

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-93601; File No. SR-CFE-2021-009)

November 17, 2021

Self-Regulatory Organizations; Cboe Futures Exchange, LLC; Notice of a Filing of a Proposed Rule Change Regarding Block Trade Recordkeeping Requirements

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on November 10, 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 November 10, 2021.

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

The Exchange proposes to update the recordkeeping requirements applicable to Block Trades. 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. 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.

¹ 15 U.S.C. 78s(b)(7).

² 7 U.S.C. 7a-2(c).

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 415 (Block Trades) governs Block Trades in CFE products.³ Rule 415(e) currently requires each CFE Trading Privilege Holder ("TPH") that is a party to a Block Trade to record certain details regarding the transaction on an order ticket. Those details include (i) the Contract (including the expiration); (ii) the number of contracts traded; (iii) the price of execution or premium; (iv) the time of execution (i.e., the time at which the parties agreed to the Block Trade); (v) the arrangement time, if any (i.e., the time at which the parties agreed to enter into the Block Trade at a later time); (vi) the identity of the counterparty; (vii) that the transaction is a Block Trade; (viii) if applicable, the account number of the customer for which the Block Trade was executed; and (ix) if applicable, the expiration, strike price, and type of option (put or call) in the case of an option.

The proposed rule change proposes to revise Rule 415(e) to limit the application of the Block Trade order ticket requirement to any TPH that acts as an agent for a Block Trade and to

³ A Block Trade is a large transaction in a Contract listed on CFE that is negotiated off of CFE's trading facility and is then reported to CFE which meets the parameters for a Block Trade under CFE's rules.

no longer apply that requirement to any TPH that is a party to a Block Trade in a principal capacity and not acting in the capacity as an agent. The proposed rule change also proposes to add a requirement to Rule 415(e) that each TPH involved in any Block Trade either maintain records evidencing compliance with the criteria set forth in Rule 415 or be able to obtain those records from its customer involved in the Block Trade. Finally, consistent with these changes, the proposed rule change proposes to revise a current cross-reference in Rule 415(e) to an order ticket in this context by referring to the order ticket as “any required order ticket” instead of the current description of “the order ticket referred to in the preceding sentence.”

These proposed rule amendments are consistent with comparable provisions included in CFE Rule 414 (Exchange of Contract for Related Position), which governs exchange of contract for related position (“ECRP”) transactions involving CFE products.⁴ In particular, Rule 414(g) includes a similar provision to the provision in Rule 415(e) regarding the details of an ECRP transaction that must be recorded on an order ticket and that provision of Rule 414(g) is applicable solely to any TPH that acts as an agent for an ECRP transaction. Similarly, the new requirement that the proposed rule change is proposing to add to Rule 415(e) regarding the maintenance of records evidencing compliance with Rule 415 is the same requirement that is included in the first sentence of Rule 414(h) related to ECRP transactions. Accordingly, the

⁴ An ECRP transaction consists of a transaction in a Contract listed on CFE and a transaction in a related position that is negotiated off of CFE’s trading facility and is then reported to CFE which meets the parameters for an ECRP transaction under CFE’s rules. The related position must have a high degree of price correlation to the underlying of the Contract transaction so that the Contract transaction would serve as an appropriate hedge for the related position. In every ECRP transaction, one party is the buyer of (or the holder of the long market exposure associated with) the related position and the seller of the corresponding Contract and the other party is the seller of (or the holder of the short market exposure associated with) the related position and the buyer of the corresponding Contract.

proposed rule change proposes to align the order ticket requirement applicable to Block Trades with the corresponding order ticket requirement applicable to ECRP transactions. Additionally, the proposed rule change proposes to make clear that any TPH involved in a Block Trade must maintain records of the Block Trade evidencing compliance with the criteria in Rule 415 or be able to obtain those records from its customer involved in the Block Trade.

Block Trades and ECRP transactions are the two primary types of off-exchange transactions that are permitted under CFE rules. Given the similarities between these two types of transactions, Block Trades and ECRP transactions are subject to similar recordkeeping and reporting requirements. Accordingly, CFE believes that it is appropriate to align the order ticket requirement applicable to Block Trades under Rule 415 with the corresponding order ticket requirement applicable to ECRP transactions under Rule 414 and that doing so will make it easier for TPHs to comply with the Exchange's recordkeeping requirements.

The Exchange also notes that it separately receives the information that a TPH party to a Block Trade in a principal capacity is currently required to record on an order ticket. Therefore, the Exchange will still receive this information following the implementation of the proposed rule change. Also, unlike with an order ticket which a TPH creates and maintains in its own records, the Exchange receives this information directly through the reporting process to the Exchange for a Block Trade and thus this information becomes part of the Exchange's records. Specifically, Rule 415(h) requires that the notification to the Exchange of a Block Trade shall include (i) whether the Block Trade is a single leg transaction, a transaction in a spread, or a transaction in a strip; (ii) the Contract identifier (or product and contract expiration for a future or product, expiration, strike price, and type of option (put or call) in the case of an option), price (or premium for an option) and quantity of the Block Trade and whether the Block Trade is buy

or sell; (iii) the time of execution (i.e., the time at which the parties agreed to the transaction); (iv) the arrangement time, if any (i.e., the time at which the parties agreed to enter into the transaction at a later time); (v) Order Entry Operator ID; (vi) executing firm ID (“EFID”); (vii) account; (viii) Clearing Corporation origin code; (ix) Customer Type Indicator code; and (x) any other information required by the Exchange. Additionally, among the other information that the Exchange requires be included as part of the notification to the Exchange of a Block Trade under Rule 415(h)(x) is the identity of the counterparty.

In addition, the proposed rule change recognizes that the use of an order ticket is more applicable with respect to an agent involved in a transaction than with respect to a principal involved in a transaction, while at the same time still requiring that any TPH involved in a Block Trade (whether that TPH is an agent or principal) maintain appropriate records relating to the Block Trade. The primary purpose of an order ticket is to record the information regarding an order that a customer communicates to a broker. An order ticket records the authorization that a customer has provided to a broker with respect to an order placed with the broker on behalf of that customer. Because a principal is trading on behalf of itself and not on behalf of a customer, there is not the same need for the TPH entering into a Block Trade as principal to record information on an order ticket regarding a transaction that the TPH desires to effectuate on behalf of itself. This is the case because there is not another party involved in the transaction on whose behalf the principal is acting and thus it is not necessary to record an authorization from that party with respect to an order from that party. Consequently, it is not common practice for TPHs trading as principal to utilize order tickets. The proposed rule change recognizes that this is the case and that there is not the same need for an order ticket when a TPH is acting as principal that exists when a TPH is acting as an agent.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Sections 6(b)(1)⁶ and 6(b)(5)⁷ 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,
- 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 proposes to set forth and make clear to TPHs within CFE rules the recordkeeping requirements that apply with regard to Block Trades. The proposed rule change proposes to align the order ticket requirement applicable to Block Trades under Rule 415 with the corresponding order ticket requirement applicable to ECRP transactions under Rule 414. The Exchange believes that aligning these requirements is appropriate given the similarities between Block Trades and ECRP transactions, which are the two primary types of off-exchange transactions that are permitted under CFE rules and which are subject to similar recordkeeping and reporting requirements. Additionally, the proposed rule change recognizes that the use of an order ticket is more applicable with respect to an agent involved in a transaction than with

⁵ 15 U.S.C. § 78f(b).

⁶ 15 U.S.C. § 78f(b)(1).

⁷ 15 U.S.C. § 78f(b)(5).

respect to a principal involved in a transaction in that the primary purpose of an order ticket is to record the information regarding an order that a customer communicates to a broker and that the need to record a customer's authorization with respect to an order does not exist when a TPH is trading as principal on behalf of itself. The Exchange believes that clearly setting forth Block Trade recordkeeping requirements in CFE rules, aligning the recordkeeping requirements for Block Trades and ECRP transactions with regard to order tickets, and applying the Block Trade order ticket requirement to agents and not to principals in recognition that order tickets are more directed to use with customer orders will make it easier for TPHs to comply with these requirements. Accordingly, the Exchange believes that the proposed rule change will contribute to furthering compliance with Exchange rules.

The Exchange separately receives the information that a TPH party to a Block Trade in a principal capacity is currently required to record on an order ticket when a Block Trade is reported to CFE. Therefore, the Exchange will still receive this information following the implementation of the proposed rule change.

The Exchange also believes that the proposed rule change will further the Exchange's ability to carry out its responsibilities as a self-regulatory organization in that it will contribute to enhancing the Exchange's ability to obtain trade information that it may utilize in reviewing whether Block Trades comply with Rule 415 by requiring that each TPH involved in any Block Trade either maintain records evidencing compliance with the criteria set forth in Rule 415 or be able to obtain those records from its customer involved in the Block Trade.

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. 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 TPHs. The Exchange also believes that the proposed rule change will not burden inter-market competition because the proposed rule change is designed to further the Exchange's ability to carry out its responsibilities as a self-regulatory organization in that it will contribute to enhancing the Exchange's ability to obtain trade information that it may utilize in reviewing whether Block Trades comply with Rule 415.

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 November 24, 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.⁸

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

⁸ 15 U.S.C. § 78s(b)(1).

- Send an e-mail to rule-comments@sec.gov. Please include File Number SR-CFE-2021-009 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-2021-009. 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-2021-009, 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.⁹

J. Matthew DeLesDernier
Assistant Secretary

⁹ 17 CFR 200.30-3(a)(73).