

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-68634; File No. SR-CFE-2013-001)

January 11, 2013

Self-Regulatory Organizations; CBOE Futures Exchange, LLC; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Regarding Minor Rule Violations

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 (“Act”),¹ notice is hereby given that on January 7, 2013, CBOE Futures Exchange, LLC (“CFE” or “Exchange”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change described in Items 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 January 7, 2013.

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

CFE Rule 714 currently provides that there are no types of Exchange rule violations that are considered minor rule violations for purposes of CFE Rule 714. The rule change would (i) identify ten categories of rules which primarily involve reporting and recordkeeping for which the Exchange may impose summary fines for violations of the applicable rule(s), (ii) enumerate the specific rule(s) within each category, (iii) set forth a summary fine schedule for violations of the rule(s) within each category; and (iv) provides examples of when the Exchange may aggregate violations as a single offense for purposes of CFE Rule 714. The rule change would apply to conduct in relation to all contracts listed and traded on the Exchange, including both security futures and non-security futures. The scope of this filing is limited solely to the

¹ 15 U.S.C. 78s(b)(7).

² 7 U.S.C. 7a-2(c).

application of the rule changes to security futures traded on CFE. The only security futures currently traded on CFE are traded under Chapter 16 of CFE's Rulebook which is applicable to Individual Stock Based and Exchange-Traded Fund Based Volatility Index ("Volatility Index") security futures. The text of the proposed rule change is available on the Exchange's website at <http://www.cfe.cboe.com>, on the Commission's website at <http://www.sec.gov>, at the principal office of the Exchange, and at the Commission's Public Reference Room.

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

The purpose of this proposal is to amend CFE Rule 714 (Imposition of Fines for Minor Rule Violations), referred to herein sometimes as "Minor Rule Violation Rule." CFE Rule 714 currently provides that there are no types of Exchange rule violations that are considered minor rule violations for purposes of CFE Rule 714. This Amendment would (i) identify ten categories of rules which primarily involve reporting and recordkeeping for which the Exchange may impose summary fines for violations of the applicable rule(s), (ii) enumerate the specific rule(s) within each category, (iii) set forth a summary fine schedule for violations of the rule(s) within

each category³, and (iv) provide examples of when the Exchange may aggregate violations as a single offense for purposes of CFE Rule 714. Below are general descriptions of areas covered by the ten categories:

- Order Entry Operator ID Designation and Recordkeeping
- Account Type Identification
- Front-End Audit Trail Information
- Exchange of Contract for Related Position Transaction Recordkeeping and Authorized Reporter Designation
- Block Trade Recordkeeping and Authorized Reporter Designation
- Responsible Trader Designation

The Exchange will have the ability to impose fines for violations of the rules covered in the Minor Rule Violation Rule both for matters that are currently pending for which a statement of charges has not yet been issued under CFE Rule 704(b) (Charges) and for future matters. The Exchange believes that these violations are suitable for incorporation into the Exchange's Minor Rule Violation Rule because they are generally technical in nature. Further, CFE will be able to carry out its regulatory responsibility more quickly and efficiently by incorporating these violations into its Minor Rule Violation Rule. CFE may, whenever it determines that any violation of a rule covered in the Minor Rule Violation Rule is intentional, egregious or otherwise not minor in nature, proceed under the Exchange's formal disciplinary rules.⁴

³ The proposed number of offenses leading up to a CFE Business Conduct Committee referral and the proposed fine amounts vary depending on the nature of the underlying violative conduct. This is because CFE regards violations of certain rule provisions under the Minor Rule Violation Rule to be more serious relative to violations of other rule provisions under the Minor Rule Violation Rule.

⁴ See CFE Rule 714(d).

CFE is proposing to make the following modifications to CFE Rule 714 with the number of offenses being calculated on a rolling twelve (12) month period:

Order Entry Operator ID Designation and Recordkeeping

CFE is proposing to modify its Minor Rule Violation Rule to cover violations of Order Entry Operator ID Designation and Recordkeeping requirements.

First, the Exchange is proposing to modify CFE Rule 714 to add CFE Rule 303A(a) to the Minor Rule Violation Rule, which requires that each Trading Privilege Holder (“TPH”) include an Order Entry Operator ID with every order and quote from that TPH this is submitted to the CBOE System (i.e., CFE’s trading system). A first offense will result in the issuance of a letter of caution. The second offense will be subject to a \$2,500 fine. The third offense will be subject to a \$10,000 fine. Subsequent offenses will be referred to CFE’s Business Conduct Committee.⁵

Second, the Exchange is proposing to modify CFE Rule 714 to add CFE Rules 303A(b) and 303A(c) to the Minor Rule Violation Rule, which require that every order and quote from a TPH that is submitted to the CBOE system include an Order Entry Operator ID that represents:

- the natural person physically responsible for entering an order or quote into the CBOE System (if a natural person entered the order or quote into the CBOE System);
- or
- the natural person physically responsible for entering the order or quote directly or indirectly into a system of or used by a TPH that interfaces with the CBOE System (if no natural person entered the order or quote into the CBOE System and instead a natural person entered the order or quote directly or indirectly into a system of or

⁵ A referral to CFE’s Business Conduct Committee would result in the initiation of a regular disciplinary proceeding.

- used by a THP that interfaces with the CBOE System); or
- the Automated Trading System (which is a system that automates the generation and routing of orders or quotes) that generated the order and quote.

CFE Rules 303(A)(b) and 303A(c) also require that: (i) an Order Entry Operator ID issued for a natural person may only be used by that natural person; (ii) an Order Entry Operator ID issued for a natural person may not be used by any other natural person or entity and may not be used as the Order Entry Operator ID for an Automated Trading System; (iii) an Order Entry Operator ID issued for an Automated Trading System may only be used for that Automated Trading System; and (iv) an Order Entry Operator ID issued for an Automated Trading System may not be used for any other Automated Trading System and may not be used as the Order Entry Operator ID for any natural person or entity.

A first offense will result in the issuance of a letter of caution. The second offense will be subject to a \$2,500 fine. The third offense will be subject to a \$10,000 fine. Subsequent offenses will be referred to the Business Conduct Committee.

Third, the Exchange is proposing to modify CFE Rule 714 to add CFE Rule 303A(d) to the Minor Rule Violation Rule, which sets forth issuance, recordkeeping and reporting requirements related to Order Entry Operator IDs. A first offense will result in the issuance of a letter of caution. The second offense will be subject to a \$2,500 fine. The third offense will be subject to a \$10,000 fine. Subsequent offenses will be referred to CFE's Business Conduct Committee.

Account Type Identification

CFE is proposing to modify its Minor Rule Violation Rule to cover violations of Account Type Identification requirements. Specifically, the Exchange is proposing to modify CFE Rule

714 to add CFE Rule 403(a)(vii) to the Minor Rule Violation Rule, which requires that each Order must contain information about account type. A first offense will result in the issuance of a letter of caution. The second offense will be subject to a \$2,500 fine. The third offense will be subject to a \$5,000 fine. The fourth offense will be subject to a \$7,500 fine. The fifth offense will be subject to a \$10,000 fine. Subsequent offenses will be referred to CFE's Business Conduct Committee.

Front-End Audit Trail Information

CFE is proposing to modify its Minor Rule Violation Rule to cover violations of Front-End Audit Trail Information requirements. Specifically, the Exchange is proposing to modify CFE Rule 714 to add CFE Rule 403(c) to the Minor Rule Violation Rule, which requires that each TPH maintain front-end audit trail information for all electronic orders entered into the CBOE System, including order modifications and cancellations. The audit trail must contain all order entry, modification, cancellation and response receipt time(s) as well as Financial Information Exchange interface (FIX) tag information and fields or CBOE Market Interface (CMi) order structure, as applicable. A first offense will result in the issuance of a letter of caution. The second offense will be subject to a \$2,500 fine. The third offense will be subject to a \$10,000 fine. Subsequent offenses will be referred to the Business Conduct Committee.

Exchange of Contract for Related Position ("ECRP") Transaction Recordkeeping and Authorized Reporter Designation

CFE is proposing to modify its Minor Rule Violation Rule to cover violations of ECRP Transactions Recordkeeping and Authorized Reporter Designation requirements.

First, the Exchange is proposing to modify CFE Rule 714 to add CFE Rule 414(g) to the Minor Rule Violation Rule, which sets forth record keeping requirements relating to a TPH's compliance with CFE Rule 414 (which governs ECRP transactions) or ability to obtain such

records from its customer involved in the ECRP. A first offense will result in the issuance of a letter of caution. The second offense will be subject to a \$2,500 fine. The third offense will be subject to a \$10,000 fine. Subsequent offenses will be referred to CFE's Business Conduct Committee.

Second, the Exchange is proposing to modify CFE Rule 714 to add CFE Rule 414(h) to the Minor Rule Violation Rule, which requires each TPH executing an ECRP transaction to have at least one designated Person that is either a TPH or a Related Party of a TPH and is pre-authorized by a Clearing Member to report ECRP transactions on behalf of the TPH. A first offense will result in the issuance of a letter of caution. The second offense will be subject to a \$10,000 fine. Subsequent offenses will be referred to CFE's Business Conduct Committee.

Block Trade Recordkeeping and Authorized Reporter Designation

CFE is proposing to modify its Minor Rule Violation Rule to cover violations of Block Trade Recordkeeping and Authorized Reporter Designation requirements.

First, the Exchange is proposing to modify CFE Rule 714 to add CFE Rule 415(e) to the Minor Rule Violation Rule, which sets forth order ticket requirements for Block Trades and recordkeeping requirements evidencing a TPH's compliance with CFE Rule 415 (which governs Block Trades). A first offense will result in the issuance of a letter of caution. The second offense will be subject to a \$2,500 fine. The third offense will be subject to a \$10,000 fine. Subsequent offenses will be referred to CFE's Business Conduct Committee.

Second, the Exchange is proposing to modify CFE Rule 714 to add CFE Rule 415(f) to the Minor Rule Violation Rule, which requires each TPH executing a side of a Block Trade to have at least one designated Person that is either a TPH or a Related Party of a TPH and is pre-authorized by a Clearing Member to report Block Trades on behalf of the TPH. A first offense

will result in the issuance of a letter of caution. The second offense will be subject to a \$10,000 fine. Subsequent offenses will be referred to CFE's Business Conduct Committee.

Responsible Trader Designation

CFE is proposing to modify its Minor Rule Violation Rule to cover violations of Account Responsible Trader Designation requirements. Specifically, the Exchange is proposing to modify CFE Rule 714 to add CFE Rule 513(a) to the Minor Rule Violation Rule, which requires that each TPH have at all times at least one employee or agent ("Responsible Trader") designated by its administrator with respect to the use of the CBOE System by such TPH (including its Authorized Traders).⁶ A first offense will result in the issuance of a letter of caution. The second offense will be subject to a \$10,000 fine. Subsequent offenses will be referred to CFE's Business Conduct Committee.

Reorganization of Aggregation Provisions and Examples

Current CFE Rule 714(a), among other things, currently permits the Exchange to aggregate individual violations of particular CFE rules that are covered by the Minor Rule Violation Rule to and treat those violations as a single offense. In other instances, the Exchange may, if no exceptional circumstances are present, impose a fine based upon a determination that there exists a pattern or practice of violative conduct. The Exchange also may aggregate similar violations generally if the conduct was unintentional, there was no injury to public investors or the violations resulted from a single problem or cause that has been corrected.

CFE is proposing to bolster the aggregation provisions of CFE Rule 714 by setting forth two additional examples of when aggregation may be appropriate. Specifically, the Exchange proposes to amend CFE Rule 714 to state that the Exchange may aggregate all similar violations

⁶ CFE Rule 105 defines "Authorized Trader" to mean any natural person who is a TPH or who is authorized by a TPH to access the CBOE System on behalf of the TPH.

found in an audit trail exam and may separately aggregate all similar violations found in a single review of exception report output. The Exchange proposes to reorganize the existing aggregation provisions in CFE Rule 714(a) and restate them, along with the above aggregation examples, in new subparagraph (e) to CFE Rule 714.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,⁷ in general, and furthers the objectives of Sections 6(b)(5)⁸ and 6(b)(6)⁹ in particular in that it is designed:

- to prevent fraudulent and manipulative acts and practices,
- to promote just and equitable principles of trade,
- to foster cooperation and coordination with persons engaged in facilitating transactions in securities,
- 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, and
- to provide a fair procedure for the disciplining of members.

The Exchange believes that the proposed rule change will strengthen its ability to carry out its responsibilities as a self-regulatory organization by adding violations to its Minor Rule Violation Rule. CFE also believes that these changes will serve as an effective deterrent to future violative conduct and as an effective and efficient means of disciplining for infractions that do not warrant a regular disciplinary proceeding. CFE additionally believes that the

⁷ 15 U.S.C. 78f(b).

⁸ 15 U.S.C. 78f(b)(5).

⁹ 15 U.S.C. 78f(b)(6).

proposed changes will promote consistent application of sanctions by the Exchange for minor rule violations, establish a fair procedure for the disciplining of TPHs for minor rule violations and reinforce its surveillance and enforcement functions. Finally, the Exchange believes that the reorganization of the aggregation provisions of CFE Rule 714 and the addition of examples in which minor rule violations may be aggregated will benefit market participants because those provisions will now be contained in a single subparagraph for easier reference and those provisions will also substantively improve market participants' understanding of how the aggregation provisions of the Minor Rule Violation Rule will operate and be applied.

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.¹⁰

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 effective on January 23, 2013.

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.¹¹

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning

¹⁰ 15 U.S.C. 78a et seq.

¹¹ 15 U.S.C. 78s(b)(1).

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-2013-001 on the subject line.

Paper comments:

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

All submissions should refer to File Number SR-CFE-2013-001. 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 on official business days between the hours of 10:00 a.m. and 3:00 p.m. Copies of such filing also will be available for inspection and copying at the principal offices of the Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to

make available publicly. All submissions should refer to File Number SR-CFE-2013-001, 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.¹²

Kevin M. O'Neill
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).