

SECURITIES AND EXCHANGE COMMISSION  
(Release No 34-86226; File No. SR-CFE-2019-001)

June 27, 2019

Self-Regulatory Organizations; Cboe Futures Exchange, LLC; Notice of a Filing of a Proposed Rule Change Regarding Trading Conduct

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (“Act”),<sup>1</sup> notice is hereby given that on June 18, 2019 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 June 18, 2019.

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

The Exchange proposes to update, clarify, and amend certain CFE rule provisions primarily relating to trading conduct as well as to the use of Order Entry Operator IDs (“OEO IDs”), to Market Participant records regarding activities in a reference market, and to Clearing Member requirements with regard to customer records concerning Exchange of Contract for Related Position (“ECRP”) transactions and Block Trades. The scope of this filing is limited solely to the application of the proposed rule amendments 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.

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

<sup>2</sup> 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

The proposed rule changes update, clarify, and amend certain CFE rule provisions primarily relating to trading conduct as well as to the use of OEO IDs, to Market Participant records regarding activities in a reference market, and to Clearing Member requirements with regard to customer records concerning ECRP transactions and Block Trades.

First, CFE is proposing to clarify when an OEO ID must be used for a front-end trading system utilized by a natural person under CFE Rule 303A (Order Entry Operator ID) which governs the use of OEO IDs in connection with the submission of orders to CFE's trading system. Specifically, CFE is proposing to amend Rule 303A to clarify that if a natural person utilizes a front-end trading system with automated functionality (such as spreading functionality) and the use of that functionality is ancillary to the natural person's manual trading, an OEO ID is not required to be used for that front-end trading system. In that event, the natural person's OEO ID may be used for the submission of orders originating from that front-end trading system. If, however, the automated functionality of the front-end trading system generates a majority of the natural person's orders, that front-end trading system will be treated as an Automated Trading

System for purposes of Rule 303A and an OEO ID for the front-end trading system must be included in each order generated by the front-end trading system in order to differentiate those orders from manual orders submitted by the natural person. CFE believes that this clarification will enhance CFE's rule provisions regarding OEO IDs by providing more explicit guidance with respect to when an OEO ID must be used for a front-end trading system utilized by a natural person.

Second, CFE is proposing to amend CFE Rule 308(d) to add CFE Rule 501(c) as a rule that is applicable to Market Participants to the same extent that it is applicable to CFE Trading Privilege Holders ("TPHs"). Rule 501(c) provides that if a contract listed on the Exchange is settled by reference to the price of a contract or commodity traded in another venue, including a price or index derived from prices on another designated contract market ("DCM"), TPHs are required to make available to the Exchange upon request in a form and manner prescribed by the Exchange and within the time frame designated by the Exchange information and their books and records regarding their activities in the reference market. The term "Market Participant" is a new defined term that CFE is implementing under CFE rules which means any Person subject to CFE Rule 308(c). Rule 308(c) 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. CFE believes that making Rule 501(c) applicable to Market Participants will enhance CFE's ability to conduct regulatory investigations in relation to CFE's market that may involve activities by a Market

Participant in a reference market.

Third, CFE is proposing to revise CFE Rule 414 (Exchange of Contract for Related Position) and CFE Rule 415 (Block Trades) to clarify certain recordkeeping and reporting requirements relating to ECRP transactions and Block Trades, respectively. Specifically, the Exchange is proposing to amend Rules 414(h) and 415(e) to clarify that each clearing member carrying a customer account for which an ECRP transaction or Block Trade is executed shall be responsible for obtaining and submitting to CFE in a timely and complete manner the records of its customer regarding the ECRP transactions or Block Trades, as applicable.

Fourth, CFE is proposing to amend CFE Rule 601 (Fraudulent Acts), CFE Rule 602 (Fictitious Transactions), CFE Rule 603 (Market Manipulation), CFE Rule 604 (Adherence to Law), CFE Rule 610 (Priority of Customers' Orders), CFE Rule 611 (Trading Against Customers' Orders), CFE Rule 612 (Withholding Orders), CFE Rule 613 (Disclosing Orders), CFE Rule 614 (Pre-Arranged Trades), CFE Rule 617 (Money Passes), CFE Rule 618 (Accommodation Trading), CFE Rule 619 (Front-Running), and CFE Rule 620 (Disruptive Practices) to specifically reference in those rules that they are applicable to Market Participants. CFE is proposing to revise the above-referenced rules to provide that they apply to Market Participants, consistent with the existing provisions of CFE Rule 308(d) which already provide that any Person subject to Rule 308(c) that is not a TPH or a Related Party of a TPH is bound by and required to comply with the above-referenced rules to the same extent that a TPH or Related Party is bound by and required to comply with those rules.

Fifth, CFE is proposing to amend Rule 601, Rule 603, Rule 619 as well as Policy and Procedure XVIII of the Policies and Procedures Section of the CFE Rulebook relating to Rule 620 to make clear that provisions of those rules prohibiting fraudulent acts, market manipulation,

front-running, and disruptive practices in any contract traded on CFE also apply with respect to any commodity, security, index, or benchmark that underlies any CFE contract, regardless of the exchange on or market in which the underlying is transacted, when that activity has an impact upon or nexus in relation to a CFE contract. Fraudulent acts, market manipulation, front-running, and disruptive practices in the underlying for a CFE contract can also impact the market in the CFE contract or improperly benefit a Person holding that CFE contract. Accordingly, consistent with similar rules on other DCMs which encompass activity in the underlying cash market and underlying commodities or securities,<sup>3</sup> it is important that CFE be able to bring disciplinary action for such activity by those subject to CFE disciplinary jurisdiction under CFE Rule 308 if warranted under the circumstances. In particular:

- CFE is proposing to amend Rule 601 to make clear that fraudulent acts and attempted fraudulent acts encompassed by Rule 601 may be committed in connection with or related to any CFE contract, either directly through activity in the market for that CFE contract, or indirectly through activity in the market of any commodity, security, index, or benchmark underlying that CFE contract, regardless of the exchange on or market in which the underlying is transacted.
- CFE is proposing to amend Rule 603 to make clear that no TPH, Related Party, or Market Participant shall (i) manipulate, or attempt to manipulate, the price of any CFE contract, either directly by engaging in activity in the market for that contract, or indirectly by engaging in activity in the market of any commodity, security, index, or

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<sup>3</sup> See, e.g., Chicago Mercantile Exchange Inc. Rule 432H, The Board of Trade of the City of Chicago, Inc. Rule 432H, New York Mercantile Exchange, Inc. Rule 432H, and Commodity Exchange, Inc. Rule 432H.

benchmark underlying that contract, regardless of the exchange on or market in which the underlying is transacted; (ii) purchase or sell, or offer to purchase or sell, any CFE contract, or any commodity, security, index, or benchmark that underlies any CFE contract, regardless of the exchange on or market in which the underlying is transacted, for the purpose of creating a condition in which prices of the contract do not or will not reflect fair market values; or (iii) intentionally or recklessly use or employ, or attempt to use or employ, any manipulative device, scheme, or artifice to defraud, relating to any CFE contract either directly by engaging in activity in the market for that contract, or indirectly by engaging in activity in the market of any commodity, security, index, or benchmark underlying that contract, regardless of the exchange on or market in which the underlying is transacted. The rules of other DCMs<sup>4</sup> and CFTC Regulation 180.1<sup>5</sup> also include a prohibition on the employment, or attempted employment, of manipulative and deceptive devices.

- CFE is proposing to amend Rule 619 to make clear that no TPH, Related Party, or Market Participant shall take a position in a CFE contract based upon non-public information regarding an impending transaction by another person in the same or a related CFE contract, or in any commodity, security, index, or benchmark underlying that CFE contract regardless of the exchange on or market in which the underlying is transacted, subject to certain existing exceptions enumerated in Rule 619. These existing enumerated exceptions include activity permitted under CFE Rule 407 (Crossing Trades), Rule 414, Rule 415, and Rule 611 or under any policies and

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<sup>4</sup> See, e.g., ICE Futures U.S., Inc. Rule 4.02(d) and the rules cited in footnote 3 above.

<sup>5</sup> 17 CFR 180.1.

- procedures for pre-execution discussions from time to time adopted by the Exchange.
- CFE is proposing to amend Policy and Procedure XVIII to make clear that prohibited activity under Rule 620 may occur directly or indirectly. In particular, prohibited activity encompassed by Rule 620 in relation to any CFE contract may occur directly through any trading, practice, or conduct in the market for that contract that is prohibited by Rule 620. Additionally, the proposed rule change makes clear that prohibited activity encompassed by Rule 620 in relation to any CFE contract may also occur indirectly through any trading, practice, or conduct in the market of any commodity, security, index, or benchmark underlying that contract, regardless of the exchange on or market in which the underlying is transacted, that would be prohibited by Rule 620 if it were done in that contract and that has an impact in relation to that contract or the market in that contract.

Sixth, the Exchange proposes to amend Rule 610 to delete superfluous references to the qualifier that actions in violation of Rule 610 must be “knowingly” committed. Rule 610 describes various circumstances under which priority must be given to customer orders. Rule 610(d) already provides for more detailed safe harbors from those provisions making this qualifier unnecessary. In particular, Rule 610(a) currently prohibits knowingly buying (selling) a contract for a personal or proprietary account when holding an order to buy (sell) the same contract for any other person at the same price or at the market price. Rule 610(b) also currently prohibits knowingly executing a discretionary order for an immediate family member or for a personal or proprietary account when holding a customer market order for the same contract open as to time and price. The qualifier that these prohibitions be knowingly committed is already addressed by the safe harbors under Rule 610(d) that there is not a violation of these

prohibitions when appropriate “firewall” or separation of function procedures are in place or an individual has no direct knowledge of the other relevant order.

## 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)(1)<sup>7</sup> and 6(b)(5)<sup>8</sup> in particular, in that it is designed:

- to enable the Exchange to enforce compliance by its TPHs and persons associated with its TPHs 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 TPHs, their related parties, and Market Participants. In particular, the proposed rule change would update, clarify, and augment CFE rules that prohibit abusive trading practices on CFE’s market by TPHs, their related parties, and Market Participants, including CFE rules that address fraudulent acts, fictitious transactions, market manipulation, adherence to law, priority of

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

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

<sup>8</sup> 15 U.S.C. 78f(b)(5).

customer orders, trading ahead of customer orders, withholding orders, disclosing orders, pre-arranged trades, simultaneous buying and selling orders, money passes, accommodation trading, front-running, and disruptive practices.

The proposed rule change would also clarify the application of CFE requirements relating to the use of OEO IDs when a natural person utilizes a front-end trading system with automated functionality, which would contribute to the accuracy of CFE's audit trail. Additionally, the proposed rule change would contribute to CFE's ability to obtain information in connection with the regulation of CFE's market by requiring clearing members carrying customer accounts to obtain and submit to CFE customer records regarding ECRP transactions and Block Trades by providing that Market Participants are required to make available to CFE upon request information and their books and records regarding their activities in a reference market.

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 the rule amendments included in the proposed rule change would apply equally to all TPHs, their related parties, and 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 July 2, 2019. 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-2019-001 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-2019-001. 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

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

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 such 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-2019-001, 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>

Eduardo A. Aleman  
Deputy Secretary

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<sup>10</sup> 17 CFR 200.30-3(a)(73).