

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-93386; File No. SR-CFE-2021-008)

October 19, 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”),<sup>1</sup> notice is hereby given that on October 5, 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”)<sup>2</sup> on October 5, 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.

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

<sup>2</sup> 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 Section E of P&P XVIII in the following manner.

The title of Section E of P&P XVIII is currently “Orders entered by mistake.” The proposed rule change proposes to revise the title of Section E of P&P XVIII to be “Orders entered by mistake or error” to clarify that Section E of P&P XVIII covers Orders entered either by mistake or error. The Exchange considers the terms “mistake” and “error” to be synonyms for one another while recognizing that a mistake may be more associated with human action

while an error may be more associated with system behavior. To the extent that there is a difference between the two terms and that Section E of P&P XVIII refers to “errors” within the text of the provision, the Exchange is making this change to make clear that a mistake is encompassed within the references to “errors” in the text of the provision.

The first sentence of Section E of P&P XVIII currently provides that: “An unintentional, accidental, or ‘fat-finger’ Order will not constitute a violation of Rule 620, but such activity may be a violation of other Exchange rules, including, but not limited to, Rule 608 (Acts Detrimental to the Exchange; Acts Inconsistent with Just and Equitable Principles of Trade; Abusive Practices).” The proposed rule change proposes to insert the word “typically” after the word “not” so that the sentence provides that an unintentional, accidental, or “fat-finger” Order will not typically constitute a violation of Rule 620, but such activity may be a violation of other Exchange rules, including, but not limited to, Rule 608.

The second sentence of Section E of P&P XVIII currently provides that: “Market participants are expected to take steps to mitigate the occurrence of errors, and their impact on the market.” The proposed rule change proposes to further flesh out this sentence by revising it to provide that: “Market participants are expected to take reasonable steps or otherwise have controls to prevent, detect and mitigate the occurrence of errors, market disruptions and system anomalies and their impact on the market.” This proposed additional language clarifies that market participants are expected to take reasonable steps or to otherwise have controls in place to prevent, detect, and mitigate the occurrence of errors, market disruptions and system anomalies, and their impact on the market.

The proposed rule change proposes to add the following sentence at the end of Section E of P&P XVIII in reference to the second sentence of Section E of P&P XVIII: “Failure to take

reasonable steps to prevent, detect and mitigate such errors, market disruptions, system anomalies or impacts may violate Rule 609 (Supervision) or other Exchange rules.” This sentence is intended to provide additional clarity to market participants about how P&P XVIII interacts with other CFE rules.

Section K of P&P XVIII describes factors that may be considered in determining whether a market participant intended to disrupt the orderly conduct of trading or the fair execution of transactions or demonstrated a reckless disregard for the orderly conduct of trading or the fair execution of transactions. CFE is proposing to amend Section K of P&P XVIII to provide that additional factors that may be considered in this regard include, but are not limited to, the impact to other market participants’ ability to trade, engage in price discovery, or manage risk. CFE believes that the addition of these added non-exhaustive factors will provide further clarity regarding how CFE determines whether a market participant intended to disrupt, or demonstrated a reckless disregard for, the orderly conduct of trading or the fair execution of transactions.

CFE also proposes to make the following clarifying updates to the provisions of Section U of P&P XVIII.

The title of Section U of P&P XVIII is currently “Submission of partial messages to reduce latency or purposeful corruption of data packets.” The proposed rule change proposes to revise the title of Section U of P&P XVIII to be “Submission of partial messages to reduce latency or purposeful submission of intentionally corrupted or malformed data packets.”

The second sentence of Section U of P&P XVIII currently provides that: “Purposefully corrupting or constructing malformed data packets also has the potential to disrupt the systems of the Exchange.” The proposed rule change proposes to revise this sentence to provide that: “Purposefully submitting intentionally corrupted or malformed data packets also has the

potential to disrupt the systems of the Exchange.”

The proposed revisions to Section U of P&P XVIII are intended clarify that activity within the scope of Section U of P&P XVIII relating to corrupted or malformed data packets involves the purposeful submission of intentionally corrupted or malformed data packets.

CFE also is proposing to add an example of prohibited activity under Rule 620. In particular, P&P XVIII includes a non-exhaustive list of various examples of conduct that may be found to violate Rule 620. The additional example provides a specific illustration of a trading strategy that may violate Rule 620 which involves purposefully submitting malformed data packets to CFE’s trading system (“CFE System”) as part of a trading strategy to reduce latency. In particular, this type of trading strategy may violate Rule 620(b)(iv) which provides 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.

The proposed additional 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 submit malformed data across one or more physical connections to the Exchange. For example, based on information received, the participant’s trading system begins constructing an order message (e.g., an Ethernet Frame, TCP or IP packet, etc.). The trading system is designed so that if further information is received during construction that negates the desire or need to trade the order being constructed, the trading system will stop construction and submit the incomplete data to the Exchange. Because the incomplete data (e.g., a TCP/IP packet missing required TCP or IP fields such as Sequence Number or Destination Port) cannot be properly processed by a network switch or receiving device at the logical or physical entry point

to the CFE System, the receiving device will discard the data. If no further information is received by the trading system during construction that would negate the desire or need to trade the order, the trading system will complete construction of, and submit, the data so that an Order message from the trading system is able to reach the CFE System. The practice of submitting to the Exchange purposefully incomplete or malformed data packets has the potential to disrupt the systems of the Exchange and may violate Rule 620(b)(iv).

The purposeful submission of intentionally corrupted or malformed data packets has the potential to impact the systems of the Exchange and the Exchange believes that this activity serves no useful purpose. Accordingly, the proposed rule change further clarifies how this type of activity may violate Rule 620 and P&P XVIII.

The proposed rule change is consistent with similar updated guidance provided by other designated contract markets (“DCMs”) regarding disruptive practices.<sup>3</sup> 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 trading practices.

CFE also believes that the proposed rule change is consistent with the Electronic Trading Risk Principles recently adopted by the CFTC.<sup>4</sup> The Electronic Trading Risk Principles are intended to address the potential risk of a DCM’s trading platform experiencing a market

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<sup>3</sup> These DCMs are ICE Futures U.S., Inc. (“ICE”), 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., ICE Submission 21-44 (June 22, 2021) and CME Submission No. 20-306 (July 16, 2021), which are available on the CFTC website.

<sup>4</sup> See CFTC Final Rule regarding Electronic Trading Risk Principles, 86 FR 2048 (January 11, 2021).

disruption or system anomaly due to electronic trading. For example, CFTC Regulation 38.251(e)<sup>5</sup> provides that a DCM must adopt and implement rules governing market participants subject to its jurisdiction to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading. The proposed rule change furthers the goals of the Electronic Trading Risk Principles by making clear, among other things, (i) that market participants are expected to take reasonable steps or otherwise have controls to prevent, detect, and mitigate the occurrence of errors, market disruptions, and system anomalies and their impact on the market and (ii) that factors which may be considered in determining whether a market participant intended to disrupt, or demonstrated a reckless disregard for, the orderly conduct of trading or the fair execution of transactions include, but are not limited to, the impact to other market participants' ability to trade, engage in price discovery, or manage risk.

## 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 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,

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<sup>5</sup> 17 CFR § 38.251(e).

<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).

- 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, CFE Rule 608 (Acts Detrimental to the Exchange, Acts Inconsistent with Just and Equitable Principles of Trade; Abusive Practices) and CFE Rule 609 (Supervision). 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 purposefully submitting intentionally corrupted or malformed data packets to be within the scope of existing CFE rules, including 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 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 operation of the Exchange or the ability of other market participants to trade, engage in price discovery, or manage risk.

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 October 20, 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.<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-2021-008 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-2021-008. 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

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<sup>9</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 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-2021-008, 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>

J. Matthew DeLesDernier  
Assistant Secretary

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