



## Rule Self-Certification

June 4, 2020

Christopher J. Kirkpatrick  
Secretary of the Commission  
Commodity Futures Trading Commission  
Three Lafayette Centre  
1155 21<sup>st</sup> Street, NW  
Washington, DC 20581

**Re: SMFE 2020-006 - Self-Certification Pursuant to CFTC Regulation 40.6 – Exchange Rule 1012**

Dear Mr. Kirkpatrick:

Pursuant to Section 5c(c) of the Commodity Exchange Act, as amended (“Act”), and Section 40.6 of the Commission’s regulations thereunder, Small Exchange, Inc. (“SMFE” or the “Exchange”) submits this self-certification as written notice that the Exchange enacting Exchange Rule 1012, “Prohibition on Trading by Employees of the Exchange; Misuse of Material, Non-Public Information”, as set forth on the attached Exhibit A, which is attached hereto and incorporated herein by reference (“Rule Change”). The Rule Change is effective June 18, 2020.

The purpose of the Rule Change is to codify the Exchange’s Rules concerning employee trading, as required by 17 C.F.R. § 1.59(b). The Rule Change:

1. prohibits employees of the Exchange from trading any Exchange product or related commodity interest, trading a commodity interest while having access to material, non-public information concerning such interest;
2. prohibits employees of the Exchange from disclosing to any other person any material, non-public information which such employee obtains as a result of his or her employment at the Exchange, where such employee has or should have a reasonable expectation that the information disclosed may assist another person in trading any commodity interest, and includes an exception for disclosures made in the course of the employee’s duties, among other circumstances;
3. empowers the Exchange’s Chief Regulatory Officer (or Board, in the case of the Chief Regulatory Officer) to grant exemptions from the provisions of paragraph (b) of this Rule to employees of the Exchange on a case-by-case basis under enumerated circumstances which are not contrary to the purposes of this Rule and CFTC Regulation 1.59; and
4. requires any employee of the Exchange that has received an exemption under paragraph (d) of this Rule shall furnish to the Exchange (or, in the case of the Chief Regulatory Officer, to the Board) account statements and other documents relevant to the trading activities that are so exempted; and inform the Chief Regulatory

Officer (or, in the case of the Chief Regulatory Officer, the Board) within one business day of any material change of information that may affect such employee's qualification for such exemption.

The Exchange reviewed the designated contract market core principles ("Core Principles") as set forth in the Act and identified that the amendments may have some bearing on the following Core Principles:

- Core Principle 2, Compliance with Rules: The Exchange shall continue its normal practice to establish, monitor, and enforce compliance with the rules applicable to the trading of Exchange Contracts. The Exchange will establish policies and procedures concerning compliance with the Rule Change.
- Core Principle 4, Prevention of Market Disruption: The Exchange has the capacity to detect abnormal price movements and unusual trading volumes, including such abnormal price movements or trading volumes as may be associated with bilaterally negotiated trades, and holds the authority to take remedial action as appropriate. Further, the Rule Change will not impact the Exchange's ability to perform its trade practice and market surveillance obligations under the CEA, CFTC Regulations and its Rules.
- Core Principle 12, Protection of Market Participants: The Rule Change is subject to the Rules of the Exchange, which include prohibitions against abusive practices, including fraudulent, anti-competitive or unfair activity. As stated above, the Exchange will establish policies and procedures concerning compliance with the Rule Change, which will ensure that the Rule Change will not impact the Exchange's obligations under the CEA, CFTC Regulations and its Rules.
- Core Principle 16, Conflicts of Interest: The Rule Change minimizes the conflicts of interest in the decision making process of the Exchange. These prohibitions ensure that employees of the Exchange are focused on the operations of the Exchange and not on trading the products it offers, and are an appropriate limitation on the use or disclosure by employees of the Exchange of material non-public information.

The Rule Change also empowers the Exchange's Chief Regulatory Officer (or Board, in the case of the Chief Regulatory Officer) to grant exemptions from the provisions of paragraph (b) of this Rule to employees of the Exchange on a case-by-case basis under enumerated circumstances which are not contrary to the purposes of this Rule and CFTC Regulation 1.59. The Rule Change also requires any employee of the Exchange that has received an exemption under paragraph (d) of this Rule shall furnish to the Exchange (or, in the case of the Chief Regulatory Officer, to the Board) account statements and other documents relevant to the trading activities that are so exempted; and inform the Chief Regulatory Officer (or, in the case of the Chief Regulatory Officer, the Board) within one business day of any material change of information that may affect such employee's

qualification for such exemption. This paragraph is not contrary Regulation 17 C.F.R. § 1.59(b), the public interest, the Commodity Exchange Act, or just and equitable principles of trade. The Exchange has put in place reasonable controls to ensure that any employee of the Exchange who trades in Exchange products or other commodity interest is supervised to ensure that such trading is conducted in a manner consistent with Exchange and Commission rules and regulations.

Pursuant to Section 5c(c) of the Act and CFTC Regulation 40.6(a), the Exchange certifies that the amendments comply with the Act, including regulations under the Act. The Exchange is not aware of any opposing views. The Exchange also certifies that this submission has been posted on the Exchange's website at [www.thesmallexchange.com](http://www.thesmallexchange.com).

If you require any additional information regarding this submission, please contact the undersigned at (312) 761-1660.

Regards,

/s/ Peter D. Santori  
Chief Regulatory Officer

Enclosed: Exhibit A

## Exhibit A

(additions underlined; deletions ~~overstruck~~)

### **Rule 1012. Prohibition on Trading by Employees of the Exchange; Misuse of Material, Non-Public Information**

- (a) Terms used in this Rule and not otherwise defined in the Rules of the Exchange shall have the meanings set forth in CFTC Regulations 1.3 and 1.59.
- (b) Employees of the Exchange are prohibited from:
  - (i) Trading, directly or indirectly, in any product traded on or cleared by the Exchange;
  - (ii) Trading, directly or indirectly, in any related commodity interest;
  - (iii) Trading, directly or indirectly, in a commodity interest traded on contract markets or swap execution facilities or cleared by derivatives clearing organizations other than the Exchange, if such employee has access to material, non-public information concerning such commodity interest; and
  - (iv) Trading, directly or indirectly, in a commodity interest traded on or cleared by a linked exchange, if such employee has access to material, non-public information concerning such commodity interest.
- (c) Employees of the Exchange are prohibited from disclosing to any other person any material, non-public information which such employee obtains as a result of his or her employment at the Exchange, where such employee has or should have a reasonable expectation that the information disclosed may assist another person in trading any commodity interest; *provided, however,* that this paragraph shall not prohibit disclosures made in the course of such employee's duties, or disclosures made to another self-regulatory organization, linked exchange, court of competent jurisdiction or representative of any agency or department of the federal or state government acting in his or her official capacity.
- (d) The Chief Regulatory Officer (or, in the case of the Chief Regulatory Officer, the Board) may grant exemptions from the provisions of paragraph (b) of this Rule to employees of the Exchange on a case-by-case basis under circumstances which are not contrary to the purposes of this Rule and CFTC Regulation 1.59. Such circumstances may include, but are not limited to:
  - (i) Participation in pooled investment vehicles where such employee has no direct or indirect control with respect to transactions executed on or behalf of such vehicles;
  - (ii) Service by such employee as an executor or administrator of an estate;
  - (iii) Service by such employee in any other fiduciary capacity, such as an officer of a charitable organization, in which such employee receives no pecuniary benefit from the trading in any product traded on or cleared by the Exchange or any related commodity interest;
  - (iv) Trading, including trading for educational or demonstration purposes, in any product traded on or cleared by the Exchange or any related commodity interest executed on or subject to the rules of a swap execution facility, a designated

- contract market or a national securities exchange under circumstances in which such employee's access to material non-public information in respect of such financial instruments is sufficiently minimal or attenuated so as to be insignificant; and
- (v) such other circumstances as the Chief Regulatory Officer (or, in the case of the Chief Regulatory Officer, the Board) may determine.
- (e) For the avoidance of doubt, participation by an employee of the Exchange in a retirement plan sponsored by the Exchange shall not be deemed to constitute trading directly or indirectly in any product traded on or cleared by the Exchange or any related commodity interest, notwithstanding such plan's trading of such products or related commodity interests.
- (f) Any employee of the Exchange that has received an exemption under paragraph (d) of this Rule shall:
- (i) furnish to the Exchange (or, in the case of the Chief Regulatory Officer, to the Board) account statements and other documents relevant to the trading activities that are so exempted; and
- (ii) inform the Chief Regulatory Officer (or, in the case of the Chief Regulatory Officer, the Board) within one business day of any material change of information that may affect such employee's qualification for such exemption.