



November 6, 2023

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
Amendments to Provisions Common to Registered Entities
RIN 3038-AF28, 88 FR 61432 (September 6, 2023)

Dear Mr. Kirkpatrick:

Cboe Global Markets, Inc. (“Cboe”) appreciates the opportunity to provide its comments to the Commodity Futures Trading Commission (“Commission” or “CFTC”) regarding the above-referenced proposed rulemaking (“Proposal”) relating to provisions common to registered entities. The Proposal seeks public comment regarding proposed amendments to Commission regulations that govern how registered entities submit self-certifications, and requests for approval, of their rules, rule amendments, and new products for trading and clearing, as well as the review and processing of those submissions by the Commission.

Cboe is well positioned to provide comments on the Proposal.

Cboe has four affiliates which are registered entities that are subject to the regulations which the Commission is proposing to amend under the Proposal. These entities have considerable experience over a number of years in making submissions to the Commission pursuant to these regulations. These entities include two designated contract markets (“DCMs”) (Cboe Futures Exchange, LLC and Cboe Digital Exchange, LLC), a swap execution facility (“SEF”) (Cboe SEF, LLC), and a derivatives clearing organization (“DCO”) (Cboe Clear Digital, LLC).

Cboe also has a number of other affiliates, including other trading venues, that are subject to regulations of the type addressed in the Proposal. Like the regulations that are the subject of the Proposal, these other regulations govern rule and product submissions to other market regulators. As a result, Cboe has additional perspectives that inform Cboe’s views regarding the Proposal which it has garnered through substantial experience in operating under these other regulatory regimes.

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

Cboe Agrees with the Removal of the Concepts of Dormant Contract or Dormant Product and Dormant Rule

Cboe supports the proposal by the Commission to remove the terms “dormant contract or

dormant product” and “dormant rule” from CFTC Regulation 40.1 and to remove the requirements relating to dormant products and dormant rules from CFTC Regulations 40.2 and 40.6.

Cboe agrees with the potential grounds suggested by the Commission in support of eliminating the concepts of a dormant product and rule. In particular, Cboe agrees that allowing a product that has not been traded for an extended period of time to remain listed will not pose concerns regarding market integrity or safety given that the DCM or SEF listing the product has a continuing obligation to ensure that the product complies with the Commodity Exchange Act, as amended (“Act”), and with Commission regulations thereunder. Additionally, deleting the concepts of a dormant product and rule will reduce compliance costs for market participants and oversight costs for the Commission.

In light of the benefits to be derived from eliminating the concepts of a dormant contract or product and dormant rule and that doing so will not result in any reduction in market integrity or safety, the Commission should remove these concepts from Commission regulations.

Cboe Has Concerns About the Potential Application of a Standard of Completeness

The Commission is proposing to add a standard that product and rule certification filings be complete with respect to various items.

Specifically, the Commission is proposing to amend CFTC Regulation 40.2 to require that a product certification filing contain a concise explanation and analysis that is complete with respect to the product’s terms and conditions, the underlying commodity, and the product’s compliance with applicable provisions of the Act, including core principles, and the Commission regulations thereunder. The Commission also states in the Proposal that to be complete, product certification filings should be guided by portions of Appendix C to Part 38 of the Commission regulations that apply to the contract being listed.

Similarly, the Commission is proposing to amend CFTC Regulation 40.6 to require that a rule certification filing contain a concise explanation and analysis that is complete with respect to the operation, purpose, and effect of the proposed rule or rule amendment and its compliance with applicable provisions of the Act, including core principles, and the Commission regulations thereunder.

Cboe believes that the addition of the phrase “that is complete with respect to” is not necessary and that the Commission can achieve the same outcome of requiring pertinent information to be included in product and rule certification filings by using the word “of” instead of this phrase. Cboe believes that the inclusion of the word “complete” can lead to the possibility that this standard will be applied in a prescriptive, inconsistent, and unreasonable manner. If this were to occur, it would undermine the utility of the product and rule certification process for registered entities, market participants, and the Commission; delay the ability to implement products and rule enhancements that benefit the market; and inhibit innovation and competition.

Cboe’s experience has been that Commission staff have been reasonable in applying the current product and rule certification regulations. However, the application of regulations by regulatory bodies can evolve over time with changes in their leadership, personnel, and approach and in prevailing circumstances.

The concept of completeness is inherently ambiguous because it is subject to interpretation by whoever may be applying the standard. It begs the question of when something is fully complete

and allows for discretion to continue to require more and more information to be included beyond what is reasonable because there will always be additional information that potentially can be requested. It also allows for the possibility that the standard could be applied in a rigid, onerous, arbitrary, and/or subjective manner. Avoiding this possibility is consistent with the overall intent of the Proposal to clarify, simplify, and enhance the utility of the product and rule certification provisions for market participants and the Commission.

Product and rule certifications should focus on key points, as reflected by the inclusion of the word “concise” in the current and proposed regulatory language which describes the explanation and analysis that is required to be included. Some aspects are more applicable and germane than others depending upon the particular product or rule which is the subject of the filing. With respect to product certification filings, Appendix C to Part 38 is and remains guidance and should continue to apply as guidance. It is important that the application of the rule and product certification provisions focuses on requiring a concise description of what is relevant with respect to the applicable product or rule in determining what information should be included instead of completeness for the sake of completeness which can lead to the inclusion of unneeded and irrelevant information.

For these reasons, Cboe believes that the word “complete” should not be included in the product and rule certification provisions. Nevertheless, if after consideration the Commission determines to retain the addition of the word “complete” in the product and rule certification provisions as proposed, Cboe requests at a minimum that the Commission clarify that the standard of completeness will be applied in a sensible and reasonable manner.

DCMs and SEFs Should Be Able to List Trading Months Within Established Rule Parameters for Contract Listings Without Any Rule Submissions to the Commission

The Proposal includes two provisions relating to the listing of trading months.

Proposed CFTC Regulation 40.6(d)(2)(ix) provides that a weekly notification of rule amendments is required to be submitted for the initial listing of trading months, or an amendment to existing trading months, which may qualify for implementation without notice pursuant to CFTC Regulation 40.6(e)(2)(viii), within the currently established cycle of trading months.

Proposed CFTC Regulation 40.6(e)(2)(viii) provides that a notification of rule amendments is not required for the initial listing of trading months, which are within the currently established cycle of trading months, for registered entities in compliance with the daily reporting requirements of CFTC Regulation 16.01.

Cboe believes that any listing of trading months (or listing of other contract expirations such as weekly contract expirations) within contract listing parameters previously established through a rule or product submission to the Commission should be permitted to be listed for trading without any further rule or product submission to the Commission.

DCMs and SEFs have large numbers of contract listings and need to be nimble in making contract listings in order to effectively and promptly respond to changing market conditions and customer demand. It would be inefficient and onerous to require a rule or product submission for each contract listing. DCMs and SEFs are required to provide contract listing information to the Commission under CFTC Regulation 16.01. DCMs and SEFs are also required to make their contract listings publicly available in accordance with CFTC Regulation 16.01. Given their large numbers of contract listings, it is more efficient for DCMs and SEFs to provide their contract listing

data to the Commission systematically under CFTC Regulation 16.01 for any contract listings that are within contract listing parameters previously established through a rule or product submission. It is a waste of DCM, SEF, and Commission resources to require otherwise.

That said, Cboe is unclear regarding what is meant by the requirement to submit weekly notifications of rule amendments for an amendment to existing trading months. If this provision is referencing an amendment to a DCM's or SEF's rule provisions regarding its contract listing parameters, Cboe agrees that these amendments should be able to be made through a weekly notification of rule amendments.

However, Cboe believes that the Commission should also clarify that DCMs and SEFs may list additional contract listings for a product subsequent to the initial contract listings for that product without any rule submission to the Commission, provided that the additional contract listings are within the contract listing parameters for that product previously established through a rule or product submission to the Commission.

One way to make this clarification would be to amend CFTC Regulation 40.6(e)(2)(viii) to provide that a notification of rule amendments is not required for the initial and subsequent listing of trading months, which are within the currently established cycle of trading months, for registered entities that are in compliance with the daily reporting requirements of CFTC Regulation 16.01.

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Cboe is available to provide any further input desired by the Commission regarding the Proposal and Cboe's comments to the Proposal.

Please contact Arthur Reinstein, Chief Legal Officer of Cboe Futures Exchange, LLC (areinstein@cboe.com or 312-786-7570); Katherine Kirkpatrick, Chief Legal Officer of Cboe Digital Exchange, LLC and Cboe Clear Digital, LLC (kkirkpatrick@cboe.com or 312-786-7431); and Michael Margolis, Chief Legal Officer of Cboe SEF, LLC (mmargolis@cboe.com or 312-786-7153) if you have any questions regarding our comments.

Cboe Global Markets, Inc.

/s/ Patrick Sexton

By: Patrick Sexton
Executive Vice President, General
Counsel & Corporate Secretary