



December 15, 2020

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-2020-036

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 reflect that National Futures Association (“NFA”) will no longer provide regulatory services to CFE and to update CFE’s arbitration rules in connection with CFE’s continued use of NFA as the designated forum for arbitrations under CFE rules. The Amendment will become effective on January 1, 2021, unless a different implementation date were to be announced by the Exchange through the issuance of an Exchange notice.

NFA currently provides regulatory services to CFE under a Regulatory Services Agreement between CFE and NFA dated as of August 20, 2019 (“RSA”). NFA performs certain surveillance, investigative, and regulatory functions for CFE under the RSA. The RSA is scheduled to expire at the end of 2020. Upon the expiration of the RSA, CFE will assume the performance of the surveillance, investigative, and regulatory functions currently conducted for CFE by NFA.

In connection with the transition to CFE of the regulatory functions currently performed by NFA, the Amendment deletes CFE Rule 217 (Regulatory Services Agreement with NFA). Rule 217 currently notes that CFE has contracted with NFA to provide certain regulatory services to CFE and that CFE may provide information to and receive information from NFA in connection with the performance by NFA of those functions. CFE is deleting Rule 217 due to the expiration of the RSA. For the avoidance of doubt, the deletion of Rule 217 would not restrict CFE and NFA from exchanging information in connection with NFA’s prior performance of regulatory functions for CFE during the term of the RSA or any prior RSA between CFE and NFA, pursuant to information sharing agreements to which CFE and NFA are parties, or pursuant to the separate agreement described below to be entered into by CFE and NFA relating to CFE’s utilization of NFA as its arbitration forum.

Under the RSA, CFE currently utilizes NFA as its arbitration forum for the resolution of disputes that must or may be arbitrated pursuant to CFE’s rules governing arbitrations. Because the RSA is expiring, CFE and NFA are entering into a separate agreement that will become effective on January 1, 2021 to govern CFE’s use of NFA as the forum for arbitrations under CFE rules. CFE’s

arbitration rules are included in Chapter 8 (Arbitration) of the CFE Rulebook. Under Chapter 8, disputes between a customer and a CFE Trading Privilege Holder (“TPH”) (including Related Parties) (“Customer Disputes”) are arbitrated in accordance with NFA’s Code of Arbitration (“Code”) and disputes between TPHs (including Related Parties) (“TPH Disputes”) are arbitrated in accordance with NFA’s Member Arbitration Rules (“Member Rules”). Part B of Policy and Procedure III (Resolution of Error Trades) of the Policies and Procedures Section of the CFE Rulebook (“P&P III.B”) also includes a section regarding the arbitration of disputes in relation to certain error trades.

Since NFA currently acts as the forum for arbitrations under CFE rules and will continue to do so, CFE is leaving Chapter 8 largely intact with one minor modification and a non-substantive wording change. CFE is also making some updates to P&P III.B to further conform P&P III.B with the Code and Member Rules. The Amendment includes the following revisions to Chapter 8 and P&P III.B relating to arbitrations:

- Arbitrations under CFE rules are currently subject to the Arbitration Fees set forth in the Member Rules. This will continue to be the case under the Amendment, except that the Amendment revises CFE Rule 801 (Matters Subject to Arbitration; Incorporation by Reference) to provide that those fees shall be assessed to the parties by CFE rather than by NFA and that the assessment of those fees shall occur following the conclusion of NFA’s administration of the arbitration proceeding.
- The Amendment moves the location of the definition of the Member Rules within Rule 801.
- The Amendment removes reference from P&P III.B to a deadline for the submission of an arbitration claim pursuant to P&P III.B, to considerations in deciding this type of claim, and to a maximum recovery amount for this type of claim. With the removal of the submission deadline under P&P III.B, the submission time frame for this type of arbitration claim will be the time frame for the submission of an arbitration claim as provided for under the Code or Member Rules, as applicable. Similarly, the removal of the other two above-referenced provisions from P&P III.B will promote consistency with the Code and Member Rules which do not bind arbitrators to considering specified factors in deciding an arbitration claim and do not cap the recovery amount for an arbitration claim.

CFE believes that the Amendment is consistent with Designated Contract Market Core Principles 2 (Compliance with Rules), 4 (Prevention of Market Disruption), 5 (Position Limitations and Accountability), 12 (Protection of Markets and Market Participants), and 14 (Dispute Resolution) under Section 5 of the Act. CFE will assume the performance of the surveillance, investigative, and regulatory functions currently conducted for CFE by NFA. In performing these functions following the expiration of the RSA, CFE will be furthering CFE’s compliance with its obligations under Core Principle 2 relating to monitoring and enforcing compliance with CFE rules and to detecting and investigating violations of CFE rules, such as CFE rules prohibiting abusive trading practices; under Core Principle 4 relating to evaluating data regarding market activity on CFE in order to seek to detect and prevent manipulation, price distortions, and disruptions to the cash-settlement process; under Core Principle 5 relating to monitoring for adherence to CFE position limit and accountability requirements; and under Core Principle 12 relating to enforcing CFE rules that are designed to promote fair and equitable trading and to protect the market and market participants from abusive practices, including fraudulent, noncompetitive, and unfair actions. CFE believes that the Amendment is also consistent with Core Principle 14 in that CFE will continue to provide facilities for alternative dispute resolution by providing for NFA to administer the forum for the arbitration of disputes under CFE rules and in that the Amendment furthers consistency between CFE’s arbitration rule provisions and the Code and

Member Rules.

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://markets.cboe.com/us/futures/regulation/rule\\_filings/cfe/](http://markets.cboe.com/us/futures/regulation/rule_filings/cfe/)) concurrent with the filing of this submission with the Commission.

The Amendment, marked to show additions in underlined text and deletions in ~~stricken~~ text, consists of the following:

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### **Cboe Futures Exchange, LLC Rules**

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#### **217. Reserved ~~Regulatory Services Agreement with NFA~~**

~~The Exchange has contracted with NFA to provide certain regulatory services to the Exchange pursuant to a Regulatory Services Agreement. In accordance that Agreement, NFA may perform certain surveillance, investigative, and regulatory functions under the Rules of the Exchange. The Exchange may provide information to and receive information from NFA in connection with the performance by NFA of those functions.~~

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### **CHAPTER 8 ARBITRATION**

#### **801. Matters Subject to Arbitration; Incorporation by Reference**

(a) Matters subject to arbitration under this Chapter 8:

(i) Any dispute, claim or controversy for which arbitration is sought by a Customer against a Trading Privilege Holder (including Related Parties) or by a Trading Privilege Holder (including Related Parties) against a Customer, shall be arbitrated in accordance with NFA's Code of Arbitration ("Code"), ~~subject to the Arbitration Fees set forth in NFA's Member Arbitration Rules ("Member Rules")~~, provided that:

(A) The arbitration filing satisfies the timeliness requirements set forth in Section 5 and 6 of the Code;

(B) The dispute, claim or controversy arises out of any transaction executed on or subject to the Rules of the Exchange and is executed or effected through the Trading Privilege Holder;

(C) The matter does not require for adjudication the presence of essential witnesses or third parties over whom the Exchange does not have

jurisdiction and who are not otherwise available, and

(D) If the claim is brought by the Trading Privilege Holder (including a Related Parties) against a Customer, the Trading Privilege Holder (including Related Parties) has satisfied the requirements of Commission Rule 166.5, if applicable, or the Customer has consented to the arbitration.

(ii) Any dispute, claim or controversy brought by a Trading Privilege Holder or Related Party against another Trading Privilege Holder or Related Party in connection with or otherwise related to the Exchange business of such parties shall be arbitrated in accordance with ~~the~~ NFA's Member Arbitration Rules ("Member Rules"), provided the arbitration filing satisfies the timeliness requirements set forth in Sections 4 and 5 of the Member Rules.

(b) All challenges to the appropriateness of submitting a matter to arbitration under this Chapter 8 shall be decided in accordance with the Code in relation to matters brought under Rule 801(a)(i) and in accordance with the Member Rules in relation to matters brought under Rule 801(a)(ii).

(c) Notwithstanding anything to the contrary set forth in the Code and Member Rules: Trading Privilege Holders shall comply with the forum election and notice provisions set forth in Commission Regulations § 166.5(c)(3)-(5) to the extent required to do so. Parties to any matter arbitrated under this Chapter shall be provided with an opportunity for a prompt hearing under, and in accordance with, the Code and Member Rules. The procedures for resolving an arbitration between or among parties who are Trading Privilege Holders or Related Parties shall be independent of, and shall not interfere with or delay, the resolution of Customer claims or grievances in an arbitration under this Chapter 8.

(d) Without limiting the generality of other permitted disclosure of information by the Exchange to NFA, the Exchange may disclose to NFA the contact information for a Trading Privilege Holder as it appears on the books and records of the Exchange in connection with NFA's administration of an arbitration proceeding pursuant to this Chapter 8.

(e) The Arbitration Fees set forth in NFA's Member Arbitration Rules ("Member Rules") shall apply in relation to all matters brought under Rule 801(a)(i) and Rule 801(a)(ii), except that those fees shall be assessed to the parties by the Exchange rather than by NFA and the assessment of those fees shall occur following the conclusion of NFA's administration of the arbitration proceeding.

(ef) The Code and Member Rules, as they may be amended or modified from time to time, are hereby incorporated by reference into this Chapter 8.

## **802. Failure to Honor Award or Settlement**

Any Trading Privilege Holder or Authorized Trader who fails to honor an arbitral award or settlement rendered under this Chapter 8 shall be subject to disciplinary proceedings in accordance with Chapter 7.

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**Cboe Futures Exchange, LLC**  
**Policies and Procedures Section of Rulebook**

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**Policy and Procedure III. Resolution of Error Trades (Rule 416)**

Part A.           No changes.

**B.       Policy When Error Trade Not Brought to Trade Desk's Attention Within Time Limit**

This Part B applies only to any error trade that cannot be busted under Part A above because it was not brought to the Trade Desk's attention within the eight-minute time limit specified therein. The procedures described in this Part B cannot be used if the trade price of the error trade in question was within the "no bust range" for the relevant Contract at the relevant time.

1.       *Both Parties Agree to Transfer Position*

Upon the request of either party to an error trade that cannot be busted under Part A above, the Exchange may disclose to that party the identity of the other party to the trade. If both parties to an error trade agree, they may transfer the position resulting from such trade between each other. Any such transfer must be made at the original trade price and for the same quantity as the original trade. The parties may also, but are not required to, provide for a cash adjustment to compensate one side of such error trade. Any such transfer must be reported to the Exchange in a form and manner prescribed by the Exchange.

2.       *Arbitration of Disputes*

If the parties to an error trade do not agree to transfer the position resulting from such trade, then the party causing such trade may file an arbitration claim against the Trading Privilege Holder representing the other side in accordance with the arbitration rules incorporated by reference into Chapter 8. ~~Any such arbitration claim must be filed not later than by the close of business on the Business Day immediately succeeding the day on which such error trade occurred.~~ Any such arbitration claim will be dismissed if the owner of the account on the other side of the error trade is not a Trading Privilege Holder or any Person otherwise subject to the jurisdiction of the arbitration. If not dismissed, arbitration proceedings will be conducted in accordance with the arbitration rules incorporated by reference into Chapter 8. ~~In deciding the claim, consideration will be given to, among other factors, the reasonableness of the actions taken by each party and what action (e.g., laying off the position in another market) the party on the other side of the error trade took before being notified that such trade was being questioned. The maximum amount that can be recovered in any such arbitration proceedings is the difference between the error trade price and the true market price for the relevant Contract immediately before such error trade occurred, as determined on the basis of the factors listed in Part A above.~~

Part C - M       No changes.

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Questions regarding this submission may be directed to Arthur Reinstein at (312) 786-7570 or Michael Margolis at (312) 786-7153. Please reference our submission number CFE-2020-036 in any

related correspondence.

Cboe Futures Exchange, LLC

/s/ Michael Mollet

By: Michael Mollet  
Managing Director