



July 16, 2013

Via Electronic Mail

Ms. Melissa Jurgens  
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-2013-29

Dear Ms. Jurgens:

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 under the Act, CBOE Futures Exchange, LLC (“CFE” or “Exchange”) hereby submits a CFE rule amendment (“Amendment”) to permit service of any charges, notices or other documents on a Trading Privilege Holder’s (“TPH’s”), Subject’s or other Person’s counsel. The Amendment will become effective on July 31, 2013.

CFE Rules 310 (Notices) and 712 (Service of Notice) set forth the varying manners in which service may be made on a TPH, Subject or other Person. Neither rule, however, expressly provides for service to be made on a TPH’s, Subject’s or other Person’s counsel. To address the situation in which a party designates counsel to receive CFE notices on behalf of that party, the Exchange is amending Rules 310 and 712 to expressly permit the Exchange to serve counsel for a party relating to a specified matter; provided that: (i) the party has previously instructed the Exchange in writing to serve the counsel with any notices relating to that matter and (ii) the counsel notifies the Exchange in writing that the counsel agrees to accept service of any notices relating to that matter and specifies a mailing address and an email address for service. In addition, the Exchange is amending Rules 310 and Rule 712 to provide that the Exchange may continue to serve a counsel who has previously notified the Exchange that the counsel agrees to accept service relating to a specified matter unless and until the counsel notifies the Exchange in writing that the counsel is no longer representing the party with respect to that matter or consents to service on the party directly.

Additionally, the Exchange is amending Rule 712 to require that for notice of charges, service must be effectuated either personally or by leaving the same at the Respondent’s or Respondent’s counsel’s place of business or by deposit in the United States mail, postage prepaid, via registered or certified mail. All other notices or other documents contemplated to be served under Rule 307 (Emergency Disciplinary Actions and Limitations of Trading Privileges) or Chapter 7 (Discipline and Enforcement) may be served in the manners specified in Rule 310,

other than by a telephone call (including by in-person delivery, mail, messenger or overnight courier, facsimile or electronic mail).

The rule change will harmonize the Exchange's Rules with many states' Rules of Professional Conduct for attorneys, which generally require that, when an attorney knows a person is represented by an attorney, all communications must be directed to that attorney about the subject of the representation unless that attorney specifically provide otherwise.<sup>1</sup>

CFE believes that the Amendment is consistent with Designated Contract Market Core Principle 13 (Disciplinary Procedures) under Section 5 of the Act because the more detailed procedures for service of process will increase the likelihood of successful service of process while providing appropriate due process protections to CFE TPHs, Subjects and other Persons.

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 it 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:

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### **CFE Rule 307. Emergency Disciplinary Actions and Limitations of Trading Privileges**

(a) 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) If practicable, a Respondent shall be served with a notice before the action is taken, or otherwise at the earliest possible opportunity. The notice shall state the action, briefly state the reasons for the action, and state the effective time and date, and the duration of the action.

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<sup>1</sup> See e.g., American Bar Association Model Rule of Professional Conduct 4.2 (Communication with Person Represented by Counsel) ("ABA Rule 4.2"). ABA Rule 4.2 provides, "[i]n representing a client, a lawyer shall not communicate about the subject of the representation with a person the lawyer knows to be represented by another lawyer in the matter, unless the lawyer has the consent of the other lawyer or is authorized to do so by law or a court order." Many states, including Illinois, have rules regarding communications with a person represented by counsel that are based on ABA Rule 4.2.

(ii) The Respondent shall be entitled to be represented in all proceedings subsequent to the imposition of the emergency action by legal counsel or any representative of the Respondent's choosing, except for any member of the Exchange's Board of Directors or Business Conduct Committee, any Exchange employee or any Person substantially related to the emergency action, such as a material witness or a Respondent.

(iii) The Respondent may make a written request in accordance with Rule 704(c) for access to books, documents or other evidence concerning the emergency action that are in the possession or under the control of the Exchange, except that the sixty day time period in Rule 704(c) shall not be applicable and any such request must be made within 10 days from the date of service of the notice of the emergency action.

(iv) The Respondent shall have 10 days from the date of service of the notice of the emergency action to request a hearing regarding the emergency action by providing written notice of the request to the Secretary. In the event that the Respondent requests a hearing regarding the emergency action, the hearing shall be held as soon as reasonably practicable.

(v) The hearing shall be conducted before a BCC Panel pursuant to Rule 706, except that the BCC Panel may determine in accordance with paragraph (a)(iv) above to shorten the fifteen day and five day time periods in Rule 706(b).

(vi) Promptly following the hearing, the BCC Panel shall render a written decision based upon the weight of the evidence contained in the record of the proceeding and shall serve notice of the decision upon the Respondent pursuant to Rule 712 and upon the Exchange. The decision shall include a description of the summary action taken; the reasons for the summary action; a summary of the evidence produced at the hearing; a statement of findings and conclusions; a determination that the summary action should be affirmed, modified or reversed; and a declaration of any action to be taken pursuant to the determination, and the effective date and duration of such action.

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

(b) If a Clearing Member revokes any authorization granted and guarantee made by it to any Trading Privilege Holder pursuant to Rule 1101(b), such Trading Privilege Holder's Trading Privileges shall be automatically terminated, and such Trading Privilege Holder must obtain another guarantee from a Clearing Member before its Trading Privileges will be reinstated. If such Trading Privilege Holder fails to obtain such a replacement guarantee within three months from the effective date of the revocation of the guarantee by its previous Clearing Member, its Trading Privileges shall be automatically terminated.

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### **CFE Rule 310. Notices**

(a) Except as otherwise provided by the Rules of the Exchange, any notice required to be given by the Rules of the Exchange or otherwise shall be deemed to have been given:

(i) in person upon delivery of the notice in person to the Person to whom such notice is addressed;

(ii) by mail upon deposit of the notice in the United States mail, enclosed in a postage prepaid envelope;

(iii) by messenger or overnight courier service upon provision of the notice to the messenger or courier service, provided that the delivery method does not require payment of the messenger or courier service fee to deliver the notice by the Person to whom the notice is addressed;

(iv) by facsimile machine upon acknowledgment by the facsimile machine used to transmit the notice of the successful transmission of the notice;

(v) by electronic mail upon electronic transmission of the notice; and

(vi) by telephone when received.

Any such notice must be addressed to its intended recipient at the intended recipient's address (including the intended recipient's business or residence address, facsimile number, electronic address, or telephone number, as applicable) as it appears on the books and records of the Exchange, or if no address appears on such books and records, then at such address as shall be otherwise known to the Exchange, or if no such address appears on such books and records, then in care of the registered agent of the Exchange in the State of Delaware.

The Exchange may serve notice with respect to a matter on counsel for a Trading Privilege Holder or other Person on behalf of that Trading Privilege Holder or other Person provided that: (i) the Trading Privilege Holder or other Person has previously instructed the Exchange in writing to serve that counsel with any notices relating to that matter; and (ii) the counsel has previously notified the Exchange in writing that the counsel agrees to accept service of any notices relating to that matter on behalf of the Trading Privilege Holder or other Person and of a mailing address and an email address for service of those notices. If a counsel has provided a notice to the Exchange pursuant to the preceding sentence with respect to a matter, the Exchange may continue to serve that counsel on behalf of the Trading Privilege Holder or other Person with respect to that matter unless and until the counsel notifies the Exchange in writing that the counsel is no longer representing the Trading Privilege Holder or other Person with respect to that matter or that the counsel consents to service on the Trading Privilege Holder or other Person directly with respect to that matter.

(b) Without limiting the generality of the foregoing, the Exchange shall publish a notice with respect to each addition to, or modification of, the Rules of the Exchange, in a form and manner that is reasonably designed to enable each Trading Privilege Holder to become aware of and familiar with, and to implement any necessary preparatory measures to be taken by it with respect to, such addition or modification, prior to the effective date thereof; provided that any failure of the Exchange to so publish a notice shall not affect the effectiveness of the addition or modification in question. Each Trading Privilege Holder shall provide its respective Authorized Traders with copies of any such notice. For purposes of publication in accordance with the first sentence of this Rule 310(b), it shall be sufficient (without limiting the discretion of the Exchange as to any other reasonable means of communication) if a notice is (a) sent to each Trading Privilege Holder by mail, recognized courier service, facsimile or electronic mail (including by means of a hyperlink included in an electronic mail message), to the address, facsimile number or electronic mail address (as applicable) as is appears on the books and records of the Exchange and (b) published on the Exchange's website.

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## **CFE Rule 712. Service of Notice**

### (a) Service on Person, Subject, Respondent or Counsel

(i) Any charges, notices or other documents contemplated to be served pursuant to Rule 307 or this Chapter 7 may be served upon a Person, Subject or Respondent directly or by service upon such Person's, Subject's or Respondent's counsel.

(ii) The Exchange may serve any charges, notices or other documents contemplated to be served pursuant to Rule 307 or this Chapter 7 with respect to a matter on counsel for a Person, Subject or Respondent on behalf of that Person, Subject or Respondent provided that: (A) the Person, Subject or Respondent has previously instructed the Exchange in writing to serve that counsel with any notices relating to that matter; and (B) the counsel has previously notified the Exchange in writing that the counsel agrees to accept service of any notices relating to that matter on behalf of the Person, Subject or Respondent and of a mailing address and an email address for service of those notices.

(iii) If a counsel has provided a notice to the Exchange pursuant to subparagraph (a)(ii)(B) above with respect to a matter, the Exchange may continue to serve that counsel on behalf of the Person, Subject or Respondent with respect to that matter unless and until the counsel notifies the Exchange in writing that the counsel is no longer representing the Person, Subject or Respondent with respect to that matter or that the counsel consents to service on the Person, Subject or Respondent directly with respect to that matter.

### (b) Manner of Service

(i) Charges. Any charges [, notices or other documents contemplated to be] served pursuant to this Chapter 7 may be served upon the Respondent or Respondent's counsel either personally or by leaving the same at his or her place of business or by deposit in the United States mail, postage prepaid, via registered or certified mail addressed to[:] the Respondent at the address as it appears on the books and records of the Exchange or to Respondent's counsel at the address identified in the notice provided pursuant to subparagraph (a)(ii)(B) above.

(ii) Other. All other notices or other documents contemplated to be served pursuant to Rule 307 or this Chapter 7 may be served in the manners specified in Rule 310(a)(i), (ii), (iii), (iv) or (v).

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Questions regarding this submission may be directed to Arthur Reinstein at (312) 786-7570 or Jenny Golding at (312) 786-7466. Please reference our submission number CFE-2013-29 in any related correspondence.

CBOE Futures Exchange, LLC

A handwritten signature in black ink, appearing to read "James F. Lubin". The signature is written in a cursive style with a large initial "J" and a long horizontal stroke at the end.

By: James F. Lubin  
Senior Managing Director

cc: Nancy Markowitz (CFTC)  
National Futures Association  
The Options Clearing Corporation