



May 1, 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-2020-011

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”) regarding the appeal provisions under CFE rules. The effective date of the Amendment will be on May 15, 2020.

CFE Rule 710 (Review) allows for a Respondent and/or the Exchange to appeal to the CFE Board of Directors (“Board”) a CFE Business Conduct Committee (“BCC”) Panel decision issued under CFE Rule 709 (Decision) following a disciplinary hearing. Rule 710 also provides that the Board may initiate this Board review process on its own initiative with respect to a disciplinary hearing decision under Rule 709 or with respect to a determination by a BCC Panel under CFE Rule 707 (Summary Proceedings) that a Respondent has committed violations alleged in a statement of charges which the Respondent has admitted or failed to deny.

CFE Rule 901 (Matters Subject to Appeal; Incorporation by Reference) allows for a person aggrieved in an economic sense by Exchange action to appeal the action to an Appeals Committee. The provisions that govern this type of appeal are incorporated by reference into Rule 901 from the rules of Cboe Exchange, Inc. (“Cboe Options”) (a CFE affiliate). These provisions provide for an Appeals Committee hearing process, the ability of an Appellant and/or the Exchange to appeal the Appeals Committee decision to the Board, and the Board to initiate the Board review process with respect to an Appeals Committee decision on its own motion. CFE Rule 901 is the only rule in Chapter 9 of the CFE Rulebook and thus is also referred to in CFE’s rules as Chapter 9.

The Amendment deletes Rule 710 and Rule 901. Additionally, as a result of the deletion of these rules, the Amendment includes the following related rule changes:

- The Amendment removes the definition of the Appeals Committee in Chapter 1 (Definitions) of the CFE Rulebook and deletes CFE Rule 211 (Appeals Committee) which contains a description of the Appeals Committee.

- The Amendment revises CFE Rule 304 (Eligibility of Trading Privileges) to remove reference to parties having the ability to appeal under Chapter 9 certain Exchange decisions relating to trading privileges on CFE or association with a CFE Trading Privilege Holder (“TPH”), such as an Exchange decision regarding an application for CFE trading privileges.
- The Amendment removes from CFE Rule 307 (Emergency Disciplinary Actions and Limitations of Trading Privileges) reference to the applicability of the appeal and Board review process under Rule 710 with respect to a BCC Panel hearing decision concerning the review of a summary action taken by the Exchange against a Respondent in order to protect the best interest of the marketplace, such as for the protection of customers, TPHs, clearing members, and/or the Exchange.
- CFE Rule 419 (Limitation of Liability; Legal Proceedings) currently provides that Exchange determinations under Rule 419, such as with respect to requests for compensation from the Exchange, are not subject to appeal, including under Chapter 9. The Amendment removes this reference to Chapter 9 in Rule 419.
- The Amendment revises CFE Rule 702 (Requirement to Furnish Information) to remove the current requirements with respect to furnishing information in connection with an appeal under Chapter 7 of the CFE Rulebook (which is a reference to the appeal process under Rule 710).
- The Amendment amends CFE Rule 706 (Hearing) to remove provisions relating to interlocutory appeals to the Board regarding determinations made by a BCC Panel in connection with a disciplinary hearing prior to the completion the hearing.
- The Amendment revises CFE Rule 709 (Decision) and CFE Rule 711 (Judgment and Sanction) to eliminate the delay in the effectiveness of a disciplinary hearing decision and the sanctions imposed by the decision until the time period to initiate review of the decision under Rule 710, or until the review process relating to the decision under Rule 710, is complete. The Amendment provides that any disciplinary hearing decision will be considered a final decision of the Exchange when it is served upon the Respondent and that any sanctions imposed by the decision will become effective upon the effective date of the sanctions set forth in the decision. The Amendment also changes the title of Rule 711 to refer solely to sanctions since that is the focus of Rule 711.
- The Amendment removes from CFE Rule 714 (Imposition of Fines for Minor Rule Violations) reference to the applicability of the appeal and Board review process under Rule 710 with respect to a BCC Panel decision concerning the review of a summary fine issued by the Exchange for a minor rule violation.

CFE took a number of factors into consideration in determining to make the rule changes included in the Amendment. These factors included, among others, the following considerations.

- There have been no appeals or decisions reviewed under Rule 710 or Rule 901 in the more than sixteen years since CFE was launched in 2004. CFE believes that this experience over a lengthy period of time demonstrates that there has not been a need for CFE to have these appeal and Board review processes.

- BCC Panels are composed of members with significant industry knowledge and experience. The BCC Panel disciplinary hearing process is extensive, and BCC Panel decisions are detailed and thorough. CFE does not believe there is a need to repeat the review process a second time at the Board level.
- Having the appeal and Board review processes under Rule 701 and Rule 901 makes the Exchange disciplinary process and the process to make other Exchange decisions less efficient; can be more burdensome on Respondents and Appellants given the need to prepare for and present their cases through an additional level of review; and extends the time period before a final decision can be reached and disciplinary sanctions for violative conduct can be imposed.
- Because CFE Regulatory Oversight Committee (ROC) members are also members of the Board and may need to function in an adjudicatory role to consider an appeal of a disciplinary decision, the ROC and CFE Regulation are inhibited in their ability to discuss CFE disciplinary matters until they are final.
- The approach being taken in the Amendment is consistent with the rules of other designated contract markets (“DCMs”) that do not have appeal processes like the ones provided for in Rule 710 and Rule 901.
- CFE is not required by Commission regulations to provide for the appeal processes in Rule 710 and Rule 901. In particular, Section 5 of the Commission Guidance under Appendix B to Part 38 of the Commission Regulations with respect to Core Principle 13 (Disciplinary Procedures) provides, in pertinent part, that: “The rules of a designated contract market may permit the parties to a proceeding to appeal promptly an adverse decision of a disciplinary panel in all or in certain classes of cases.” This is a permissive provision which allows, but does not require, a DCM to have such an appeal process.
- Any Respondent or Appellant that is the subject of disciplinary or access denial action by the Exchange or any person who is otherwise adversely affected by any other action of the Exchange may appeal that action to the Commission under Commission Regulation 9.20. Accordingly, a Respondent or Appellant would continue to have this additional right of review following the effectiveness of the Amendment.

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 2 (Compliance with Rules), 7 (Availability of General Information), 12 (Protection of Markets and Market Participants), and 13 (Disciplinary Procedures) in that the Amendment (i) enhances the efficient operation of CFE’s disciplinary process and the process to effectuate other CFE determinations; (ii) allows CFE to address rule violations more promptly by enabling CFE to take disciplinary actions in a more timely manner and thus enhances CFE’s ability to enforce compliance with its rules and to protect the market, TPHs, and other market participants from abusive practices; (iii) enhances the regulatory oversight performed by the ROC by allowing the ROC to engage with CFE Regulation regarding pending disciplinary matters in performing the ROC’s oversight functions; (iv) retains the opportunity for a Respondent to have a disciplinary matter adjudicated through an extensive BCC Panel hearing process if the Respondent chooses not to settle a disciplinary matter; (v) is consistent with Commission Regulation 38.708(f) which provides that a disciplinary hearing decision of a DCM must include, among other things, the effective date of the sanctions imposed by the decision; (vi) is consistent with Commission Regulation 38.709 which provides that a DCM must

establish rules setting forth when a disciplinary decision of the DCM will become the final decision of the DCM; (vii) is consistent with Commission Guidance, as noted above, which provides flexibility to a DCM to determine whether or not to provide for an appeal process for BCC Panel disciplinary hearing decisions like the one set forth in Rule 710; and (viii) updates CFE's Rulebook to reflect the rule changes provided for in the Amendment so that TPHs and other market participants are aware of the provisions of CFE rules as revised following the effectiveness of the Amendment.

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 (https://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 ~~striketrough~~ text, consists of the following:

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Cboe Futures Exchange, LLC Rules

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Chapter 1 Definitions

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~~Appeals Committee~~

~~The term "Appeals Committee" means the appeals committee constituted in accordance with, and with the authority and rights set forth or referred to, in Rule 211.~~

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211. ~~Appeals Committee~~ Reserved

~~The functions and responsibilities of the Appeals Committee shall be assumed by the appeals committee of Cboe Options, as appointed from time to time by Cboe Options. The Appeals Committee shall have the authority and rights assigned to it in Chapter 9.~~

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304. Eligibility for Trading Privileges

- (a) - (c) No changes.
- (d) Any decision made by the Exchange pursuant to this Rule 304 must be consistent with the provisions of this Rule and the provisions of the CEA.

~~Any applicant who has been denied Trading Privileges or association with a Trading~~

~~Privilege Holder or granted only conditional Trading Privileges or association, pursuant to this Rule 304, and any Trading Privilege Holder or Person associated with a Trading Privilege Holder who is not permitted to keep its Trading Privileges or maintain the Person's association with the Trading Privilege Holder or whose Trading Privileges or association are conditioned pursuant to this Rule 304, may appeal the Exchange's decision in accordance with the provisions of Chapter 9. No determination of the Exchange to discontinue or condition a Person's Trading Privileges or association with a Trading Privilege Holder pursuant to this Rule 304 shall take effect until the review procedures under Chapter 9 have been exhausted or the time for review has expired.~~

Any applicant to become a Trading Privilege Holder who has been denied Trading Privileges pursuant to this Rule 304 shall not be eligible for re-application during the six months immediately following such denial.

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307. Emergency Disciplinary Actions and Limitations of Trading Privileges

Notwithstanding anything in Rule 304 to the contrary, the Exchange may at any time impose a sanction or take other summary action against any Trading Privilege Holder or Related Party of a Trading Privilege Holder if, necessary to protect the best interest of the marketplace, including, without limitation, for the protection of Customers, Trading Privilege Holders, Clearing Members or the Exchange. Any such sanction or other summary action may include, without limitation, revoking, suspending, limiting, conditioning, restricting, denying or qualifying the access to the Exchange, the Trading Privileges or the activities, functions and operations of a Trading Privilege Holder or Related Party of a Trading Privilege Holder. One instance in which the Exchange may take action under this Rule 307 is if a Trading Privilege Holder or Related Party is or becomes subject to a statutory disqualification. The following procedures shall be applicable to any such action:

(i) - (vi) No changes.

~~(vii) — The decision issued by the BCC Panel shall be subject to the review procedures under Rule 710.~~

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419. Limitation of Liability; Legal Proceedings

(a) - (e) No changes.

(f) ALL DETERMINATIONS MADE PURSUANT TO THIS RULE BY THE EXCHANGE SHALL BE FINAL AND NOT SUBJECT TO APPEAL UNDER ~~CHAPTER 9~~ OF THE RULES OF THE EXCHANGE OR OTHERWISE. NOTHING IN THIS RULE, NOR ANY PAYMENT PURSUANT TO THIS RULE, SHALL IN ANY WAY LIMIT, WAIVE, OR PROSCRIBE ANY DEFENSES A COVERED PERSON MAY HAVE TO ANY CLAIM, DEMAND, LIABILITY, ACTION OR CAUSE OF ACTION, WHETHER SUCH DEFENSE ARISES IN LAW OR EQUITY, OR WHETHER SUCH DEFENSE IS ASSERTED IN A JUDICIAL, ADMINISTRATIVE, OR OTHER PROCEEDING.

(g) - (k) No changes.

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702. Complaint and Investigation

(a) No changes.

(b) Requirement to Furnish Information. Each Trading Privilege Holder and Related Party shall be obligated upon request by the Exchange and within the time frame designated by the Exchange to appear and testify, and to respond in writing to interrogatories and furnish documentary materials and other information requested by the Exchange in connection with (i) any investigation initiated pursuant to paragraph (a) of this Rule 702, (ii) any hearing ~~or appeal~~ conducted pursuant to this Chapter 7 or preparation by the Exchange in anticipation of any such hearing ~~or appeal~~ or (iii) an Exchange inquiry resulting from any agreement entered into by the Exchange pursuant to Rule 216. No Trading Privilege Holder or Related Party shall impede or delay any Exchange investigation or proceeding conducted pursuant to this Chapter 7 or any Exchange inquiry resulting from any agreement entered into by the Exchange pursuant to Rule 216, nor refuse to comply with a request made by the Exchange pursuant to this paragraph (b).

(c) - (f) No changes.

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706. Hearing

(a) No changes.

(b) Prehearing Procedures. The BCC Panel shall determine the date, time and location of any hearing and shall promptly hold any hearing upon the completion of any procedures prior to the hearing pursuant to this Chapter 7. All parties shall be given at least 15 days' prior notice of the time and place of any hearing. Hearings shall generally be held in Chicago, Illinois, but a BCC Panel may decide to hold a hearing in any other location to accommodate the parties, witnesses, Exchange staff or the BCC Panel members. Not less than five business days in advance of a scheduled hearing date, each party shall furnish to the BCC Panel and each of the other parties copies of all documentary evidence such party intends to present at such hearing and a list containing the names of all witnesses the party intends to present at such hearing. Where the time and nature of a proceeding permit, the parties shall meet in a pre-hearing conference for the purpose of clarifying and simplifying issues and otherwise expediting the proceeding. At any such pre-hearing conference, the parties shall attempt to reach agreement respecting the authenticity of documents, facts not in dispute and any other items the resolution of which may serve to expedite the hearing of the matter. At the request of any party, the BCC Panel or the chairperson thereof shall hear and decide all pre-hearing issues not so resolved among the parties. ~~Interlocutory Board review of any decision made by a BCC Panel prior to completion of a hearing is generally prohibited. Such interlocutory review shall be permitted only if a BCC Panel agrees to such review after determining that a particular issue is a controlling issue of rule or policy and that immediate Board review would materially advance the ultimate resolution of a matter before such BCC Panel.~~

(c) - (e) No changes.

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709. Decision

Following any hearing conducted pursuant to Rule 706, the BCC Panel conducting such hearing shall issue a decision in writing determining, based upon the weight of the evidence contained in the record of the hearing, whether the Respondent has committed a violation and imposing the sanction, if any, therefor. Each decision made pursuant to this Rule 709 shall include (i) the statement of charges or summary of the charges; (ii) the answer, if any, or summary of the answer; (iii) a summary of the evidence produced at the hearing; (iv) a statement of findings and conclusions with respect to each charge, and a complete explanation of the evidentiary and other basis for such findings and conclusions with respect to each charge; (v) an indication of each specific provision of the CEA, Commission Regulations thereunder, the Exchange Act, Exchange Act Regulations thereunder, or Rules of the Exchange that the Respondent was found to have violated; and (vi) a declaration of all sanctions imposed against the Respondent, including the basis for such sanctions and the effective date of such sanctions. The Respondent shall be promptly sent a copy of any decision made pursuant to this Rule 709. After Board review pursuant to Rule 710, or upon expiration of the time for such review in accordance with Rule 710, whichever occurs first, a decision will be considered final served with a copy of the decision in accordance with Rule 712, and the Exchange shall publish the decision. Any decision made pursuant to this Rule 709 will be considered a final decision of the Exchange when it is served upon the Respondent.

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710. Review Reserved

~~(a) (i) Petition. A Respondent and the Exchange shall each have the right, within 15 days after service of notice of a decision made pursuant to Rule 709, to petition for review of such decision by filing a copy of such petition with the Secretary and the other party to the hearing. Any such petition shall be in writing and shall specify the findings, conclusions and sanctions to which exceptions are taken, together with reasons for such exceptions. Any objections to a decision not specified by written exception shall be considered to have been abandoned.~~

~~(ii) Written Submissions. Within 15 days after a petition for review has been filed with the Secretary pursuant to clause (i) above, the other party to the hearing may submit to the Secretary a written response to the petition. A copy of such response must be served upon the petitioner. A petitioner has 15 days from the service of the response to file a reply with the Secretary and the other party to the hearing.~~

~~(b) Conduct of Review. Any review shall be conducted by the Board or a committee of the Board that includes at least one Public Director, whose decision must be ratified by the Board. No director who participated in a particular matter before the Business Conduct Committee or any BCC Panel or who is a regulatory staff member may participate in any review of such matter by the Board. Unless the Board decides to open the record for the introduction of evidence or to hear additional arguments based upon good cause shown, such review shall be based solely upon the record and the written exceptions filed by the parties.~~

~~In the course of a review pursuant to this Rule 710, new issues may be raised by the Board; provided that the Respondent shall be given notice of, and an opportunity to address, any such new issues. The Board may affirm, reverse or modify, in whole or in part, any decision of a BCC Panel reviewed by it. Any such modification may include additional, lesser or different sanctions. The decision issued by the Board shall adhere to all of the requirements of Rule 709 to the extent that the Board reaches a different conclusion from that issued by a BCC Panel. Any decision of the Board pursuant to this Rule 710 shall be in writing, shall be promptly served on the Respondent, and shall be final.~~

~~(c) — Review on Motion of Board. The Board may on its own initiative order review of any decision made pursuant to Rule 707 or 709 within 30 days after notice of the decision has been served on the Respondent. Any such review shall be conducted in accordance with the procedures set forth in paragraph (b) above.~~

711. Judgment and Sanction Sanctions

(a) - (b) No changes.

(c) Effective Date of Judgment Sanctions. Any sanctions imposed by a decision issued pursuant to this Chapter 7 shall ~~not become effective until the review process with respect to such decision has been completed or such decision otherwise becomes final~~ upon the effective date of the sanctions set forth in the decision. Pending effectiveness of a decision imposing a sanction on a Respondent, a BCC Panel may impose such conditions and restrictions on the activities of such Respondent as the BCC Panel may consider reasonably necessary for the protection of Customers, Trading Privilege Holders or the Exchange.

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714. Imposition of Fines for Minor Rule Violations

(a) - (b) No changes.

(c) (i) Any Person against whom a fine is imposed pursuant to this Rule 714 may contest the Exchange's determination by filing with the office of the Secretary, on or before the date specified pursuant to clause (b)(iv) of this Rule 714, a written answer in accordance with Rule 705 (which shall apply with such changes as may be appropriate under the circumstances), at which point the matter shall become subject to review by a BCC Panel. The filing must include a request for a hearing, if a hearing is desired. Hearings shall be conducted in accordance with the provisions of Rule 706 (which shall apply with such changes as may be appropriate under the circumstances). If a hearing is not requested, the review shall be based on written submissions and shall be conducted in a manner to be determined by the BCC Panel.

(ii) If after a hearing or review based on written submissions pursuant to clause (i) above the BCC Panel determines that the conduct serving as the basis for the action under review is in violation of that provision of the Rules of the Exchange the violation of which has been charged, the BCC Panel (A) may impose any one or more of the disciplinary sanctions authorized by the Rules of the Exchange and (B) shall impose a forum fee against the Person charged in the amount of one hundred dollars (\$100) if the determination was reached without a hearing, or in the amount of three hundred dollars (\$300) if a hearing was conducted. Notwithstanding the

foregoing, in the event that the BCC Panel determines that the Person charged committed one or more violations of Rules of the Exchange and the sole disciplinary sanction imposed by the BCC Panel for such violations is a fine which is less than the total fine initially imposed by the Exchange pursuant to this Rule 714, the BCC Panel shall have discretion to waive the imposition of a forum fee.

~~(iii) — The committee or department of the Exchange that commenced any action under this Rule 714, the Person charged and any member of the Board may require a review by the Board of any determination by a BCC Panel under this Rule 714 by proceeding in accordance with Rule 710 (which shall apply with such changes as may be appropriate under the circumstances). In connection with such review the committee or department of the Exchange that commenced the action under this Rule 714 shall have the same rights as a Respondent under Rule 710.~~

~~(iv iii)~~ In the event that a fine imposed pursuant to this Rule 714 is upheld by a BCC Panel ~~or, if applicable, on review by the Board~~, such fine, plus interest thereon, at a rate from time to time specified by the Exchange for such purpose, from and including the date specified in clause (b)(iv) of this Rule 714, shall be immediately due and payable.

(d) - (f) No changes.

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CHAPTER 9 APPEALS RESERVED

901. — Matters Subject to Appeal; Incorporation by Reference

~~Persons aggrieved in an economic sense by Exchange action, including, but not limited to, Persons who have been denied Trading Privileges or association with a Trading Privilege Holder, or whose Trading Privileges or association with a Trading Privilege Holder are conditioned pursuant to Rule 304, may appeal the Exchange's decision in accordance with the provisions contained in Chapter XIX of the rules of Cboe Options, as such rules may be amended or otherwise modified from time to time, which rules shall apply, with any such changes as may be necessary or appropriate under the circumstances, to any such appeal, and which rules are hereby incorporated by reference into this Chapter 9; *provided* that any reference in such rules to the "Appeals Committee" shall be deemed to refer to the Appeals Committee of the Exchange.~~

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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-2020-011 in

any related correspondence.

Cboe Futures Exchange, LLC

[/s/ Matthew McFarland](#)

By: Matthew McFarland
Managing Director