

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91383; File No. SR-CFE-2021-006)

March 22, 2021

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

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on March 15, 2021 Cboe Futures Exchange, LLC (“CFE” or “Exchange”) filed with the Securities and Exchange Commission (“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”)² on March 15, 2021.

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

The Exchange proposes to provide additional guidance in its rules regarding prohibited disruptive practices.

The rule amendments included as part of this proposed rule change are to apply to all products traded on CFE, including both non-security futures and any security futures that may be listed for trading on CFE. 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.

¹ 15 U.S.C. 78s(b)(7).

² 7 U.S.C. 7a-2(c).

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

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 620 (Disruptive Practices) prohibits various disruptive practices and CFE Policy and Procedure XVIII (Disruptive Trading Practices) ("P&P XVIII") of the Policies and Procedures section of the CFE Rulebook lists various factors that CFE may consider in assessing whether conduct violates Rule 620. The proposed rule change proposes to make the following clarifying updates in relation to these provisions.

CFE is proposing to amend the provisions of Rule 620 in the following manner.

Rule 620(b)(iii) currently provides that no Person shall enter or cause to be entered an actionable or non-actionable message or messages with intent to overload, delay, or disrupt the systems of the Exchange or other market participants. CFE proposes to add a new subparagraph (b)(iv) to Rule 620 to address disruption to the systems of the Exchange or market participants in this context and accordingly proposes to remove reference to disruption from Rule 620(b)(iii).

Specifically, proposed revised Rule 620(b)(iii) will provide that no Person shall enter or cause to be entered an actionable or non-actionable message(s) with intent to overload or delay the systems of the Exchange or other market participants.

Proposed new Rule 620(b)(iv) will provide that no Person shall intentionally or recklessly submit or cause to be submitted an actionable or non-actionable message(s) that has the potential to disrupt the systems of the Exchange or other market participants.

CFE also proposes to make the following two non-substantive changes to Rule 620(b): (1) to change the numbering of current subparagraph (b)(iv) of Rule 620 to subparagraph (b)(v) of Rule 620 to account for the addition of proposed new Rule 620(b)(iv) and (2) to revise Rule 620(b)(ii), Rule 620(b)(iii), and renumbered Rule 620(b)(v) to use the same wording when referring to an actionable or non-actionable message(s) and thus to provide for consistent language in relation to these references throughout Rule 620(b).

CFE is also proposing to amend the provisions of P&P XVIII in the following manner.

CFE proposes to revise Section A of P&P XVIII to specifically reference an additional factor that the Exchange may consider in assessing whether conduct violates Rule 620. Section A of P&P XVIII enumerates a non-exclusive list of factors that the Exchange may consider in assessing whether conduct violates Rule 620. CFE proposes to revise Section A of P&P XVIII to specifically provide that the Exchange may consider industry best practices regarding the design, testing, implementation, operation, change management, monitoring, and documentation of automated trading systems in assessing whether conduct violates Rule 620.

CFE proposes to update Section J of P&P XVIII to reference additional examples of non-actionable messages. Currently, Section J of P&P XVIII lists a heartbeat message transmitted to CFE's trading system ("CFE System") as a non-actionable message. CFE proposes to revise

Section J of P&P XVIII to list the entry of Orders in test products and network packets that are incomplete, partial, corrupt, or otherwise unable to be processed by the Exchange as additional examples of non-actionable messages.

CFE proposes to add new Section U to P&P XVIII to specifically reference two examples of practices that are prohibited by new Rule 620(b)(iv). In particular, CFE proposes to add new Section U of P&P XVIII, which will provide that (1) engaging in a pattern and practice of submitting partial messages for the purpose of seeking to reduce latency has the potential to disrupt the systems of the Exchange; (2) purposefully corrupting or constructing malformed data packets also has the potential to disrupt the systems of the Exchange; and (3) the Exchange considers any market participant engaging in either of these practices as part of a trading strategy to have recklessly disregarded the potential to disrupt the systems of the Exchange in violation of new Rule 620(b)(iv).

CFE proposes to add these provisions to make clear that intentionally submitting partial order messages for the purpose of seeking to reduce latency only to complete the order message upon the happening of an event or trading signal is prohibited activity. Similarly, these provisions are intended to make clear that purposefully corrupting or constructing malformed data packets as part of a trading strategy to reduce latency is also prohibited activity. These strategies have the potential to impact the systems of the Exchange, and the Exchange believes they serve no useful purpose.

CFE proposes to add new Section V to P&P XVIII to make clear that brokers and execution clerks are obligated to consider market conditions when executing an order on behalf of a customer or employer pursuant to their instructions and that the instructions of a customer or employer do not negate the obligation for brokers and execution clerks to comply with Rule 620.

In connection with the addition of new Section V to P&P XVIII, CFE proposes to amend P&P XVIII to change the lettering of current Section U to new Section W of P&P XVIII and of current Section V to new Section X of P&P XVIII to account for the addition of proposed new Section V to P&P XVIII.

Finally, CFE proposes to amend new Section X of P&P XVIII to add two examples of prohibited activity under Rule 620. In particular, this Section of P&P XVIII includes a non-exhaustive list of various examples of conduct that may be found to violate Rule 620. The proposed additional examples in new Section X of P&P XVIII provide specific illustrations of trading strategies that may violate Rule 620, including the provisions of new Rule 620(b)(iv), which involve purposefully corrupting or constructing malformed data packets.

The first proposed example includes the following fact pattern: A market participant engages in a trading strategy where the market participant's trading system is designed to purposefully corrupt data sent across one or more physical connections to the Exchange. For example, prior to the occurrence of an event or signal, the market participant's trading system begins transmitting to the Exchange data necessary for an order message (e.g., Ethernet frame; Internet Protocol (IP) packet; Transmission Control Protocol (TCP) packet; etc.). The trading system is designed so that if the event or signal does not occur as expected, the trading system will corrupt the partially transmitted data, for instance by invalidating the Frame Check Sequence (FCS) checksum causing the packet or Ethernet frame to be dropped by a network switch or receiving device at the logical or physical entry point to the CFE System. If the event does occur as expected, the trading system will complete the partially transmitted data so that an order message from the trading system is able to reach the Exchange trading platform.

The second proposed example includes the following fact pattern: A market participant engages in a trading strategy where the market participant's trading system is designed to purposefully send to the Exchange untradeable orders or orders that have no reasonable probability of trading. For example, prior to the occurrence of an event or signal, the market participant's trading system begins transmitting to the Exchange data necessary for an order message (e.g., Ethernet frame; TCP packet; etc.). The trading system is designed so that if the event or signal does not occur as expected, the trading system will complete the partially transmitted data and successfully submit an order message to the Exchange. However, because the event or signal did not occur as expected, the trading system is designed to render the completed order message untradeable or improbable of trading. This may be accomplished, for example, by submitting the order message as a fill or kill order type with a price or quantity that causes the order to immediately be cancelled by the trading platform. This may also be accomplished, for example, by submitting the order message at an off-market price, deep in the order book, and intending to cancel that order prior to execution.

The proposed rule change is consistent with similar updated guidance provided by other designated contract markets ("DCMs") regarding disruptive practices.³ The Exchange believes that aligning its guidance regarding disruptive trading practices across DCMs where appropriate protects the Exchange, investors, and the public interest by promoting uniform expectations among market participants regarding disruptive trade practices.

³ These DCMs are Chicago Mercantile Exchange, Inc. ("CME"), The Board of Trade of the City of Chicago, Inc., New York Mercantile Exchange, Inc., and Commodity Exchange, Inc. Each submitted rule certification filings to the CFTC to effectuate their respective updated guidance. See, e.g., CME Submission No. 20-305 (July 24, 2020), which is available on the CFTC website at: <https://www.cftc.gov/sites/default/files/filings/orgrules/20/07/rule072420cmedcm003.pdf>

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁴ in general, and furthers the objectives of Sections 6(b)(1)⁵ and 6(b)(5)⁶ in particular, in that it is designed:

- to enable the Exchange to enforce compliance by its Trading Privilege Holders and persons associated with its Trading Privilege Holders 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 proposed rule change provides additional guidance regarding disruptive practices that violate CFE Rule 620. CFE considers the disruptive trading practices addressed by the proposed rule change to be prohibited by existing CFE rules, including current Rule 620, P&P XVIII, and CFE Rule 608 (Acts Detrimental to the Exchange, Acts Inconsistent with Just and Equitable Principles of Trade; Abusive Practices). CFE also considers the provisions that are proposed to be added to P&P XVIII relating to factors that the Exchange may consider in assessing whether conduct violates Rule 620 and relating to the obligation of brokers to consider market conditions when executing orders to be within the scope of existing CFE rules, including

⁴ 15 U.S.C. § 78f(b).

⁵ 15 U.S.C. § 78f(b)(1).

⁶ 15 U.S.C. § 78f(b)(5).

current Rule 620 and P&P XVIII. Although this is the case, CFE believes that it is beneficial to provide additional guidance to market participants through the inclusion of further detail in CFE's rules regarding prohibited disruptive practices. By further describing prohibited disruptive trading practices in CFE's rules and by providing additional guidance relating to the application of CFE's rule provisions with respect to disruptive trading practices, the proposed changes to Rule 620 and P&P XVIII contribute to the protection of CFE's market and market participants from abusive practices; to the promotion of fair and equitable trading on CFE's market; and to precluding activity on CFE's market that is disruptive to the orderly execution of transactions and that may negatively impact the systems of the Exchange.

Accordingly, the Exchange believes that the proposed rule change will benefit market participants because it will provide greater clarity regarding the Exchange's current prohibited disruptive trading practices and the various factors that CFE may consider in assessing whether conduct violates Rule 620. Additionally, the Exchange believes that the proposed rule change will strengthen its ability to carry out its responsibilities as a self-regulatory organization by providing further guidance regarding the type of activity that is prohibited under CFE Rule 620. In addition, the proposed rule change benefits market participants by contributing to the protection of CFE's market and market participants from abusive practices and to the promotion of a fair and orderly market.

The Exchange also 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 market participants.

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

CFE does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that the proposed rule change will not burden intra-market competition because the clarifying updates to the prohibited disruptive trading practices will apply equally to all market participants. The Exchange also believes that these clarifying updates will help to foster a fair and orderly market and contribute to furthering the promotion of fair and equitable trading on the Exchange. Additionally, the proposed rule change is designed to make CFE's disruptive trading practice rules consistent with the existing rules and guidance published by other DCMs and thus will not burden intermarket competition.

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 29, 2021. 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.⁷

⁷ 15 U.S.C. § 78s(b)(1).

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. Please include File Number SR-CFE-2021-006 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-2021-006. 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-2021-006, 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.⁸

J. Matthew DeLesDernier
Assistant Secretary

⁸ 17 CFR 200.30-3(a)(73).