

August 7, 2017

Christopher J. Kirkpatrick
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-2017-013

Dear Mr. Kirkpatrick:

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 amend CFE Rules 502 (Inspection and Delivery) and Rule 535 (Compliance with Commission Regulation 1.31 – Regulatory Records; Retention and Production). The Amendment will become effective on August 28, 2017.

CFE Rule 502 sets forth CFE’s requirements relating to record retention periods and the inspection and delivery of books and records. CFE Rule 535 provides that any CFE Trading Privilege Holder subject to Commission Regulation 1.31 that violates Commission Regulation 1.31 shall be deemed to have violated Rule 535. Rule 535 also includes the text of Commission Regulation 1.31 within Rule 535.

The CFTC recently issued a final rulemaking regarding recordkeeping requirements which amends Commission Regulation 1.31.¹ The amendments to Commission Regulation 1.31 become effective on August 28, 2017. CFE is amending Rules 502 and 535 to conform them to amended Commission Regulation 1.31. Rule 502 continues to provide for a five year record retention period consistent with Commission Regulation 1.31. In conformity with amended Commission Regulation 1.31, CFE is amending Rule 502 to provide that required books and records exclusively created and maintained on paper shall be readily accessible during the first two years of that five year period and that electronic books and records shall be readily accessible for the entire five year period. CFE is amending Rule 535 to replace the previous text of Commission Regulation 1.31 with the new text of Commission Regulation 1.31.

CFE believes that the Amendment is consistent with DCM Core Principles 2 (Compliance with Rules) and 18 (Recordkeeping) under Section 5 of the Act in that the Amendment updates Rules 502 and 535 to be consistent with the recordkeeping requirements in amended Commission Regulation 1.31.

CFE believes that the impact of the Amendment will be beneficial to the public and

¹ 82 FR 24479 (May 30, 2017).

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:

* * * * *

CBOE Futures Exchange, LLC
Rules

* * * * *

Rule 502. Inspection and Delivery

Each Trading Privilege Holder and Clearing Member shall keep all books and records required to be kept by it pursuant to the Rules of the Exchange for a period of five years from the date on which they are first prepared, unless otherwise provided in the Rules of the Exchange or required by law. Any such [Such] books and records exclusively created and maintained on paper shall be readily accessible during the first two years of that [such] five-year period and any such electronic books and records shall be readily accessible during that entire five-year period. During such five-year period, all such books and records shall be made available for inspection by, and copies thereof shall be delivered to, the Exchange and its authorized representatives upon request in a form and manner prescribed by the Exchange and within the time frame designated by the Exchange and its authorized representatives.

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Rule 535. Compliance with Commission Regulation 1.31 – [Books and Records; Keeping and Inspection] Regulatory Records; Retention and Production

Any Trading Privilege Holder subject to Commission Regulation 1.31 that violates Commission Regulation 1.31 shall be deemed to have violated this Rule 535. Commission Regulation 1.31 is set forth below and incorporated into this Rule 535.

Commission Regulation 1.31 – [Books and records; keeping and inspection.] Regulatory records; retention and production.

(a) Definitions. For purposes of this section:

Electronic regulatory records means all regulatory records other than regulatory records exclusively created and maintained by a records entity on paper.

Records entity means any person required by the Act or Commission regulations in this chapter to keep regulatory records.

Regulatory records means all books and records required to be kept by the Act or Commission regulations in this chapter, including any record of any correction or other

amendment to such books and records, provided that, with respect to such books and records stored electronically, regulatory records shall also include:

(i) Any data necessary to access, search, or display any such books and records; and

(ii) All data produced and stored electronically describing how and when such books and records were created, formatted, or modified.

(b) *Duration of retention.* Unless specified elsewhere in the Act or Commission regulations in this chapter:

(1) A records entity shall keep regulatory records of any swap or related cash or forward transaction (as defined in § 23.200(i) of this chapter), other than regulatory records required by § 23.202(a)(1) and (b)(1)–(3) of this chapter, from the date the regulatory record was created until the termination, maturity, expiration, transfer, assignment, or novation date of the transaction and for a period of not less than five years after such date.

(2) A records entity that is required to retain oral communications, shall keep regulatory records of oral communications for a period of not less than one year from the date of such communication.

(3) A records entity shall keep each regulatory record other than the records described in paragraphs (b)(1) or (b)(2) of this section for a period of not less than five years from the date on which the record was created.

(4) A records entity shall keep regulatory records exclusively created and maintained on paper readily accessible for no less than two years. A records entity shall keep electronic regulatory records readily accessible for the duration of the required record keeping period.

(c) *Form and manner of retention.* Unless specified elsewhere in the Act or Commission regulations in this chapter, all regulatory records must be created and retained by a records entity in accordance with the following requirements:

(1) *Generally.* Each records entity shall retain regulatory records in a form and manner that ensures the authenticity and reliability of such regulatory records in accordance with the Act and Commission regulations in this chapter.

(2) *Electronic regulatory records.* Each records entity maintaining electronic regulatory records shall establish appropriate systems and controls that ensure the authenticity and reliability of electronic regulatory records, including, without limitation:

(i) Systems that maintain the security, signature, and data as necessary to ensure the authenticity of the information contained in electronic regulatory records and to monitor compliance with the Act and Commission regulations in this chapter;

(ii) Systems that ensure the records entity is able to produce electronic regulatory records in accordance with this section, and ensure the availability of such regulatory records in the event of an emergency or other disruption of the records entity's electronic record retention systems; and

(iii) The creation and maintenance of an up-to-date inventory that identifies and describes each system that maintains information necessary for accessing or producing electronic regulatory records.

(d) *Inspection and production of regulatory records.* Unless specified elsewhere in the Act or Commission regulations in this chapter, a records entity, at its own expense, must produce or make accessible for inspection all regulatory records in accordance with the following requirements:

(1) *Inspection.* All regulatory records shall be open to inspection by any representative of the Commission or the United States Department of Justice.

(2) *Production of paper regulatory records.* A records entity must produce regulatory records exclusively created and maintained on paper promptly upon request of a Commission representative.

(3) *Production of electronic regulatory records.* (i) A request from a Commission representative for electronic regulatory records will specify a reasonable form and medium in which a records entity must produce such regulatory records.

(ii) A records entity must produce such regulatory records in the form and medium requested promptly, upon request, unless otherwise directed by the Commission representative.

(4) *Production of original regulatory records.* A records entity may provide an original regulatory record for reproduction, which a Commission representative may temporarily remove from such entity's premises for this purpose. Upon request of the records entity, the Commission representative shall issue a receipt for any original regulatory record received. At the request of a Commission representative, a records entity shall, upon the return thereof, issue a receipt for the original regulatory record returned by such representative.

[(a)(1) All books and records required to be kept by the Act or by these regulations shall be kept for a period of five years from the date thereof and shall be readily accessible during the first 2 years of the 5-year period. All such books and records shall be open to inspection by any representative of the Commission or the United States Department of Justice.

(2) A copy of any book or record required to be kept by the Act or by these regulations shall be provided, at the expense of the person required to keep the book or record, to a Commission representative upon the representative's request. Instead of furnishing a copy, such person may provide the original book or record for reproduction, which the representative may temporarily remove from such person's premises for this purpose. All copies or originals shall be provided promptly. Upon request, the Commission representative shall issue a receipt provided by such person for any copy or original book or record received. At the request of the Commission representative, such person shall, upon the return thereof, issue a receipt for any copy or original book or record returned by the representative.

(b) Except as provided in paragraph (d) of this section, immediate reproductions on either "micrographic media" (as defined in paragraph (b)(1)(i) of this section) or "electronic storage media" (as defined in paragraph (b)(1)(ii) this section) may be kept in that form for the required time period under the conditions set forth in this paragraph (b).

(1) For purposes of this section:

- (i) The term “micrographic media” means microfilm or microfiche or any similar medium.
- (ii) The term “electronic storage media” means any digital storage medium or system that:
 - (A) Preserves the records exclusively in a non-rewritable, non-erasable format;
 - (B) Verifies automatically the quality and accuracy of the storage media recording process;
 - (C) Serializes the original and, if applicable, duplicate units of storage media and creates a time-date record for the required period of retention for the information placed on such electronic storage media; and
 - (D) Permits the immediate downloading of indexes and records preserved on the electronic storage media onto paper, microfilm, microfiche or other medium acceptable under this paragraph upon the request of representatives of the Commission or the Department of Justice.
- (2) Persons who use either micrographic media or electronic storage media to maintain records in accordance with this section must:
 - (i) Have available at all times, for examination by representatives of the Commission or the Department of Justice, facilities for immediate, easily readable projection or production of micrographic media or electronic storage media images;
 - (ii) Be ready at all times to provide, and immediately provide at the expense of the person required to keep such records, any easily readable hard-copy image that representatives of the Commission or Department of Justice may request;
 - (iii) Keep only Commission-require records on the individual medium employed (e.g., a disk or sheets of microfiche);
 - (iv) Store a duplicate of the record, in any medium acceptable under this regulation, at a location separate from the original for the period of time required for maintenance of the original; and
 - (v) Organize and maintain an accurate index of all information maintained on both the original and duplicate storage media such that:
 - (A) The location of any particular record stored on the media may be immediately ascertained;
 - (B) The index is available at all times for immediate examination by representatives of the Commission or the Department of Justice;
 - (C) A duplicate of the index is stored at a location separate from the original index; and
 - (D) Both the original index and the duplicate index are preserved for the time period required for the records included in the index.
- (3) In addition to the foregoing conditions, persons using electronic storage media must:
 - (i) Be ready at all times to provide, and immediately provide at the expense of the person required to keep such records, copies of such records on such approved machine-readable media as

defined in §15.00(1) of this chapter which any representative of the Commission or the Department of Justice may request. Records must use a format and coding structure specified in the request.

(ii) Develop and maintain written operational procedures and controls (an “audit system”) designed to provide accountability over both the initial entry of required records to the electronic storage media and the entry of each change made to any original or duplicate record maintained on the electronic storage media such that:

(A) The results of such audit system are available at all times for immediate examination by representatives of the Commission or the Department of Justice;

(B) The results of such audit system are preserved for the time period required for the records maintained on the electronic storage media; and

(C) The written operational procedures and controls are available at all times for immediate examination by representatives of the Commission or the Department of Justice.

(iii) Either

(A) Maintain, keep current, and make available at all times for immediate examination by representatives of the Commission or Department of Justice all information necessary to access records and indexes maintained on the electronic storage media; or

(B) Place in escrow and keep current a copy of the physical and logical format of the electronic storage media, the file format of all different information types maintained on the electronic storage media and the source code, documentation, and information necessary to access the records and indexes maintained on the electronic storage media.

(4) In addition to the foregoing conditions, any person who uses only electronic storage media to preserve some or all of its required records (“Electronic Recordkeeper”) shall, prior to the media's use, enter into an arrangement with at least one third party technical consultant (“Technical Consultant”) who has the technical and financial capability to perform the undertakings described in this paragraph (b)(4). The arrangement shall provide that the Technical Consultant will have access to, and the ability to download, information from the Electronic Recordkeeper's electronic storage media to any medium acceptable under this regulation.

(i) The Technical Consultant must file with the Commission an undertaking in a form acceptable to the Commission, signed by the Technical Consultant or a person duly authorized by the Technical Consultant. An acceptable undertaking must include the following provision with respect to the Electronic Recordkeeper:

With respect to any books and records maintained or preserved on behalf of the Electronic Recordkeeper, the undersigned hereby undertakes to furnish promptly to any representative of the United States Commodity Futures Trading Commission or the United States Department of Justice (the “Representative”), upon reasonable request, such information as is deemed necessary by the Representative to download information kept on the Electronic Recordkeeper's electronic storage media to any medium acceptable under 17 CFR 1.31. The undersigned also undertakes to take reasonable steps to provide access to information contained on the Electronic Recordkeeper's electronic storage media, including, as appropriate, arrangements for the downloading of any record required to be maintained under the Commodity Exchange Act or the rules, regulations, or

orders of the United States Commodity Futures Trading Commission, in a format acceptable to the Representative. In the event the Electronic Recordkeeper fails to download a record into a readable format and after reasonable notice to the Electronic Recordkeeper, upon being provided with the appropriate electronic storage medium, the undersigned will undertake to do so, at no charge to the United States, as the Representative may request.

(ii) [Reserved]

(c) Persons employing an electronic storage system shall provide a representation to the Commission prior to the initial use of the system. The representation shall be made by the person required to maintain the records, the storage system vendor, or another third party with appropriate expertise and shall state that the selected electronic storage system meets the requirements set forth in paragraph (b)(1)(ii) of this section. Persons employing an electronic storage system using media other than optical disk or CD-ROM technology shall so state. The representation shall be accompanied by the type of oath or affirmation described in §1.10(d)(4).

(d) Trading cards, documents on which trade information is originally recorded in writing, written orders required to be kept pursuant to §1.35(a), (a-1)(1), (a-1)(2) and (d), and paper copies of electronically filed certified Forms 1-FR and FOCUS Reports with the original manually signed certification must be retained in hard-copy for the required time period.]

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Questions regarding this submission may be directed to Arthur Reinstein at (312) 786-7570 or Nicole Gordon at (312) 786-8109. Please reference our submission number CFE-2017-013 in any related correspondence.

CBOE Futures Exchange, LLC

A handwritten signature in dark ink, appearing to read 'Andrew Lowenthal', is written over a light blue rectangular background.

By: Andrew Lowenthal
Senior Managing Director