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May 20, 2009

Via Electronic Mail

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

Re: CBOE Futures Exchange, LLC Rule Certification
Submission Number CFE-2009-12

Dear Mr. Stawick:

Pursuant to Section 5c(c)(1) of the Commodity Exchange Act, as amended ("Act"), and §40.6(a) of the regulations promulgated by the Commodity Futures Trading Commission ("Commission") under the Act, CBOE Futures Exchange, LLC ("CFE" or "Exchange") hereby submits an amendment ("Amendment") to (i) revise CFE Rule 406(b)(iii) to allow the Exchange to implement a trade participation right for designated primary market makers ("DPMs") up to a specified size, (ii) add CFE Rule 406(b)(iii)(C) to allow the Exchange to specify the manner of interaction between a DPM's trade participation right priority and the pro rata base allocation method, (iii) add CFE Rule 1403 to provide for the appointment of a DPM in the Mini CBOE Volatility Index ("Mini VIX") futures contract, and (iv) amend CFE Rule 1402(g) to revise the execution priorities for the Mini VIX futures contract.

In connection with the initial appointment of a DPM in the Mini VIX futures contract, the Exchange will make a one-time payment in the amount of \$15,000 to that DPM to offset its systems and other costs in connection with acting as the DPM in that contract.

The Amendment will become effective on June 1, 2009.

CFE is not aware of any substantive opposing views to the Amendment. CFE hereby certifies that the Amendment complies with the Act and the regulations thereunder.

The Amendment, marked to show additions in underlined text and deletions in [bracketed] text, consists of the following:

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CFE Rule 406. Execution of Orders by CBOE System

(a) General. At the discretion of the Exchange, any of the following base allocation methods shall apply to the execution of Orders (other than Spread Orders) for any Contract by the CBOE System:

(i) *Price-Time Priority.* Under this method, Orders for any Contract are prioritized according to price and time. If at any time there are two or more such Orders at the best price then available, such Orders are executed in the order in which they were received by the CBOE System.

(ii) *Pro Rata Priority.* Under this method, Orders for any Contract are prioritized according to price. If at any time there are two or more such Orders at the best price then available, the executable quantity of Contracts is allocated to such Orders on a pro rata basis, taking into account the relative sizes of such Orders; provided that if such pro rata method would result in a fraction of a Contract being allocated to any Order, such fraction shall be rounded up (if such fraction is equal to or greater than one-half) or down (if such fraction is less than one-half); provided, further, that if rounding in accordance with the immediately preceding proviso would result in a number of Contracts in excess of the executable quantity, the quantity allocated to the Order that was last received by the CBOE System shall be reduced accordingly.

(b) *Priority Overlays.* In addition to the base allocation methods set forth in paragraph (a) above, the Exchange may determine that any or all of the following priority overlays shall apply, in a sequence determined by the Exchange, to the execution of Orders (other than Spread Orders) for any Contract by the CBOE System:

(i) *Public Customer Priority.* If this priority overlay is in effect with respect to any Contract, the highest bid and lowest offer available at any time shall have priority, except that Orders placed by or on behalf of public Customers shall have priority over Orders at the same price placed by or on behalf of non-public Customers. If there are two or more Orders placed by or on behalf of public Customers at the same price, such Orders shall be executed in the order in which they were received by the CBOE System, even if pro rata priority is the chosen base allocation method.

(ii) *Market Turner Priority.* If this priority overlay is in effect with respect to any Contract, each Market Turner shall have priority at the highest bid or lowest offer made by it. At any given price, such priority shall remain with the Market Turner for such price. For example, if the market first moves in the same direction as an Order previously placed by a Market Turner, and then moves back to the price previously bid or offered by such Market Turner, then such Market Turner retains its priority at such price.

The Exchange may determine to reduce the Market Turner priority to a percentage of each Order that is executable against the Market Turner. In such cases, the Market Turner may participate in the balance of an Order, pursuant to the base allocation method in effect under paragraph (a) of this Rule 406, after the Market Turner priority has been applied. To the extent the Market Turner Order bid or offer is not fully exhausted, it shall retain Market Turner priority for subsequent Orders until the conclusion of the trading session.

(iii) *Trade Participation Right Priority.* DPMs may be granted trade participation rights in accordance with any program adopted pursuant to Rule 515, which rights may provide for priority of Orders placed, or quotes made, by such market makers over other Orders or quotes, up to the applicable participation right percentage and/or up to a specified size. In granting trade participation rights to DPMs, the following principles shall be followed:

(A) The DPM's Order or quote must be at the best available price immediately prior to the execution of the relevant Order.

(B) A DPM may not be allocated a total quantity of Contracts that would be greater than the quantity for which such DPM placed Orders or made quotes at that price. [If pro rata priority is in effect, and the DPM's allocation pursuant to its trade participation right is greater than its percentage share of quotes or Orders at the best price at the time the trade participation right is granted, the DPM shall not receive any further allocation of Contracts based on pro rata priority.]

(C) If both the trade participation right priority and pro rata priority are in effect, the priorities shall interact in one of the following two ways, as specified by the Exchange:

1. the DPM shall receive the allocation resulting from the application of the trade participation right priority or the DPM shall receive the allocation resulting from the application of the pro rata priority, which is greater; or

2. the DPM shall receive the allocation resulting from the application of the trade participation right priority and any further allocation resulting from the subsequent application of the pro rata priority to the DPM's remaining quote /Order size at the best price.

[(C)] (D) If both the trade participation right priority and the market turner priority are in effect and the DPM is the Market Turner for the relevant price, the market turner priority shall not be applicable.

[(D)] (E) In determining the parties to a particular trade, a DPM's trade participation right shall be applied against such DPM's bids or offers in accordance with their relative priority.

(c) – (e) No change.

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1402. Mini CBOE Volatility Index Futures Contract Specifications

(a) – (f) No change.

(g) *Execution Priorities.* Pursuant to Rule 406(a)(ii), the base allocation method of pro rata priority shall apply to trading in Mini VIX futures contracts. [Pursuant to Rule 406(b)(ii), a Market Turner priority shall overlay the pro rata priority base allocation method and the Market Turner priority participation percentage shall be 30%.] The following priorities shall overlay the pro rata priority base allocation method and shall be applied in the sequence below:

1. A Market Turner priority shall be applied pursuant to Rule 406(b)(ii) with a Market Turner priority participation percentage of 30%.

2. A DPM participation right priority shall then be applied pursuant to Rule 406(b)(iii) with a DPM participation right percentage of 30%, and the DPM shall receive any further allocation resulting from the subsequent application of the pro rata priority below to the DPM's remaining quote/Order size at the best price pursuant to Rule 406(b)(iii)(C)(2).

3. The pro rata priority base allocation method shall then be applied.

(h) – (o) No change.

1403. DPM Provisions

(a) DPM Appointment. A Trading Privilege Holder will be appointed to act as a DPM for the Mini VIX futures contract pursuant to Rule 515.

(b) DPM Participation Right. The DPM participation rights for the Mini VIX futures contract are set forth in Rule 1402(g).


140[3] 4. Settlement

No change.

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Questions regarding this submission may be directed to Arthur Reinstein at (312) 786-7570 or Jennifer Yeadon at (312) 786-7466. Please reference our submission number CFE-2009-12 in any related correspondence.

CBOE Futures Exchange, LLC

By: 
Andrew Lowenthal
Managing Director

cc: Riva Adriance (CFTC)
Edward Dasso (NFA)
The Options Clearing Corporation