sup> 15 U.S.C. 78f(b).

<sup>7</sup> 15 U.S.C. 78f(b)(5).

<sup>8</sup> 15 U.S.C. 78f(b)(7).

parties to and Authorized Reporters for an ECRP transaction responsible for compliance with the related rule depending on the facts and circumstances and by adding violations to its Minor Rule Violation Rule. CFE also believes that the additions to the Minor Rule Violation Rule will serve as an effective deterrent to future violative conduct and as an effective and efficient means of disciplining for infractions that do not warrant a regular disciplinary proceeding. CFE additionally believes that these additions will promote consistent application of sanctions by the Exchange for minor rule violations, establish a fair procedure for the disciplining of TPHs for minor rule violations and reinforce its surveillance and enforcement functions.

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 rule change makes enhancements to CFE's ability to deter and discipline certain infractions. The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because the clarification of compliance responsibilities with respect to ECRP transactions and all of the additions to the Minor Rule Violation Rule would apply equally to all parties that are subject to the applicable requirements.

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 effective on October 16, 2014.

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.<sup>9</sup>

#### 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:

##### 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](mailto:rule-comments@sec.gov). Please include File Number SR-CFE-2014-003 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-2014-003. 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

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<sup>9</sup> 15 U.S.C. 78s(b)(1).

Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CFE-2014-003, 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.<sup>10</sup>

Kevin M. O'Neill  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(12).