



July 29, 2013

Via Electronic Mail

Ms. Melissa Jurgens  
Secretary  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21st Street, N.W.  
Washington, D.C. 20581

Re: CBOE Futures Exchange, LLC Rule Certification  
Submission Number CFE-2013-30

Dear Ms. Jurgens:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended ("Act"), and §40.6(a) of the regulations promulgated by the Commodity Futures Trading Commission ("CFTC" or "Commission") under the Act, CBOE Futures Exchange, LLC ("CFE" or "Exchange") hereby submits a CFE rule amendment ("Amendment") to clarify various CFE rule provisions. The Amendment will become effective on August 13, 2013.

CFE is amending the CFE rules identified below in the following manner in order to clarify certain aspects of those rules:

- CFE is amending CFE Rule 203 to clarify that CFE rules and rule amendments may be adopted by the CFE Board of Directors or its designee and shall become effective on the effective date determined by CFE after any required filing with the Commission and any required period prior to effectiveness or any approval by the Commission.
- CFE is amending CFE Rule 302(g) in three respects in order to clarify the requirement that no Person other than a CFE Trading Privilege Holder ("TPH") or its Related Parties may have direct electronic access to CFE's trading system (other than an Independent Software Vendor ("ISV") that provides connectivity to CFE's trading system to one or more TPHs). Rule 302(g) requires in this regard that any order entered by a Person, such as a customer, that is not a TPH or Related Party of a TPH must pass through a TPH's systems. First, CFE is amending Rule 302(g) to clarify that a Related Party in this context refers to an Authorized Trader (which is defined by CFE Rule 105 as any natural person who is a TPH or who is authorized by a TPH to access CFE's trading system on behalf of the TPH). Second, CFE is amending Rule 302(g) to clarify that, in addition to a TPH's own systems, a TPH's systems in this context shall be deemed to include a hosted system environment that an ISV makes available for use by a TPH that is controlled by the TPH (including in relation to access to the environment and risk control parameters applied within the

environment). Third, CFE is amending Rule 302(g) to clarify that in order to satisfy the requirement that an order pass through a TPH's systems, the order must be processed in a material manner by a TPH's systems and that solely passing through a TPH's network connection is not sufficient.

- CFE is amending CFE Rule 305 to make clear that CFE can defer action on a TPH application if there is just cause for delay and that one just cause for delay is when an applicant is the subject of an inquiry, investigation, or proceeding conducted by a self-regulatory organization or governmental authority that involves the applicant's fitness to be a TPH. CFE Rule 305 currently includes this authority in that it provides that CFE shall act upon a TPH application without unreasonable delay, and delaying action on a TPH application pending the outcome of a matter of this kind is a reasonable delay.
- CFE is amending the provisions of CFE Rule 305A and CFE Policy and Procedure VI regarding Pooled Investment Vehicle/Pool Manager TPHs and TPH Permits for these TPHs to clarify that a Pooled Investment Vehicle may have more than one Pool Manager for these purposes.
- CFE is amending CFE Rule 402(a) to clarify that CFE may permit bids and offers to be made in CFE contracts outside of trading hours while continuing to provide that no transactions may occur in CFE contracts outside of trading hours, except to the extent expressly permitted by CFE Rules. The reason for this clarification is that orders may be submitted to CFE's trading system during a specified timeframe prior to the opening of trading which are queued until trading hours commence.
- CFE is amending the prohibition against "spoofing" contained in CFE Rule 620(c) to clarify that language by exactly conforming it to the language in the statutory prohibition regarding "spoofing" contained in Section 4c(a)(5)(C) of the Act.
- CFE is amending CFE Policy and Procedure XIV, which sets forth the CBOE Holdings, Inc. and Subsidiaries Regulatory Independence Policy for Non-Regulatory Group Personnel, to add a clarifying sentence that is already contained in CFE Policy and Procedure XIII, which sets forth the CBOE Holdings, Inc. and Subsidiaries Regulatory Independence Policy for Regulatory Group Personnel. The clarifying sentence provides that any regulatory investigation, examination, inquiry, or complaint that is being investigated or brought by the Securities and Exchange Commission or any other regulator is included within the scope of the term "regulatory matter" for purposes of these Policies.

CFE believes that the Amendment is consistent with Designated Contract Market Core Principle 2 (Compliance with Rules) in that it clarifies CFE's access requirements and prohibition against "spoofing", Core Principle 7 (Availability of General Information) in that it clarifies CFE's rule provisions relating to effectiveness of rules and with respect to trading hours, and Core Principle 16 (Conflicts of Interest) in that it clarifies CFE's Regulatory Independence Policy for Non-Regulatory Group Personnel.

CFE believes that the impact of the Amendment will be beneficial to the public and market participants. CFE is not aware of any substantive opposing views to the Amendment. CFE hereby certifies that the Amendment complies with the Act and the regulations thereunder.

CFE further certifies that CFE has posted a notice of pending certification with the Commission and a copy of this submission on CFE's Web site (<http://cfe.cboe.com/aboutcfe/rules.aspx>) concurrent with the filing of this submission with the Commission.

The Amendment, marked to show additions in underlined text and deletions in [bracketed] text, consists of the following:

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## **CBOE Futures Exchange, LLC Rules**

### **CFE Rule 203. Effectiveness of Rules**

Unless otherwise specified by the Board, all Rules of the Exchange and amendments thereto from time to time adopted by the Board or its designee shall become effective on such date (after any required filing with[,] the Commission and required period prior to effectiveness or any approval thereof by[,] the Commission) as may be determined by the Exchange.

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### **CFE Rule 302. Trading Privilege Holders**

(a) - (f) No changes.

(g) Other than as permitted by this Rule 302 in relation to Independent Software Vendors that provide connectivity to the CBOE System on behalf of one or more Trading Privilege Holders, no Person other than a Trading Privilege Holder and its Authorized Traders [Related Parties] may have direct electronic access to the CBOE System. Without limiting the generality of the foregoing, no Person, such as a Customer, that is not a Trading Privilege Holder or Authorized Trader [Related Party of a Trading Privilege Holder] may enter Orders directly into the CBOE System for execution. Instead, any Order entered by a Person, such as a Customer, that is not a Trading Privilege Holder or Authorized Trader [Related Party of a Trading Privilege Holder] must pass through a Trading Privilege Holder's system(s) and be processed in a material manner by the Trading Privilege Holder's system(s) before receipt of the Order by the CBOE System. In addition to a Trading Privilege Holder's own system(s), a Trading Privilege Holder's system(s) shall be deemed to include for this purpose a hosted system environment of an Independent Software Vendor that the Independent Software Vendor makes available for use by a Trading Privilege Holder and that is controlled by the Trading Privilege Holder, including in relation to access to the environment and risk control parameters applied within the environment. Solely passing through a Trading Privilege Holder's network connection is not sufficient to satisfy the requirement that an Order pass through and be processed in a material manner by a Trading Privilege Holder's system(s). No Trading Privilege Holder or Related Party shall facilitate or assist in providing a Person that is not a Trading Privilege Holder or Authorized Trader [Related Party of a Trading Privilege Holder] with direct electronic access to the CBOE System.

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### **CFE Rule 305. Application for Trading Privileges**

(a) Each applicant for Trading Privileges shall submit an application to the Exchange in a form and manner prescribed by the Exchange. Each applicant shall promptly update the

application materials if any of the information provided therein becomes inaccurate or incomplete after the date of submission and prior to any approval of the application. [The Exchange shall act upon, and approve or disapprove, any such application without unreasonable delay.] Upon completion of the application process, the Exchange shall determine whether to approve or disapprove the application, unless there is a just cause for delay. One such just cause for delay is when an applicant for Trading Privileges is the subject of an inquiry, investigation, or proceeding conducted by a self-regulatory organization or governmental authority that involves the applicant's fitness to be a Trading Privilege Holder. In such instance, the Exchange may defer taking action on the application until the matter has been resolved.

(b) - (d) No changes.

#### **CFE Rule 305A. Pooled Investment Vehicles**

With respect to any pooled investment vehicle ("Pool") and any entity that acts as an operator, investment manager, investment advisor or in any other similar managerial or advisory capacity to, and/or that otherwise exercises discretionary authority on behalf of, a Pool ("Pool Manager") that is approved for Trading Privileges, (i) the term "Trading Privilege Holder" shall be deemed to include the Pool together with the Pool Manager(s) and (ii) the Pool and the Pool Manager(s) are each subject to the Rules of the Exchange (including, without limitation, the requirements of Rule 305B) and to the jurisdiction of the Exchange as applicable to Trading Privilege Holders. If an entity serves as a Pool Manager of multiple Pools, a separate approval must be obtained from the Exchange for each Pool that intends to avail itself of the benefits of Trading Privileges on the Exchange, including any Trading Privilege Holder fee rates for transactions on the Exchange on behalf of the Pool.

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#### **CFE Rule 402. Trading Hours**

(a) The Exchange shall from time to time determine (i) on which days the Exchange shall be regularly open for business in any Contract ("Business Days") and (ii) during which hours trading in any Contract may regularly be conducted on such days ("Trading Hours"). Trading Hours shall include any regular and extended trading hours under the rules governing the relevant Contract. Except to the extent expressly permitted by the Rules of the Exchange, no Trading Privilege Holder (including its Authorized Traders) shall [make any bid or offer for, or] engage in any transaction in[, ] any Contract before or after such hours.

(b) - (c) No changes.

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#### **CFE Rule 620. Disruptive Practices**

No Trading Privilege Holder nor any of its Related Parties shall engage in any trading, practice or conduct on the Exchange or subject to the Rules of the Exchange that:

(a) - (b) No changes.

(c) Is, is of the character of, or is commonly known [as] to the trade as "spoofing" (bidding or offering with the intent to cancel the bid or offer before execution).

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**CBOE Futures Exchange, LLC  
Policies and Procedures**

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**CFE Policy and Procedure VI. Trading Privilege Holder Permit Program**

Any Person that desires to become a Trading Privilege Holder is required to obtain a Trading Privilege Holder permit ("TPH Permit").

Initially, the Exchange will make available 2,500 TPH Permits. The Exchange may subsequently make available additional TPH Permits if the initial supply of 2,500 TPH Permits is exhausted.

TPH Permits may be obtained by any Person that is a trading permit holder of CBOE with CBOE trading privileges and any other Person that satisfies the requirements set forth in Rule 304(a).

Each Person desiring to obtain a TPH Permit must submit an application to the Exchange in a form and manner prescribed by the Exchange pursuant to Rule 305 and become approved by the Exchange as a Trading Privilege Holder. Each Trading Privilege Holder may permit one or more individuals to act as its Authorized Traders pursuant to Rule 303.

Any organization that desires to become a Clearing Member of the Exchange is required to become a Trading Privilege Holder and to obtain a TPH Permit. Additionally, in order to be an Exchange Clearing Member, an organization is required to be a member of the Clearing Corporation that is authorized under the rules of the Clearing Corporation to clear trades in Contracts traded on the Exchange.

CFE issues two different types of TPH Permits. The first type of TPH Permit is the Order Entry Trading Permit that provides an order entry bandwidth allowance, up to three logins to the CBOE System and Trading Privilege Holder status. The second type of TPH Permit is the Quoting and Order Entry Trading Permit that provides a quoting and order entry bandwidth allowance, up to three logins to the CBOE System and Trading Privilege Holder status. If additional logins and/or bandwidth are required, Trading Privilege Holders must obtain one or more additional TPH Permits, as applicable.

A Pool Manager may obtain a single TPH Permit for the Pool Manager and all of the Pools approved under Rule 305A for which it acts as Pool Manager. If there is more than one Pool Manager for a Pool or Pools, the Pool Managers for the Pool(s) may obtain a single Trading Permit for the Pool Managers and all of the Pools approved under Rule 305A for which they act as Pool Manager.

TPH Permit holders shall have all of the rights and obligations of Trading Privilege Holders under the Rules of the Exchange except to the extent otherwise provided under this Policy and the Rules of the Exchange.

Any recipient of a TPH Permit as permitted by Rule 302 is required to provide the Exchange with the appropriate application materials and to be approved as a Trading Privilege Holder pursuant to Rule 304 before the recipient will be permitted to act as a Trading Privilege Holder.

A TPH Permit is non-transferable, non-assignable and may not be sold or leased, except that a Trading Privilege Holder may, with the prior written consent of the Exchange, transfer a TPH Permit to a Trading Privilege Holder organization or organization approved to be a Trading Privilege Holder: (i) which is an Affiliate; or (ii) which continues substantially the same business without regard to the form of the transaction used to achieve such continuation, e.g., merger, sale of substantially all assets, reincorporation, reorganization or the like.

The term of each TPH Permit that is issued and outstanding at the end of 2012 shall be automatically extended until December 31, 2013 unless the TPH Permit holder notifies the Exchange in a form and manner and within the time period prescribed by the Exchange that the TPH Permit holder would like to have the TPH permit expire on December 31, 2012. All TPH Permits issued and outstanding during 2013 shall expire on December 31, 2013. The Exchange may determine to extend the term of TPH Permits or allow TPH Permits to expire and replace the TPH Permit program with a different permit program.

All Exchange fees applicable to TPH Permit holders and all other Exchange fees will be as set forth in a separate Exchange fee schedule.

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#### **CFE Policy and Procedure XIV. CBOE Holdings, Inc. and Subsidiaries Regulatory Independence Policy for Non-Regulatory Group Personnel**

##### **Summary**

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##### **Purpose**

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##### **Persons Subject to the Policy**

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##### **The Independence of the Regulatory Group**

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##### **Communications Regarding Regulatory Matters**

Except as otherwise provided below, no director of any CBOE Company or any employee of a CBOE Company engaged in activities outside of the Regulatory Group shall engage in any communications with personnel of the Regulatory Group about any regulatory matter. Regulatory matters include regulatory investigations, examinations, inquiries or complaints either from or about a regulated entity or person concerning existing or anticipated regulatory actions and all investigative and surveillance activities of the Regulatory Services Division, and the planning and development of examination programs and surveillance procedures. Regulatory matters also include any regulatory investigation, examination, inquiry or complaint that is being investigated or brought by the SEC or any other regulator. Regulatory matters do not include regulatory inquiries about CBOE or its employees or representatives or activities related to

potential legislation, rule-making or general regulatory policies that do not include specific facts about existing or anticipated regulatory investigations, examinations or actions.

As exceptions to this restriction, directors and non-Regulatory Group employees of a CBOE Company may discuss regulatory matters with Regulatory Group personnel to the extent such communications are:

- Initiated by the Regulatory Group personnel in order to obtain information reasonably necessary to carry out the Regulatory Services Division's regulatory activities;
- For the purpose of alerting the Regulatory Services Division to the existence of a possible regulatory violation;
- Between Regulatory Group personnel and members of the Regulatory Oversight Committees of CBOE, C2, or CFE;
- Between Regulatory Group personnel and directors of a CBOE Company to the extent the communication is relevant to the Board's self-regulatory responsibilities;
- For the limited purpose of determining whether an application to become a trading permit or privilege holder should be approved or in connection with mandatory reporting obligations;
- For the limited purpose of conveying the final disposition of a regulatory matter;
- Between Regulatory Group personnel and a director of a CBOE Company concerning an appeal from a regulatory decision that the director is involved in deciding;
- Between Regulatory Group personnel and a director of a CBOE Company concerning a regulatory matter involving that director or a firm that employs that director; or
- Authorized by the Regulatory Group's Chief Regulatory Officer or CBOE's General Counsel.

Directors and employees of a CBOE Affiliate may discuss issues concerning the management, budget and financial planning issues of the Regulatory Services Division with Regulatory Group personnel, provided that those communications do not include specific facts about existing or anticipated regulatory investigations, examinations or actions.

### **Responding To Communications Regarding Regulatory Matters**

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### **Violations of the Policy**

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Questions regarding this submission may be directed to Arthur Reinstein at (312) 786-7570 or Jenny Golding at (312) 786-7466. Please reference our submission number CFE-2013-30 in any related correspondence.

CBOE Futures Exchange, LLC

A handwritten signature in black ink, appearing to read "James F. Lubin". The signature is fluid and cursive, with the first name "James" written in a larger, more prominent script than the last name "Lubin".

By: James F. Lubin  
Senior Managing Director

cc: Nancy Markowitz (CFTC)  
National Futures Association  
The Options Clearing Corporation