



July 13, 2020

**VIA ELECTRONIC SUBMISSION**

Christopher Kirkpatrick  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street N.W.  
Washington, DC 20581

**Re: Part 190 Bankruptcy Regulations  
Notice of Proposed Rulemaking  
RIN 3038-AE67**

Dear Mr. Kirkpatrick:

This letter is in response to the request for comment by the Commodity Futures Trading Commission (“CFTC” or “Commission”) on a proposal to update Part 190 of CFTC regulations, which governs the distribution of assets in a bankruptcy of a futures commission merchant (“FCM”) or derivatives clearing organization (“DCO”) (the “Proposal”).<sup>1</sup>

Cboe Global Markets, Inc. (“Cboe”) is the creator of listed options, and operates a designated contract market (CFE); a swap execution facility (Cboe SEF); four U.S. options exchanges (Cboe Options, C2 Options, BZX Options, and EDGX Options), including the largest U.S. options exchange (Cboe Options); four U.S. stock exchanges (BYX Equities, BZX Equities, EDGA Equities, and EDGX Equities); one of the largest pan-European stock exchanges (Cboe Europe Equities); and a foreign exchange-trading platform (Cboe FX). Cboe sets the standard for options and volatility trading through product innovation, trading technology, and investor education. Cboe offers options and futures trading on various market indexes as well as options on the stocks of individual corporations and exchange-traded products, such as ETFs and exchange-traded notes.

Cboe appreciates the opportunity to comment on the Proposal to make clarifying updates to the regulations that govern bankruptcy proceedings for FCMs and DCOs.

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<sup>1</sup>85 FR 36000 (June 12, 2020).

Cboe applauds the Commission's clarification of insolvency regulations as they relate to the applicability of Part 190 of the Securities Investor Protection Act ("SIPA"). Specifically, Cboe supports clarity being added to §190.00(e) to address portfolio margining and cross margining programs.

Cboe is especially supportive of the Proposal to clarify § 190.00(e), which addresses account classes in the context of portfolio margining and cross margining programs. Cboe believes that there is great benefit to the ecosystem that results from expanded portfolio margining programs. Specifically, portfolio margining recognizes potential changes in value across the full portfolio of related instruments, all held within the same margin account. As a result, required margin is determined with reference to the risk of the entire portfolio of related products, as opposed to individual positions on a position-by-position basis. Cboe believes that portfolio margining would benefit market participants by promoting greater efficiencies in clearing with respect to offsetting positions in related instruments, thereby aligning capital costs more closely with the overall risks of an investor's portfolio.

Cboe believes that expanded portfolio margining programs could benefit the overall market by reducing systemic risks, promoting prudent and sound risk modelling by impacted firms, and allowing for greater uniformity in the treatment of related instruments, leading to greater regulatory and legal certainty, as well as the financial integrity of the markets. Further, Cboe argues that allowing for increased portfolio margining opportunities will increase market liquidity through capital and operational efficiencies, thus leading to enhanced innovation in the trading markets.

Moreover, the Proposal addresses the applicability of Part 190 as it relates to insolvent FCMs subject to a SIPA proceeding, as well as proceedings under the orderly liquidation authority provisions of Title II of the Dodd-Frank Act in the case of a commodity broker insolvency where the Federal Deposit Insurance Corporation acts as a receiver. Cboe supports the Proposal's clarification of the applicability of SIPA in bankruptcy proceedings of a firm that is dually registered as an FCM and a broker-dealer where the bankruptcy must be handled pursuant to SIPA rather than by the FCM rules. Today, many FCMs are also registered as broker-dealers under the Securities Exchange Act of 1934 and Cboe believes adding this clarity to Part 190 as it relates to bankruptcy proceedings under SIPA is beneficial to the entire ecosystem, including customers of FCMs and broker-dealers, as well as to further the ability of market participants to utilize portfolio margining and the associated efficiencies.

The Proposal makes changes seeking to clarify existing regulations, address ambiguities that have caused past complications, and avoid future ambiguities. Cboe is generally supportive of rulemakings that attempt to clarify rules and provide non-substantive updates that reflect current market practices.

Cboe is not providing comments on all of the proposed changes to the Part 190 bankruptcy regulations related to FCMs and DCOs that are contemplated in the Proposal. Rather, Cboe generally supports rulemakings that balance sound principles-based regulation with the evolution of our dynamic marketplace while providing clarity and flexibility where appropriate. All market participants benefit from clear rules that account for changes in current practices and general developments in the market. Cboe is supportive of the Commission's efforts in the Proposal to update the way bankruptcy

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proceedings are handled for FCMs and DCOs since the regulations were adopted in 1983<sup>2</sup> in order to incorporate current market practices and lessons learned.

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Cboe appreciates the opportunity to share its views on the Proposal. Cboe is supportive of the Commission's efforts to update and clarify Part 190.00(e) of CFTC Regulations relating to insolvency proceedings. Cboe believes that the updates contemplated by the Proposal will provide meaningful clarity, especially for dually registered firms to conduct insolvency proceedings pursuant to SIPA and the rules of the Securities Investor Protection Corporation. Cboe also believes that the clarifications to Part 190.00(e) in the Proposal will allow for broader implementation of portfolio margining between positions held in securities accounts and related positions held in futures accounts, which will increase capital efficiencies for numerous market participants, and as a result, additional capital for the provision of liquidity to the benefit of all market participants. Cboe welcomes the opportunity to discuss these comments further.

Sincerely,



Angelo Evangelou  
Chief Policy Officer  
Cboe Global Markets, Inc.

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<sup>2</sup> 48 FR 8716 (March 1, 1983).