

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-91385; File No. SR-CFE-2021-007)

March 22, 2021

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

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on March 15, 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. 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”)² on March 15, 2021.

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

The Exchange proposes to update certain of its rule provisions relating to position limits.

The rule amendments included as part of this proposed rule change are to apply to all products traded on CFE, including both non-security futures and any security futures that may be listed for trading on CFE. 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 on CFE, CFE may list security futures for trading in the future.

¹ 15 U.S.C. 78s(b)(7).

² 7 U.S.C. 7a-2(c).

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

CFE Rule 412 (Position Limits) governs CFE position limits and position limit exemptions. The CFTC recently amended its position limit regulations in Part 150³ of the CFTC Regulations.⁴ Among other things, revised Part 150⁵ imposes federal position limits for “referenced contracts,” which include (1) 25 “core referenced futures contracts” (made up of nine “legacy agricultural contracts” (e.g., CBOT Corn) and 16 “non-legacy contracts” (e.g., ICE Cocoa)), (2) futures contracts and options on futures contracts directly or indirectly linked to a core referenced futures contract, and (3) “economically equivalent swaps.” CFE does not currently offer for trading any products that are subject to the requirements of revised Part 150⁶

³ 17 CFR Part 150.

⁴ See CFTC Final Rule Regarding Position Limits for Derivatives, 86 FR 3236 (January 14, 2021).

⁵ 17 CFR Part 150.

⁶ 17 CFR Part 150.

of the CFTC Regulations. Instead, CFE offers for trading futures on excluded commodities, which are not within the scope of revised Part 150⁷ of the CFTC Regulations. Although the changes to Part 150⁸ of the CFTC Regulations do not apply to CFE's products, CFE is proposing to make the following three updates to Rule 412 in light of the changes made by the CFTC to Part 150⁹ of the CFTC Regulations. CFE is proposing to make these updates to Rule 412 in order to align certain language of Rule 412 with the language of revised Part 150¹⁰ of the CFTC Regulations and to make clear that CFE will adhere to the applicable provisions of Part 150¹¹ if CFE were ever to list a product that is subject to the provisions of Part 150.¹²

Rule 412(b) currently provides that position limits shall be as established by the Exchange from time to time as permitted by CFTC Regulations 150¹³ and 41.25¹⁴ as applicable. The reference in Rule 412(b) to CFTC Regulation 150¹⁵ is intended to refer to Part 150¹⁶ of the CFTC Regulations. CFTC Regulation 41.25¹⁷ governs position limits for security futures products. In addition to being able to establish position limits for products governed by Part

⁷ 17 CFR Part 150.

⁸ 17 CFR Part 150.

⁹ 17 CFR Part 150.

¹⁰ 17 CFR Part 150.

¹¹ 17 CFR Part 150.

¹² 17 CFR Part 150.

¹³ 17 CFR Part 150.

¹⁴ 17 CFR § 41.25.

¹⁵ 17 CFR Part 150.

¹⁶ 17 CFR Part 150.

¹⁷ 17 CFR § 41.25.

150¹⁸ of the CFTC Regulations as permitted by Part 150¹⁹ and for security futures products as permitted by CFTC Regulation 41.25,²⁰ CFE is also able to establish position limits for other products as permitted by CFTC Regulation 38.300.²¹ CFTC Regulation 38.300²² restates Designated Contract Market (“DCM”) Core Principle 5 (Position Limitations or Accountability) under Section 5 of the CEA²³ and applies to all products offered for trading by a DCM. CFTC Regulation 38.300²⁴ provides, in relevant part, that to reduce the potential threat of market manipulation or congestion (especially during trading in the delivery month), a DCM shall adopt for each contract of the DCM, as is necessary and appropriate, position limitations or position accountability for speculators. In order to more clearly reflect the reference to Part 150²⁵ of the CFTC Regulations in Rule 412(b) and to also reference CFTC Regulation 38.300²⁶ in Rule 412(b), the proposed rule change proposes to revise Rule 412(b) to provide that CFE position limits shall be as established by the Exchange from time to time as permitted by CFTC Regulation 38.300,²⁷ Part 150²⁸ of the CFTC Regulations, and CFTC Regulation 41.25,²⁹ as applicable.

¹⁸ 17 CFR Part 150.

¹⁹ 17 CFR Part 150.

²⁰ 17 CFR § 41.25.

²¹ 17 CFR § 38.300.

²² 17 CFR § 38.300.

²³ 7 U.S.C. § 7(d)(5).

²⁴ 17 CFR § 38.300.

²⁵ 17 CFR Part 150.

²⁶ 17 CFR § 38.300.

²⁷ 17 CFR § 38.300.

²⁸ 17 CFR Part 150.

²⁹ 17 CFR § 41.25.

The proposed rule change also proposes to remove from Rule 412(c) and Rule 412(d)(i) references to prior CFTC Regulation 1.3(z)³⁰ which has been superseded by revisions to Part 150³¹ of the CFTC Regulations. Prior CFTC Regulation 1.3(z)³² previously included a definition of the term “bona fide hedging transaction for excluded commodities,” but with the CFTC’s amended position limit regulations, CFTC Regulation 1.3³³ no longer contains a definition for bona fide hedge transaction. Accordingly, the proposed rule change proposes to remove a reference to prior CFTC Regulation 1.3(z)³⁴ in current Rule 412(c) which provides that the term “bona fide hedge transaction” means any transaction or position in a particular contract based the requirements of CFTC Regulation 1.3(z).³⁵ The proposed rule change also proposes to remove references to prior CFTC Regulation 1.3(z)³⁶ in current Rule 412(d)(1) [sic] which requires representations in a position limit exemption request for a bona fide hedge transaction with respect to satisfaction of the requirements of CFTC Regulation 1.3(z).³⁷ The proposed rule change also proposes to revise Rule 412(c) and Rule 412(d)(1) [sic] to refer to a “bona fide hedge transaction or position” instead of to a “bona fide hedge transaction” consistent with how the CFTC now refers to this term.³⁸

Finally, the proposed rule change proposes to revise Rule 412(c) to provide that to the

³⁰ 17 CFR § 1.3(z).

³¹ 17 CFR Part 150.

³² 17 CFR § 1.3(z).

³³ 17 CFR § 1.3.

³⁴ 17 CFR § 1.3(z).

³⁵ 17 CFR § 1.3(z).

³⁶ 17 CFR § 1.3(z).

³⁷ 17 CFR § 1.3(z).

³⁸ See 17 CFR 150.1(a).

extent that a contract is subject to federal position limits or otherwise subject to the provisions Part 150³⁹ of the CFTC Regulations, the Exchange shall adhere to the applicable provisions Part 150⁴⁰ of the CFTC Regulations, including any applicable definitions and requirements, in relation to any position limit exemption requests relating to that contract. As noted above, Part 150 does not apply to futures on excluded commodities, which are the only products that CFE currently lists for trading. Thus, while CFE does not currently offer for trading any contract subject to federal position limits or otherwise subject to the provisions of Part 150⁴¹ of the CFTC Regulations, this provision makes clear that CFE will comply with the applicable provisions of Part 150⁴² in the event that CFE were to list this type of contract for trading in the future. Additionally, this provision makes clear that CFE will apply the definitions included in Part 150⁴³ of the CFTC Regulations to the extent that they are applicable. As a result, CFE is not including or cross-referencing those specific definitions in Rule 412.

CFE is proposing to make these three targeted updates to Rule 412 now so that its provisions are not out of date. CFE may propose further updates to Rule 412 in the future if it were to ever list for trading any contract subject to the provisions of Part 150⁴⁴ of the CFTC Regulations or in light of how other DCMs that offer trading in products not subject to the provisions of Part 150⁴⁵ of the CFTC Regulations may amend their position limit rules in light of

³⁹ 17 CFR Part 150.

⁴⁰ 17 CFR Part 150.

⁴¹ 17 CFR Part 150.

⁴² 17 CFR Part 150.

⁴³ 17 CFR Part 150.

⁴⁴ 17 CFR Part 150.

⁴⁵ 17 CFR Part 150.

the revisions that the CFTC has made to its position limit regulations.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁴⁶ in general, and furthers the objectives of Sections 6(b)(1)⁴⁷ and 6(b)(5)⁴⁸ in particular, in that it is designed:

- to enable the Exchange to enforce compliance by its Trading Privilege Holders and persons associated with its Trading Privilege Holders with the provisions of the rules of the Exchange,
- 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 Exchange believes that the rule updates included in the proposed rule change will contribute to CFE's ability to enforce CFE's rule provisions regarding position limits and position limit exemptions and thus contribute to the protection of investors and the public interest. The proposed rule updates are consistent with the position limit regulations adopted by the CFTC and remove superseded references in CFE's rules. The proposed rule updates will also provide additional clarity to Trading Privilege Holders regarding the application of CFE's rule provisions relating to position limits and position limit exemptions. Additionally, the Exchange

⁴⁶ 15 U.S.C. § 78f(b).

⁴⁷ 15 U.S.C. § 78f(b)(1).

⁴⁸ 15 U.S.C. § 78f(b)(5).

believes that the proposed rule change is equitable and not unfairly discriminatory in that the rule amendments included in the proposed rule change would apply equally to all Trading Privilege Holders.

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

CFE does not believe that the proposed rule changes will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act. Specifically, the Exchange believes that the proposed rule change will not burden intra-market competition because the proposed rule updates will apply equally to all Trading Privilege Holders. The Exchange also believes that the proposed rule change will not burden inter-market competition since the proposed rule change is consistent with CFTC regulations and will enhance CFE's ability to carry out its responsibilities as a self-regulatory organization.

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 March 29, 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.⁴⁹

⁴⁹ 15 U.S.C. 78s(b)(1).

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-2021-007 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.

All submissions should refer to File Number SR-CFE-2021-007. 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-2021-007, 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.⁵⁰

J. Matthew DeLesDernier
Assistant Secretary

⁵⁰ 17 CFR 200.30-3(a)(73).