

6(b)(5) of the Exchange Act<sup>65</sup> and the rules and regulations thereunder applicable to a national securities exchange.

#### IV. Solicitation of Comments on Amendment No. 3

Interested persons are invited to submit written data, views, and arguments concerning whether Amendment No. 3 is consistent with the Exchange 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 email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-NYSEArca-2016-84 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-NYSEArca-2016-84. This file number should be included on the subject line if email 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 Web site (<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 Web site 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; 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-NYSEArca-2016-84 and should be submitted on or before January 5, 2017.

<sup>65</sup> 15 U.S.C. 78f(b)(5).

#### V. Accelerated Approval of Proposed Rule Change as Modified by Amendment No. 3

The Commission finds good cause to approve the proposed rule change, as modified by Amendment No. 3, prior to the thirtieth day after the date of publication of notice of the filing of Amendment No. 3 in the **Federal Register**. In Amendment No. 3, the Exchange (among other things): (1) Provided additional information, which helped the Commission conclude that the Index is not susceptible to manipulation; and (2) expanded the scope of NYSE Arca Equities Rule 8.201(g) which, as discussed above, appropriately tailors the rule to accommodate the listing and trading of an issue of Commodity-Based Trust Shares that overlies both a commodity and currencies. Accordingly, Amendment No. 3 helped the Commission find that the proposed listing and trading of the Shares is consistent with the portion of Section 6(b)(5) of the Exchange Act,<sup>66</sup> which requires that the rules of a national securities exchange must be designed to, among other things, prevent fraudulent and manipulative acts and practices and, in general, to protect investors and the public interest. Accordingly, the Commission finds good cause, pursuant to Section 19(b)(2) of the Exchange Act,<sup>67</sup> to approve the proposed rule change, as modified by Amendment No. 3, on an accelerated basis.

#### VI. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Exchange Act,<sup>68</sup> that the proposed rule change (SR-NYSEArca-2016-84), as modified by Amendment No. 3 be, and it hereby is, approved on an accelerated basis.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>69</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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<sup>66</sup> 15 U.S.C. 78f(b)(5).

<sup>67</sup> 15 U.S.C. 78s(b)(2).

<sup>68</sup> *Id.*

<sup>69</sup> 17 CFR 200.30-3(a)(12).

#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-79514; File No. SR-CFE-2016-004]

#### Self-Regulatory Organizations; CBOE Futures Exchange, LLC; Notice of Filing of a Proposed Rule Change Regarding Attempted Fraudulent Acts

December 9, 2016.

Pursuant to Section 19(b)(7) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 2, 2016 CBOE Futures Exchange, LLC ("CFE" or "Exchange") filed with the Securities and Exchange Commission ("SEC" or "Commission") the proposed rule change described in Items I and II 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")<sup>2</sup> on December 1, 2016.

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

The Exchange proposes to amend CFE Rule 601 related to fraudulent acts. The scope of this filing is limited solely to the application of the rule amendments to security futures that may be traded on CFE. 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.

#### 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.

<sup>1</sup> 15 U.S.C. 78s(b)(7).

<sup>2</sup> 7 U.S.C. 7a-2(c).

*A. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change*

1. Purpose

The purpose of the proposed CFE rule amendments included as part of this rule change is to amend CFE Rule 601 (Fraudulent Acts) to broaden the language of Rule 601 to also prohibit attempts to engage in any fraudulent act or scheme prohibited by Rule 601. The amendment to CFE Rule 601 is being made at the request of the CFTC. The rule amendments included as part of this rule change are to apply to all products traded on CFE, including both non-security futures and security futures.

CFE Rule 601 currently prohibits CFE Trading Privilege Holders and their related parties from engaging in any fraudulent act or in any scheme to defraud, deceive, or trick, in connection with or related to any trade on or other activity related to the Exchange or the clearing organization for the Exchange. Pursuant to CFE Rule 308, Rule 601 also applies to any person that initiates or executes a transaction on or subject to Exchange rules directly or through an intermediary and to any person for whose benefit such a transaction is initiated or executed.

The proposed rule change broadens the language of Rule 601 to also prohibit attempts to engage in any fraudulent act or any scheme prohibited by Rule 601.

This change is consistent with CFE Rule 604 (Adherence to Law) which prohibits conduct in violation of applicable law, including any provisions of the CEA and CFTC regulations which prohibit attempts to engage in fraudulent acts, such as CFTC Regulation 180.1<sup>3</sup> (Prohibition on the employment, or attempted employment, of manipulative and deceptive devices).

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with Section 6(b) of the Act,<sup>4</sup> in general, and furthers the objectives of Sections 6(b)(5)<sup>5</sup> and 6(b)(7)<sup>6</sup> in particular in that it is designed:

- To prevent fraudulent and manipulative acts and practices,
- to promote just and equitable principles of trade, and
- 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 Exchange believes that the proposed rule change would strengthen its ability to carry out its responsibilities as a self-regulatory organization by providing further guidance with regard to attempted fraudulent acts by TPHs, their related parties, and others that access CFE's market. In particular, the proposed rule change makes it clear that attempts to engage in fraudulent acts are prohibited. The proposed rule change would also contribute to enhanced protection of CFE markets and market participants.

*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, in that the rule change will enhance CFE's ability to carry out its responsibilities as a self-regulatory organization. The Exchange believes that the proposed rule change is equitable and not unfairly discriminatory because the amendments regarding attempted fraudulent acts or schemes apply equally to all market participants.

*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 December 15, 2016. At any time within 60 days of the date of the filing by the Exchange of a written certification with the CFTC under Section 5c(c) of the CEA, 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.<sup>7</sup>

**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
- Send an email to [rule-comments@sec.gov](mailto:rule-comments@sec.gov). Please include File Number SR-CFE-2016-004 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-2016-004. This file number should be included on the subject line if email 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 Web site (<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 Web site 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 such filing also will be available for inspection and copying at the principal office 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-2016-004, and should be submitted on or before January 5, 2017.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>8</sup>

**Eduardo A. Aleman,**

*Assistant Secretary.*

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<sup>3</sup> 17 CFR 180.1.

<sup>4</sup> 15 U.S.C. 78f(b).

<sup>5</sup> 15 U.S.C. 78f(b)(5).

<sup>6</sup> 15 U.S.C. 78f(b)(7).

<sup>7</sup> 15 U.S.C. 78s(b)(1).

<sup>8</sup> 17 CFR 200.30-3(a)(73).