



March 18, 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-2020-007

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 clarify and update CFE’s policy regarding regulatory data. The Amendment will become effective on April 1, 2020.

Policy and Procedure XII (Confidentiality Policy for Information Received or Reviewed in a Regulatory Capacity) (“Policy”) of the Policies and Procedures Section of the CFE Rulebook addresses the confidential treatment of information received or reviewed by the Exchange in a regulatory capacity. CFE is revising the Policy in order to clarify and update certain of its provisions, including to provide further detail in relation to certain aspects of the Policy and to revise various provisions of the Policy in a manner consistent with similar provisions of other designated contract markets (“DCMs”). The primary elements of the Policy, as clarified and updated by the Amendment, include the following:

- CFE is restating the purpose of the Policy in a more straight-forward manner. The revised purpose states: “This policy defines Regulatory Data, how it may be used, and who may have access to it.”
- CFE is removing language from the Policy that focuses on the application of the Policy to Exchange Regulatory Group personnel to further clarify that the Policy is applicable to all Exchange personnel.
- CFE is further clarifying the scope of Regulatory Data for purposes of the Policy. The Amendment clarifies that: “Regulatory Data” means proprietary data or personal information the Exchange collects or receives from or on behalf of any Person for the purpose of fulfilling its regulatory obligations and that is included in one of five enumerated categories. These categories include Position Data, Financial Information, Regulatory Division Data, Investigative Materials, and Other Confidential Information. The Amendment also clarifies and further defines each category.

- The Amendment clarifies for the avoidance of doubt that any information received or maintained in the regular course of business by the Exchange does not become Regulatory Data for purposes of the Policy merely because the information also is received, maintained, or used by the Regulatory Division. For example, information included as part of an order submission to CFE's trading system is information received or maintained in the regular course of the Exchange's business and does not become Regulatory Data for purposes of this Policy because the Regulatory Division also utilizes it in conducting regulatory surveillances.
- The Amendment clarifies that the Exchange will make Regulatory Data available exclusively to Regulatory Division staff, to any regulatory services providers to the Exchange, and as otherwise permitted by the Regulatory Independence Policy. The Amendment also makes clear that the Exchange may disclose Regulatory Data in certain enumerated circumstances as may be permitted by the Regulatory Division or Legal Division. For example, one of these circumstances is disclosure to any committee, officer, employee, or agent of the Exchange authorized to receive the information within the scope of its or that Person's duties. Examples of the application of this provision could include, among others, disclosure to a Business Conduct Committee panel, to a Legal Division attorney providing input on a regulatory matter, or to the Internal Audit Department in connection with an internal audit. As another example, the Exchange may disclose Regulatory Data pursuant to a request from the Commission, Securities and Exchange Commission, or Department of Justice.
- Consistent with Commission Regulation 38.7 (Prohibited use of data collected for regulatory purposes) and with the current Policy, the Policy provides that: The Exchange may not use Regulatory Data for business or marketing purposes; provided, however, that the Exchange may use Regulatory Data for business or marketing purposes if the Person from whom the Exchange collects or receives such data or information clearly consents to the Exchange's use of such data or information in such manner. The Exchange may not condition access to its trading facility on a market participant's consent to the use of Regulatory Data for business or marketing purposes.
- The Amendment provides additional clarity by more precisely defining "business" or "marketing" purposes to make clear that they do not include appropriate internal uses of Regulatory Data by authorized personnel in certain enumerated circumstances. One of these circumstances is activity aimed at compliance with the Act or any other applicable law or regulation. Another example is use of information for market operations. For example, information could be used for market operations by the Trade Desk in connection with conducting real-time market monitoring of the Exchange's market or addressing a trade bust request.
- The Policy retains the current provision of the Policy which provides that failure to comply with the Policy may result in disciplinary action in accordance with the Exchange's employment policies.

CFE believes that the Amendment is consistent with the DCM Core Principles under Section 5 of the Act. In particular, CFE believes that the Amendment is consistent with DCM Core Principles 1 (Designation as Contract Market), 2 (Compliance with Rules), and 7 (Availability of General Information) in that (i) the Policy is consistent with Commission Regulation 38.7 and specifies the manner in which CFE complies that Regulation; (ii) the Policy furthers CFE's ability to establish,

monitor, and enforce compliance with its rules by enabling CFE to utilize Regulatory Data for appropriate purposes, such as for purposes of complying with the Act; and (iii) clarifies, and provides additional detail relating to the application of, various provisions of the Policy.

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 ~~stricken~~ text, consists of the following:

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II. Confidentiality Policy for Information Received or Reviewed in a Regulatory Capacity

I. Purpose

~~The Regulatory Services Division of the Exchange and other personnel within the Regulatory Group receive and review confidential information in connection with fulfilling Exchange regulatory responsibilities. This policy sets forth in detail the specific types of information received or reviewed in a regulatory capacity that must be kept confidential and the limited circumstances in which the information may be used and disclosed to other individuals and entities.~~

II. Scope

~~This policy applies to the staff of the Regulatory Group and any other individuals that have an obligation to maintain the confidentiality of confidential information received or reviewed in a regulatory capacity as a result of properly getting access to the confidential information. The Regulatory Group consists of all employees of the Regulatory Services Division and any employee who is performing services for the Regulatory Services Division, including, when providing such services, the General Counsel and enforcement attorneys as well as systems and database personnel who are assigned to work on matters for the Regulatory Services Division.~~

III. Confidential Information

~~For the purposes of this policy, confidential information received or reviewed in a regulatory capacity, whether such confidential information originates at the Exchange or any other self-regulatory organization or is provided to the Exchange pursuant to a memorandum of understanding or agreement or any other type of similar information sharing arrangement, includes:~~

a. ~~Position Data~~ Data collected via the reporting of large trader positions (via Commission Form 102) as well as clearing member position data maintained in The Options Clearing Corporation's clearing system;

b. ~~Financial Information~~ Financial records, including original third party or internal source documents, used in the production of financial reports or used to demonstrate compliance with Exchange rules;

~~e. — Detailed Transaction Data — Trade data at the specific account level for individual trades from which market positions and/or profit and loss might be derived; and~~

~~d. — Investigative Materials — Documents collected as part of routine surveillance activities or investigations of potential rule violations, including, but not limited to (i) account statements; (ii) orders to buy and sell contracts traded on the Exchange; (iii) customer account agreements; (iv) bank records; and, (v) audio tape.~~

~~e. — Other Confidential Information — Any other information required to be kept confidential pursuant to the Cboe Global Markets, Inc. and Subsidiaries Regulatory Independence Policy for Regulatory Group Personnel (Regulatory Independence Policy).~~

IV. — Responsibilities

~~Senior management in the Regulatory Services Division is responsible for ensuring that Regulatory Group staff are aware of, and adhere to, this policy.~~

V. — Procedure

~~Confidential information received or reviewed in a regulatory capacity shall be used solely for regulatory purposes and shall be made available exclusively to Regulatory Group staff, to the National Futures Association in its capacity as regulatory services provider to the Exchange, and as otherwise permitted by the Regulatory Independence Policy.~~

~~Confidential information received or reviewed in a regulatory capacity may also be released pursuant to (i) a request by the Commodity Futures Trading Commission, Securities and Exchange Commission, or the United States Department of Justice; (ii) a request by a securities or derivatives self-regulatory organization pursuant to an information sharing agreement; or, (iii) a valid subpoena or other order of a court that directs the Exchange to release such confidential information. Any disclosure under these circumstances must be approved by senior management in the Regulatory Services Division or in the Legal Division, as appropriate.~~

~~Confidential Financial Information received or reviewed in a regulatory capacity may also be used by the Exchange to implement the Exchange's Conflict of Interest Policy regarding Securities and Futures Products Transactions that applies to Exchange employees.~~

VI. — Use of Regulatory Data

~~— The Exchange may not use for business or marketing purposes any proprietary data or personal information the Exchange collects or receives, from or on behalf of any Person, for the purpose of fulfilling the Exchange's regulatory obligations; provided, however, that the Exchange may use such data or information for business or marketing purposes if the Person from whom the Exchange collects or receives such data or information clearly consents to the Exchange's use of such data or information in such manner. The Exchange may not condition access to its trading facility on a market participant's consent to the use of proprietary data or personal information for business or marketing purposes.~~

VII. — Consequences of Noncompliance

~~Failure to comply with this policy may result in disciplinary action in accordance with the Exchange's employment policies.~~

~~Adopted October 17, 2012 (12-26). Amended June 30, 2014 (14-15); October 31, 2017 (17-016).~~

XII. Confidentiality Policy for Regulatory Data

I. Purpose

The Regulatory Division of the Exchange receives and reviews Regulatory Data in connection with fulfilling Exchange regulatory responsibilities. This policy defines Regulatory Data, how it may be used, and who may have access to it.

II. Regulatory Data

For the purposes of this policy, “Regulatory Data” means proprietary data or personal information the Exchange collects or receives from or on behalf of any Person for the purpose of fulfilling its regulatory obligations and that is included in one of the following categories:

- a. Position Data – Reports of large positions and other information collected via CFE Rule 412B (Ownership and Control Reports and Reportable Positions) and Commission Form 102 as well as clearing member position data maintained in the Clearing Corporation’s clearing system, records of requests for exemptions from position limits collected via Rule 412 (Position Limits) and records collected pursuant to Rule 412A (Position Accountability);
- b. Financial Information – Financial records and other information, including account balance information and original third party or internal source documents, used in the production of financial reports or used to demonstrate compliance with Exchange rules;
- c. Regulatory Division Data – Data separately collected and maintained by the Regulatory Division, such as the referential data that identifies the owner of a customer account or the individual identified by an Order Entry Operator ID;
- d. Investigative Materials – Documents collected as part of surveillance reviews, examinations, investigations or enforcement cases relating to potential rule violations, including but not limited to (i) account statements, (ii) order tickets, (iii) customer account agreements, (iv) bank records and (v) audio and video recordings; and
- e. Other Confidential Information – Any other information required to be kept confidential pursuant to the Cboe Global Markets, Inc. and Subsidiaries Regulatory Independence Policy for Regulatory Group Personnel (Regulatory Independence Policy).

For the avoidance of doubt, any information received or maintained in the regular course of business by the Exchange does not become Regulatory Data for purposes of this policy merely because the information also is received, maintained or used by the Regulatory Division. For example, information included as part of an Order submission to the CFE System is information received or maintained in the regular course of the Exchange’s business and does not become Regulatory Data for purposes of this policy because it is also utilized by the Regulatory Division in conducting regulatory surveillances, investigations or examinations.

III. Access to Regulatory Data

The Exchange shall make Regulatory Data available exclusively to Regulatory Division staff, to any regulatory services providers to the Exchange, and as otherwise permitted by the Regulatory Independence Policy.

The Exchange also may disclose Regulatory Data in the following circumstances as may be permitted by the Regulatory Division or Legal Division of the Exchange: (a) to any committee, officer, employee or agent of the Exchange authorized to receive such information within the scope of its or that Person's duties; (b) to the Clearing Corporation; (c) to any third party performing a service for the Exchange, provided that the party is subject to a confidentiality obligation to the Exchange with respect to that information; (d) pursuant to a request from the Commodity Futures Trading Commission (CFTC), Securities and Exchange Commission, or Department of Justice; (e) as may be required by legal process or law; (f) as the Exchange may deem necessary or appropriate in connection with any litigation involving the Exchange; (g) pursuant to the consent of the Person from whom the information was received or collected; (h) pursuant to the terms of an information sharing agreement entered into pursuant to Rule 216; and (i) to any other Person, if, and to the extent that the Chief Regulatory Officer, from time to time, may deem appropriate.

IV. Prohibited Uses of Regulatory Data

The Exchange may not use Regulatory Data for business or marketing purposes; provided, however, that the Exchange may use Regulatory Data for business or marketing purposes if the Person from whom the Exchange collects or receives such data or information clearly consents to the Exchange's use of such data or information in such manner. The Exchange may not condition access to its trading facility on a market participant's consent to the use of Regulatory Data for business or marketing purposes.

Note that the use restrictions that prevent Regulatory Data from being used for "business" or "marketing" purposes would not prevent appropriate internal uses of Regulatory Data by authorized personnel. Specifically, "business" purposes do not include: activity aimed at compliance with the Commodity Exchange Act or any other applicable law or regulation; market regulation; risk management; billing; market operations; and performance monitoring in connection with ensuring effective operations and integrity of the marketplace. For example, Regulatory Data collected by the Regulatory Division could be shared with Exchange staff for the purpose of operating the Exchange's Designated Contract Market business functions in compliance with CFTC Core Principles.

Regulatory Data also may be used by the Exchange to implement the Exchange's Conflict of Interest Policy regarding Securities and Futures Products Transactions that applies to Exchange employees.

V. Consequences of Noncompliance

Failure to comply with this policy may result in disciplinary action in accordance with the Exchange's employment policies.

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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-2020-007 in any related correspondence.

Cboe Futures Exchange, LLC

[/s/ Matthew McFarland](#)

By: Matthew McFarland
Managing Director