

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-56241; File No. SR-CFE-2007-01)

August 13, 2007

Self-Regulatory Organizations; CBOE Futures Exchange, LLC; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Block Trading

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (“Act”)<sup>1</sup> and Rule 19b-7 under the Act,<sup>2</sup> notice is hereby given that on July 31, 2007, 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 substantially prepared by CFE. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. CFE also filed the proposed rule change with the Commodity Futures Trading Commission (“CFTC”), together with a written certification under Section 5c(c) of the Commodity Exchange Act (“CEA”)<sup>3</sup> on July 30, 2007.

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

The Exchange proposes to amend CFE Rule 415, which governs Block Trading, to further describe: (a) the specific conditions under which it is permissible to aggregate orders for different accounts in order to satisfy minimum Block Trade size requirements, (b) the factors to be considered in determining whether the price of a Block Trade is “fair and reasonable,” and (c) certain aspects relating to CFE’s review of Block Trades. Although Rule 415 and these proposed rule amendments are applicable to all of CFE’s products, CFE is submitting this proposed rule change to the Commission solely with respect to its applicability to any security futures that may

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

<sup>2</sup> 17 CFR 240.19b-7.

<sup>3</sup> 7 U.S.C. 7a-2(c).

be listed for trading on CFE. The text of the proposed rule change is available at CFE, the Commission's Public Reference Room, and <http://cfe.cboe.com/aboutcfe/>.

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

In its filing with the Commission, the Exchange 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. The Exchange 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

First, CFE is proposing to amend CFE Rule 415(a)(i) to further specify the conditions under which it is permissible to aggregate orders for different accounts in order to satisfy minimum Block Trade size requirements. For each futures contract traded on CFE, there is a separate rule chapter that governs the relevant contract and which sets forth, among other things, the minimum Block Trade quantity for that contract. Rule 415(a)(i) currently permits three classes of persons (hereinafter, "permissible persons") to aggregate orders for different accounts in order to meet the designated minimum Block Trade quantity.<sup>4</sup> CFE proposes amending Rule 415(a)(i) to specify that a permissible person may only aggregate accounts that are under the management or control of that permissible person in order to satisfy the designated Block Trade

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<sup>4</sup> The three permissible persons identified in CFE Rule 415 are (1) a commodity trading advisor registered under the CEA, (2) an investment adviser registered as such with the SEC that is exempt from regulation under the CEA and CFTC Regulations thereunder, or (3) any person authorized to perform functions similar or equivalent to those of a commodity trading advisor in any jurisdiction outside the United States of America, in each case with total assets under management exceeding US\$25 million.

size requirement. CFE also proposes to amend the rule to explicitly state that, other than as described above, orders for different accounts may not be aggregated to satisfy Block Trade size requirements. The aggregation allowance in Rule 415(a)(i) was intended as a narrow exception and was made available so that permissible persons who used the same strategy for different accounts under their same management could receive the same treatment. CFE believes that the addition of the proposed language more clearly sets forth the original intent of the aggregation allowance in Rule 415(a)(i).

CFE additionally proposes to amend Rule 415(a)(i) to provide that if a Block Trade is executed as a spread or combination, each leg of the order must meet the designated minimum size set forth in the rule chapter governing the relevant futures contract. Currently, every rule chapter specifies that one leg must meet the minimum Block Trade quantity for that contract (which is currently 100 contracts for each CFE futures contract) and the other leg(s) must have a contract size that is reasonably related to the leg meeting the minimum Block Trade quantity. By amending Rule 415(a)(i) to refer to the required size of each leg of the order instead of to the total quantity of the legs (as is currently the case), the Rule will mesh better with the provisions of these rule chapters.

Second, CFE is proposing to add new sub-paragraph (b) to Rule 415 to set forth the factors to be considered in determining whether the price of a Block Trade is “fair and reasonable.” Specifically, CFE proposes to move the four factors already codified in sub-paragraph (c) of Rule 415 and to add two new factors to be considered. The existing four factors are: (1) the size of the Block Trade; (2) the prices and sizes of transactions in the same contract at the relevant time; (3) the prices and sizes of transactions in other relevant markets, including without limitation the underlying cash and futures markets, at the relevant time; and

(4) the circumstances of the parties to the Block Trade. CFE proposes adding two new factors, which are: (1) prices and sizes of resting book orders on the Exchange or other relevant markets; and (2) whether the Block Trade is executed as a spread or combination.

CFE also proposes amending Rule 415(b) to provide that the foregoing “guidelines apply in determining whether the execution price of a Block Trade that is not executed as a spread or combination is ‘fair and reasonable.’ These guidelines are general and may not be applicable in each instance. Whether the execution price of a Block Trade is ‘fair and reasonable’ depends upon the particular facts and circumstances. In the event the quantity present in the order book is greater or equal to the quantity needed to fill an order of the size of the Block Trade, it would generally be expected that the Block Trade price would be better than the price present in the order book. In the event the quantity present in the order book is less than the quantity needed to fill an order of the size of the Block Trade, it would generally be expected that the Block Trade price would be relatively close to the price present in the order book and that the amount of the differential between the two prices would be smaller to the extent that the differential between the quantity present in the order book and the Block Trade quantity is smaller.” CFE believes that these general guidelines will help market participants by providing them with additional guidance regarding when the price of a Block Trade is considered “fair and reasonable.”

Third, CFE is proposing to add new sub-paragraphs (i) and (j) to Rule 415 to codify pre-existing practices and aspects of CFE’s review of Block Trades. Proposed new sub-paragraph (i) provides that the CFE Help Desk may review a Block Trade for compliance with the requirements of Rule 415 and may determine not to permit the Block Trade to be consummated if the Help Desk determines that the Block Trade does not conform with the requirements of Rule 415. Additionally, proposed new sub-paragraph (j) provides that (i) the posting of a Block

Trade by the CFE Help Desk does not constitute a determination by CFE that the Block Trade was effected in conformity with the requirements of Rule 415, and (ii) a Block Trade that is posted by the CFE Help Desk which does not conform to the requirements of Rule 415 shall be processed and given effect but will be subject to appropriate disciplinary action in accordance with the rules of CFE. Although this reflects current CFE policy and practice, CFE believes it is beneficial to explicitly reflect it in CFE's rules.

Lastly, the proposed rule change makes some clarifying wording changes to the current language of Rule 415, which are non-substantive.

## 2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act<sup>5</sup> in general and Section 6(b)(5) of the Act<sup>6</sup> in particular in that it provides additional detail to market participants regarding CFE's Block Trading requirements and thus is designed to prevent fraudulent and manipulative acts and practices, and to promote just and equitable principles of trade, and in general, to protect investors and the public interest.

### 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.

### 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.

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

<sup>6</sup> 15 U.S.C. 78f(b)(5).

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

The foregoing proposed rule change has become effective pursuant to Section 19(b)(7) of the Act.<sup>7</sup> 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>8</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-2007-01 on the subject line.

#### Paper comments:

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

All submissions should refer to File Number SR-CFE-2007-01. 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 Web site (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the

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

<sup>8</sup> 15 U.S.C. 78s(b)(1).

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 inspection and copying in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 am and 3:00 pm. Copies of such filing also will be available for inspection and copying at the principal office of CBOE. 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-2007-01 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

Florence E. Harmon  
Deputy Secretary

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<sup>9</sup> 17 CFR 200.30-3(a)(73).