



August 24, 2020

Via Electronic Submission

Mr. Christopher J. Kirkpatrick
Secretary
Commodity Futures Trading Commission
Three Lafayette Centre
1155 21st Street, N.W.
Washington, D.C. 20581

Re: Comment Letter on Proposed Rulemaking Relating to
Electronic Trading Risk Principles
RIN 3038-AF04, 85 FR 42761 (July 15, 2020)

Dear Mr. Kirkpatrick:

Cboe Futures Exchange, LLC (“CFE”) appreciates the opportunity to provide its comments to the Commodity Futures Trading Commission (“Commission”) regarding the above-referenced proposed rulemaking (“Proposal”) relating to electronic trading risk principles. The Proposal seeks public comment regarding proposed Commission regulations and acceptable practices that address the potential risk of a designated contract market (“DCM”) trading platform experiencing a disruption or system anomaly due to electronic trading.

CFE Agrees with the Principles-Based Approach of the Proposal

CFE supports the Proposal with some suggested clarifications discussed below. CFE appreciates the Commission’s efforts to streamline its prior Regulation Automated Trading (“Regulation AT”) proposal and to replace it with a principles-based proposal. Proposed Regulation AT was much too prescriptive in nature. CFE agrees that it is important to manage the risks associated with electronic trading, and CFE maintains extensive risk controls for its trading platform. At the same time, CFE believes that it is important for Commission regulations to allow for the markets and technologies to change and evolve over time. Prescriptive requirements inhibit the implementation of new technology and innovative methods to address the underlying goals of the requirements. Accordingly, CFE supports the principles-based approach that the Commission has taken in the Proposal.

CFE has the following comments regarding specific aspects of the Proposal.

A DCM Should Be Able to Implement Rules Governing Market Participants Subject to Its
Jurisdiction by Having DCM Rule Provisions that Encompass All Electronic Orders
Submitted to the DCM

CFE requests that the Commission clarify that the requirement under proposed Regulation 38.251(e) that DCMs have certain rules governing market participants subject to a DCM’s

jurisdiction may be satisfied by rules that apply to a subset of DCM market participants as long as those rules apply to all electronic orders submitted to the DCM.

Proposed Regulation 38.251(e) provides that a DCM must adopt and implement rules governing market participants subject to its jurisdiction to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading.

Similar to the rules of other DCMs, CFE Rule 308(b) provides that any Person initiating or executing a transaction on or subject to CFE rules directly or through an intermediary, and any Person for whose benefit such a transaction has been initiated or executed, is subject to CFE's jurisdiction. Additionally, also similar to the rules of other DCMs, CFE Rule 308(b) provides that any futures commission merchant, broker-dealer, introducing broker, associated person, or foreign Person performing a similar role, that charges a commission or fee in connection with a transaction on or subject to CFE rules is also subject to CFE's jurisdiction. Chapter 1 of CFE's rules defines a "Person" as any natural person, sole proprietorship, association, partnership, limited liability company, joint venture, trust, corporation, or other type of entity or organization. Accordingly, the scope of market participants subject to CFE's jurisdiction is very broad.

CFE is an all-electronic exchange. Under CFE Rule 302, CFE only permits one type of market participant to conduct electronic trading on its trading system and to directly submit electronic orders to its trading system. Specifically, the only type of market participant that may do so is a CFE Trading Privilege Holder ("TPH"). A TPH is a member of CFE for purposes of the Commodity Exchange Act and Commission regulations and is the only type of market participant that may hold trading privileges on CFE. A market participant must go through a membership application process and be approved as a TPH before the participant is provided with trading privileges on CFE.

No other type of market participant other than a TPH may conduct electronic trading on CFE's trading system or directly submit electronic orders to CFE's trading system. Instead, orders submitted to CFE by other types of market participants are submitted through TPHs. For example, if a non-TPH (such as a customer) desires to submit an order to CFE, the only manner in which the order may be submitted to CFE is if a TPH submits the order to CFE as agent on behalf of the non-TPH. Any such order is treated by CFE as the TPH's order. As a result, all electronic orders received by CFE are from TPHs and from no other parties. Thus, there are many parties subject to the jurisdiction of CFE that are not able to directly submit electronic orders to CFE. Instead, the only way a non-TPH's order may be submitted to CFE is by a TPH.

CFE has extensive rule provisions, including under CFE Rule 513A, which provide for risk controls that are applicable to all orders submitted to CFE. These rule provisions describe risk controls that are set by Clearing Members, by TPHs, and by CFE itself. When a risk control may be set by more than one party, the most restrictive limit that is set applies. Clearing Members are TPHs that are members of The Options Clearing Corporation, the derivatives clearing organization for all trades on CFE. Clearing Members are required to set certain risk controls for their own trading and for any trading by TPHs to be cleared through that Clearing Member. Although these rule provisions only govern TPHs (including both Clearing Members and TPHs that are not Clearing Members), these rule provisions govern all orders submitted to CFE. Even though the rule provisions do not apply to other market participants under the jurisdiction of CFE, the rule provisions do apply to any orders submitted to CFE that may originate from those other market participants.

CFE believes that rule provisions should be able to satisfy the requirements of Regulation

38.251(e) even if they are not applicable to all market participants subject to a DCM's jurisdiction as long as those rule provisions govern all electronic orders submitted to the DCM. CFE interfaces directly with its Clearing Members and other TPHs. These are the parties with whom it has a relationship and that are connected to its trading system. Every order submitted to CFE must be from one of these parties. CFE has involvement and interaction with the orders submitted by these parties since they are processed within CFE's trading system. What occurs downstream prior to CFE's receipt of an order does not occur on CFE's trading system. Accordingly, CFE has constructed its risk controls and related rule provisions to apply at the level of its own trading system when it first interfaces with an order and where it can control what occurs in relation to that order and can either reject or process it. Having a construct like this should be a permissible manner in which to comply with Regulation 38.251(e) because CFE's risk control rule provisions apply with respect to all electronic orders submitted to CFE, no matter the type of market participant from whom those orders may originate.

A DCM Should Be Able to Implement Measures to Prevent, Detect, and Mitigate Market Disruptions and System Anomalies Through Rules and/or Internal Systems, Processes, and Procedures

CFE requests that the Commission clarify that the requirement under proposed Regulation 38.251(e) may be satisfied through rules and/or internal systems, processes, and procedures. In this regard, Proposed Regulation 38.251(e) provides, in relevant part, that a DCM must adopt and implement rules to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading. CFE believes that some of these measures are best addressed other than through rules.

For example, DCMs may have internal detection and monitoring systems, processes, and procedures that are designed to detect market disruptions or system anomalies which are not described in their rulebooks. This makes sense because these internal detection and monitoring features impose no requirements or conditions on market participants subject to a DCM's jurisdiction. Additionally, there may be instances in which a DCM may not want to publicly disclose how it monitors particular markets or market activity so as not to provide a road map for potential evasion of that monitoring. Requiring a DCM to describe in its rules how it detects and monitors for market disruptions or system anomalies is also administratively burdensome. Having this requirement may actually disincentivize and inhibit DCMs from quickly making changes to adjust and improve their detection and monitoring features since a DCM would have to first prepare and submit a rule certification filing and wait 10 business days every time it desires to make a small change or adjustment to its detection and monitoring programs. For similar reasons, there may be prevention and mitigation measures which are best addressed through internal systems, processes, and procedures rather than rules.

CFE does not object to the notion that a DCM should describe in its rules measures that it may take in relation to a market participant or how its trading system or risk controls treat electronic orders submitted to the DCM in the context of seeking to prevent and mitigate market disruptions or system anomalies associated with electronic trading. These measures directly impact market participants and the treatment of their orders. However, there are other measures that a DCM may employ that also relate to prevention, detection, and mitigation of market disruptions and system anomalies that are internal to the DCM's operations and do not directly impact market participants and the treatment of their orders. CFE believes that a DCM should be able to employ these types of measures through internal systems, processes, and procedures rather than through rules.

Any Commission Assessments of DCM Controls Should Be Across All DCMs

CFE requests that the Commission clarify that any baseline assessments conducted by the Commission of DCM pre-trade risk controls be conducted by taking into consideration the pre-trade risk controls that are prevalent and effective across all DCMs.

Proposed Regulation 38.251(f) provides that a DCM must subject all electronic orders to exchange-based pre-trade risk controls to prevent, detect, and mitigate market disruptions or system anomalies associated with electronic trading. The Proposal states that proposed Regulation 38.251(f) allows the Division of Market Oversight (“DMO”) “to assess compliant risk controls as part of its rule enforcement review program, comparing all DCMs to a baseline of controls on electronic trading and electronic order entry that are prevalent and effective across DCMs.”

CFE believes that it is important that any such assessment take into consideration what all DCMs have in place and not seek to hold all DCMs to what the larger DCMs and DCM groups may have in place on their markets. Larger DCMs with greater resources may implement more sophisticated and extensive risk controls. That does not mean that those risk controls are necessary or would materially increase risk protection at a smaller DCM. Each DCM is different, and DCMs have different systems, products, and market characteristics. CFE agrees with the Commission’s statement in the Proposal that a DCM is well-positioned to assess the market disruption and system anomaly risks posed by its markets and market participant activity and to design appropriate measures to address those risks. Accordingly, what is in place at the larger DCMs and DCM groups should not simply become the de facto standard for what all DCMs must employ.

If there were to become an expectation over time that smaller DCMs must employ all of the same risk controls that are in place at larger DCMs (for example, because those DCMs account for a large percentage of industry market share), that expectation could undermine competition and diversity. The cost of having to replicate those risk controls may make it more difficult for smaller DCMs to compete in the market and could become a barrier to entry to new DCMs. CFE does not believe that this is the Commission’s intent and does not read the quoted statement above to imply that this would be case. Nevertheless, CFE believes it would be beneficial for the Commission to make clear that its assessments to a baseline of DCM pre-trade risk controls will be across all DCMs so there is no potential for ambiguity on this point in the future.

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CFE is available to provide any further input desired by the Commission regarding the issues discussed in the Proposal and to work cooperatively with the Commission to address them. Please contact Arthur Reinstein (areinstein@cboe.com or 312-786-7570) or Michael Margolis (mmargolis@cboe.com or 312-786-7153) if you have any questions regarding our comments.

Cboe Futures Exchange, LLC

/s/ Matthew McFarland

By: Matthew McFarland
Managing Director