

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91144; File No. SR-CFE-2021-002)

February 17, 2021

Self-Regulatory Organizations; Cboe Futures Exchange, LLC; Notice of a Filing of a Proposed Rule Change Regarding Rule Consolidation

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on February 3, 2021 Cboe Futures Exchange, LLC (“CFE” or “Exchange”) filed with the Securities and Exchange Commission (“Commission”) the proposed rule change described in Items I, II, and III below, which Items have been prepared by CFE.² The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons. CFE also has filed this proposed rule change with the Commodity Futures Trading Commission (“CFTC”). CFE filed a written certification with the CFTC under Section 5c(c) of the Commodity Exchange Act (“CEA”)³ on January 28, 2021.

I. Self-Regulatory Organization’s Description of the Proposed Rule Change

The Exchange proposes to streamline the manner in which CFE’s rules require CFE Trading Privilege Holders (“TPHs”) to comply with CFTC regulations relating to minimum financial requirements, financial reporting requirements, and protection of customer funds. The scope of this filing is limited solely to the application of the proposed rule change to security futures that may be traded on CFE. Although no security futures are currently listed for trading

¹ 15 U.S.C. § 78s(b)(7).

² The Commission notes that the Exchange originally filed its proposed rule change regarding rule consolidation on January 29, 2021 (SR-CFE-2021-001). SR-CFE-2021-001 was subsequently withdrawn and replaced by this filing in order to correct certain typographical errors in the Exhibit 1 and proposed rule text.

³ 7 U.S.C. § 7a-2(c).

on CFE, CFE may list security futures for trading in the future. The text of the proposed rule change is attached as Exhibit 4 to the filing but is not attached to the publication of this notice.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, CFE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below. CFE has prepared summaries, set forth in Sections A, B, and C below, of the most significant aspects of such statements.

A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

1. Purpose

Chapter 5 (Obligations of Trading Privilege Holders) of the CFE Rulebook currently includes a lengthy Appendix that contains twenty CFE rules numbered Rules 518 through 537. Each of these rules provides that any TPH subject to an enumerated CFTC Regulation that violates the specified Regulation shall be deemed to have violated that CFE rule. The CFTC Regulations referenced in the Appendix relate to minimum financial standards for intermediaries, the segregation of customer and proprietary funds, the custody of customer funds, the investment standards for customer funds, intermediary default procedures, and related recordkeeping. The Appendix is lengthy because it includes twenty separate CFE rules. The Appendix is also lengthy because each of these CFE rules includes CFE rule language as well as a restatement of the provisions of the applicable CFTC Regulation that is referenced in the rule which follows after the CFE rule language.

The proposed rule change streamlines the manner in which the requirements under the

Appendix to Chapter 5 are presented in the CFE Rulebook while maintaining the same requirements within the Rulebook that are currently provided for under the Appendix. Specifically, the proposed rule change consolidates those requirements by enumerating all of them within current CFE Rule 518 (Compliance with Minimum Financial Requirements, Financial Reporting Requirements, and Requirements Relating to Protection of Customer Funds) instead of within an Appendix to Chapter 5. The proposed rule change also deletes the restatement of all of the provisions of the CFTC Regulations referenced in the Appendix while maintaining within Rule 518 reference to those same CFTC Regulations and to the subject matter of those regulations.

The following table identifies for each of the current CFE rules that is proposed to be consolidated into Rule 518 the rule number of the current rule, the subsection of amended Rule 518 that is proposed to address the subject matter of the current rule, and the CFTC regulation underlying the current rule. The table also includes a high level description of the subject matter of each of those rules as provided for under applicable CFTC regulation.

<u>Current CFE Rule</u>	<u>New CFE Rule</u>	<u>CFTC Regulation</u>	<u>Summary of Rule</u>
519	518(a)	1.10 ⁴	Requires TPHs subject to CFTC Regulation 1.10 to comply with financial reporting requirements, including the requirement to file CFTC Form 1-FR.
520	518(b)	1.11 ⁵	Requires TPHs subject to CFTC Regulation 1.11 to comply with the requirement that futures commission merchants (“FCMs”) establish, maintain, and enforce a system of risk management policies and procedures.
521	518(c)	1.12 ⁶	Requires TPHs subject to CFTC Regulation 1.12 to comply with the requirement to notify the CFTC if the TPH fails to

⁴ 17 CFR § 1.10.

⁵ 17 CFR § 1.11.

⁶ 17 CFR § 1.12.

<u>Current CFE Rule</u>	<u>New CFE Rule</u>	<u>CFTC Regulation</u>	<u>Summary of Rule</u>
			maintain an adjusted net capital above certain specified thresholds.
522	518(d)	1.17 ⁷	Requires TPHs subject to CFTC Regulation 1.17 to comply with certain minimum financial requirements.
523	518(e)	1.18 ⁸	Requires TPHs subject to CFTC Regulation 1.18 to comply with the requirement to maintain records for and relating to financial reporting and a monthly computation regarding the TPH's assets, liabilities, and capital.
524	518(f)	1.20 ⁹	Requires TPHs subject to CFTC Regulation 1.20 to comply with the requirement to separately account for all future customer funds and segregate those funds as belonging to the TPH's futures customers.
525	518(g)	1.21 ¹⁰	Requires TPHs subject to CFTC Regulation 1.21 to comply with the requirement to treat all money and equities accruing to an FCM on behalf of any futures customer as accruing to the futures customer.
526	518(h)	1.22 ¹¹	Requires TPHs subject to CFTC Regulation 1.22 to comply with a prohibition on using or permitting the use of the customer funds of one futures customer to purchase, margin, or settle the trades of or to secure credit of any person other than that futures customer.
527	518(i)	1.23 ¹²	Requires TPHs subject to CFTC Regulation 1.23 to comply with a prohibition on the commingling of futures customer funds with the funds of an FCM.
528	518(j)	1.24 ¹³	Requires TPHs subject to CFTC Regulation 1.24 to comply with an exclusion that money held in a segregated account shall not include money invested in obligations or stocks of any clearing organization or contract market.
529	518(k)	1.25 ¹⁴	Requires TPHs subject to CFTC Regulation 1.25 to comply with the requirements and restrictions regarding the investments of customer funds.

⁷ 17 CFR § 1.17.

⁸ 17 CFR § 1.18.

⁹ 17 CFR § 1.20.

¹⁰ 17 CFR § 1.21.

¹¹ 17 CFR § 1.22.

¹² 17 CFR § 1.23.

¹³ 17 CFR § 1.24.

¹⁴ 17 CFR § 1.25.

<u>Current CFE Rule</u>	<u>New CFE Rule</u>	<u>CFTC Regulation</u>	<u>Summary of Rule</u>
530	518(l)	1.26 ¹⁵	Requires TPHs subject to CFTC Regulation 1.26 to comply with the requirement that each FCM that invests customer funds in instruments described in CFTC Regulation 1.25, except for investments in money market mutual funds, shall separately account for those instruments as futures customer funds and segregate those instruments as funds belonging to customers.
531	518(m)	1.27 ¹⁶	Requires TPHs subject to CFTC Regulation 1.27 to comply with the requirement that each FCM which invests customer funds shall keep certain records of the investment.
532	518(n)	1.28 ¹⁷	Requires TPHs subject to CFTC Regulation 1.28 to comply with the requirement that FCMs that invest customer funds in instruments described in CFTC Regulation 1.25 shall include those instruments in segregated account records and reports at values not exceeding current market values.
533	518(o)	1.29 ¹⁸	Requires TPHs subject to CFTC Regulation 1.29 to comply with the provision that an FCM may invest customer funds and retain as the TPH's own incremental income or interest resulting therefrom and the requirement that an FCM shall bear sole responsibility for any losses resulting from the investment of customer funds in instruments described in CFTC Regulation 1.25.
534	518(p)	1.30 ¹⁹	Requires TPHs subject to CFTC Regulation 1.30 to comply with a prohibition against an FCM lending funds on an unsecured basis to finance customers' trading or lending funds to customers secured by the customers' accounts.
535	518(q)	1.31 ²⁰	Requires TPHs subject to CFTC Regulation 1.31 to comply with the requirement to maintain electronic records in accordance with certain provisions and to further establish appropriate systems and controls that ensure the authority and reliability of electronic regulatory records.

¹⁵ 17 CFR § 1.26.

¹⁶ 17 CFR § 1.27.

¹⁷ 17 CFR § 1.28.

¹⁸ 17 CFR § 1.29.

¹⁹ 17 CFR § 1.30.

²⁰ 17 CFR § 1.31.

<u>Current CFE Rule</u>	<u>New CFE Rule</u>	<u>CFTC Regulation</u>	<u>Summary of Rule</u>
536	518(r)	1.32 ²¹	Requires TPHs subject to CFTC Regulation 1.32 to comply with the requirement each FCM compute as of the close of each business day the total amount of futures customer funds on deposit in segregated accounts as well as other specified details.
537	518(s)	1.36 ²²	Requires TPHs subject to CFTC Regulation 1.36 to comply with the requirement that each FCM maintain a record of all securities and property received from customers in lieu of money to margin, purchase, guarantee, or secure the transactions of those customers.

CFE believes that its proposed approach to amending the Appendix to Chapter 5 simplifies the CFE Rulebook by streamlining a lengthy portion of the Rulebook that contains twenty separate rules into one straightforward rule that reflects all of the same requirements that exist under the consolidated rules thereby making it easier for TPHs to reference these requirements within CFE’s Rulebook because they will all be enumerated in a single rule.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,²³ in general, and furthers the objectives of Sections 6(b)(1)²⁴ and 6(b)(5)²⁵ in particular, in that it is designed:

- to enable the Exchange to enforce compliance by its TPHs and persons associated with its TPHs with the provisions of the rules of the Exchange,

²¹ 17 CFR § 1.32.
²² 17 CFR § 1.36.
²³ 15 U.S.C. § 78f(b).
²⁴ 15 U.S.C. § 78f(b)(1).
²⁵ 15 U.S.C. § 78f(b)(5).

- to prevent fraudulent and manipulative acts and practices,
- to promote just and equitable principles of trade,
- to remove impediments to and perfect the mechanism of a free and open market and a national market system,
- and in general, to protect investors and the public interest.

The proposed rule change retains within the CFE Rulebook rule provisions that address minimum financial requirements, financial reporting requirements, and protection of customer funds, including rules relating to appropriate minimum financial standards for intermediaries, the segregation of customer and proprietary funds, the custody of customer funds, the investment standards for customer funds, intermediary default procedures, and related recordkeeping as required by CFTC regulations, all in furtherance of TPH compliance with those rule provisions and their enforcement by the Exchange. In particular, the proposed rule change streamlines a lengthy portion of the Rulebook that contains twenty separate rules into one straightforward rule that reflects all of the same requirements that exist under the consolidated rules thereby making it easier for TPHs to reference those requirements within CFE's Rulebook because they will all be enumerated in a single rule. The Exchange believes that making it easier for TPHs to reference those requirements will contribute to furthering compliance with those requirements by TPHs.

B. Self-Regulatory Organization's Statement on Burden on Competition

CFE does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act, in that the Exchange believes that the proposed rule change will contribute to furthering compliance by TPHs with CFTC regulations relating to minimum financial requirements, financial reporting requirements, and protection of customer funds. The Exchange believes that the proposed rule

change is equitable and not unfairly discriminatory in that it would apply equally to all TPHs subject to the relevant CFTC regulations.

C. Self-Regulatory Organization’s Statement on Comments on the Proposed Rule Change Received from Members, Participants, or Others

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

The proposed rule change will become operative on February 11, 2021. At any time within 60 days of the date of effectiveness of the proposed rule change, the Commission, after consultation with the CFTC, may summarily abrogate the proposed rule change and require that the proposed rule change be refiled in accordance with the provisions of Section 19(b)(1) of the Act.²⁶

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change is consistent with the Act. Comments may be submitted by any of the following methods:

Electronic comments:

- Use the Commission’s Internet comment form (<http://www.sec.gov/rules/sro.shtml>); or
- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CFE-2021-002 on the subject line.

Paper comments:

- Send paper comments in triplicate to Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

²⁶ 15 U.S.C. § 78s(b)(1).

All submissions should refer to File Number SR-CFE-2021-002. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet website (<http://www.sec.gov/rules/sro.shtml>). Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for website viewing and printing in the Commission's Public Reference Room, 100 F Street, NE, Washington, DC 20549, on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of the filing also will be available for inspection and copying at the principal office of the Exchange. All comments received will be posted without change. Persons submitting comments are cautioned that we do not redact or edit personal identifying information from comment submissions. You should submit only information that

you wish to make available publicly. All submissions should refer to File Number SR-CFE-2021-002, and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.²⁷

J. Matthew DeLesDernier
Assistant Secretary

²⁷ 17 CFR 200.30-3(a)(73).