



September 13, 2019

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

**Re: Derivatives Clearing Organization General Provisions and Core Principles
Notice of Proposed Rulemaking
RIN 3038-AE66**

Ladies and Gentlemen:

This letter is in response to the request by the Commodity Futures Trading Commission (the “*Commission*”) for comment to its Notice of Proposed Rulemaking with respect to Derivatives Clearing Organization General Provisions and Core Principles (the “*Proposed Rulemaking*”)¹.

Cboe Futures Exchange, LLC (“*CFE*”) is a designated contract market (a “*DCM*”). CFE launched trading in Cboe Volatility Index (VIX) futures in 2004, and currently offers trading in several other futures contracts as well. With product innovation being one of CFE’s core tenets, CFE appreciates the opportunity to comment on the Commission’s proposal to make changes to the Designated Clearing Organization (“*DCO*”) framework as it relates to the DCO notice requirements for accepting new products for clearing.

DCOs should not be required to provide 30 calendar days’ notice to the Commission prior to accepting a new product for clearing

Under the Proposed Rulemaking, a DCO would be required to provide the Commission with 30 calendar days’ notice prior to accepting a new product for clearing. CFE has three primary concerns regarding this proposed requirement. First, the proposed requirement is inconsistent with the existing framework for DCM product certifications. Second, the proposed requirement is contrary to the efficiency objectives of Project KISS. In particular, the proposed requirement is redundant and inefficient as the Commission already receives prior notification of new products before they begin trading. Third, the proposed requirement will hinder competition and innovation, as competing products will not be brought to market as expeditiously. This added delay in bringing a new product to market will delay the ability for market participants to utilize and benefit from new products to the detriment of the overall market.

1. DCO notice requirement is inconsistent with existing rule certification framework

Under §39.19(c)(4)(xxvi) of the Proposed Rulemaking, a DCO would be required to provide the Commission with 30 calendar days’ notice prior to accepting a new product for clearing. This notice

¹ 84 FR 22226 (May 16, 2019).

period is much longer than the 2 business days' prior notice that DCMs must provide of the listing of a new product through the §40.2 self-certification process. Specifically, a DCM can list a product for trading under §40.2(a)(2) if the DCM submits a self-certification submission to the Commission by the open of business on the business day preceding the product's listing. Thus, the proposed DCO notice requirement would have the effect of thwarting the DCM self-certification process by imposing a time frame for prior notice of new products that far exceeds the notice requirement under the currently applicable process. The effect of this proposed change would be that the current notice period under §40.2 will become subsumed by the notice period under proposed §39.19(c)(4)(xxvi), and that DCMs will not be able to launch new products until both notice periods have been satisfied. The current product certification process was promulgated in order to foster competition and enable DCMs to self-certify new products in a manner that enables DCMs to quickly bring new products to market. The proposed requirement is contrary to both of those objectives.

2. DCO notice requirement conflicts with the goals of Project KISS

The proposed DCO notice requirement also conflicts with the objectives of the Project KISS initiative. Project KISS, which stands for "Keep it Simple, Stupid," is the Commission's agency-wide review of its rules, regulations, and practices to make them simpler, less burdensome, and less costly.² The proposed requirement is contrary to these goals in that it makes the product review framework more complicated by introducing a new notice requirement and new notice period; adds additional obligations in terms of a new notice along with its required contents, which makes the current process to launch new products more burdensome; and adds cost by, among other things, delaying the time frame in which new products may be made available to and utilized by market participants.

The proposed DCO notice requirement is also duplicative of the existing process to provide the Commission with notice of new products. The Commission already receives notice of a new product that will be cleared by a DCO through the submission of a product certification filing by a DCM pursuant to §40.2, which filing is reviewed by the Commission's Division of Market Oversight ("**DMO**"). If there is a concern that the Division of Clearing and Risk ("**DCR**") is not receiving notice of new products being brought to market and being accepted for clearing by a DCO, the Commission can structure its internal processes to also route DCM product filings to DCR so that DCR receives notice of the new product and can then ask any questions of the relevant DCO. Such an approach is consistent with Project KISS because it leverages an existing notice process without imposing additional obligations and delay.

It should also be noted that while the DCM self-certification process under §40.2 allows for new products to begin trading two business days after a product filing has been formally filed with the Commission, for many products, that time frame is actually 10 business days due to the fact that the Commission requires certain rules for products to be filed pursuant to §40.6. For example, a new product filing for a futures product that allows for block trades to be conducted off-exchange requires a dual filing – once pursuant to §40.2, by which the product would become certified and available for trading two business days after filing, and once pursuant to §40.6, to establish block trade thresholds which would become certified 10 business days after filing. Therefore, DCR will often have 10 business days for which to review DCM product filings and to ask any questions of a DCO as necessary.

As a result, requiring DCOs to provide 30 days' prior notice of new products over and above the notice already provided to the Commission would be inefficient, burdensome, and redundant. CFE encourages the Commission to consider the current §40.2 and §40.6 self-certification review periods as sufficient for

² See Remarks of Acting Chairman J. Christopher Giancarlo before the 42nd Annual International Futures Industry Conference in Boca Raton, FL, Mar. 15, 2017, available at <https://www.cftc.gov/PressRoom/SpeechesTestimony/opagiancarlo-20>

purposes of notice and review in order to continue to foster and encourage efficient and competitive markets.

3. DCO notice requirement is detrimental to competition

The proposed additional notice requirement for new products will burden product innovation and have a detrimental impact on the speed and efficiency with which new products can be brought to market. Currently, DCMs can bring innovative new products to market in as little as two business days while at the same time certifying that those products comply with the Commodity Exchange Act (“*CEA*”) and the Commission regulations thereunder. As such, the current product notification and certification regime under §40.2 enhances competition and is beneficial to the marketplace as it allows DCMs to develop innovative new products and make those products available quickly and efficiently consistent with the requirements of the CEA and Commission regulations.

CFE has benefitted from and continues to appreciate the ability to bring new products to market in as little as two business days after the date that the product certification filing is submitted to the Commission. CFE believes that proposed §39.19(c)(4)(xxvi) would constitute an unnecessary shift away from the current effective and efficient self-certification process. The markets regulated by the Commission are some of the most dynamic and fast-paced markets in the world. Market participants greatly benefit from the current product self-certification regime which allows new products to be made available for trading quickly and efficiently while also allowing for a period of review by the Commission that the Commission has previously determined to be adequate and sufficient.

Conclusion

CFE believes that the current self-certification regime brings utility and value to the market as a whole. We are hopeful that after further thought and consideration, the Commission will agree that DCOs should not be required to provide the Commission with 30 calendar days’ notice prior to accepting a new product for clearing.

CFE appreciates the opportunity to offer its views on the Proposed Rulemaking and on how to further promote innovation and strengthen the environment for introducing new products to the benefit of all market participants. CFE is available to provide any further input desired by the Commission regarding these issues and to work cooperatively with the Commission to address them. Please contact me at (312) 786-7978 or mmcfarland@cboe.com if you have any questions regarding our comments.

Cboe Futures Exchange, LLC

[/s/ Matthew McFarland](#)

By: Matthew McFarland
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