



June 9, 2023

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

Re: Cboe Clear Digital, LLC Rule Certification
Submission Number CCD-2023-01C

Dear Mr. Kirkpatrick:

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 (“CFTC” or “Commission”) under the Act, Cboe Clear Digital, LLC (“CCD” or “Clearinghouse”) hereby submits a CCD rule amendment (“Amendment”) to update the dispute resolution mechanism for disputes against CCD to be consistent with the dispute resolution procedures required by CCD’s master membership agreement. Exhibit A to this submission sets forth the rule changes included in the Amendment. The Amendment will become effective on June 26, 2023.

CCD Rule 707 currently governs the requirements for legal proceedings brought against CCD, while CCD Rule 708 provides for the dispute resolution mechanisms applicable to disputes across Clearing Members and disputes involving Customers. In particular, CCD Rule 707(b) requires that any action, suit or proceeding against CCD be brought in the State or Federal Courts within Chicago, Illinois, and that Clearing Members consent to the jurisdiction of Chicago, Illinois courts.¹ Cboe Clear Digital’s master membership agreement, to which all futures Clearing Members must agree to in order to become a Clearing Member of CCD, however, contains a mandatory arbitration clause which provides that any controversy or claim arising out of or in connection with the master membership agreement or the performance or breach hereof, or relating to a Clearing Member’s clearing account, including any claim against Cboe Digital² shall be settled by arbitration as set forth in the Cboe Digital Rules.³ To note, Cboe Clear Digital and its designated contract market (“DCM”) affiliate, Cboe Digital Exchange, LLC (“Exchange”), are joint parties to the master membership agreement, and, while Cboe Digital Exchange Rule 1006 provides that any disputes between the Exchange and its participants be brought to arbitration, the Cboe Clear Digital Rules do not currently

¹ Rule 707(b) also requires Clearing Members to bring claims within one year and waive right to a jury trial.

² Cboe Clear Digital and its DCM affiliate, Cboe Digital Exchange, are joint parties to the master membership agreement and collectively are “Cboe Digital”.

³ The “Cboe Digital Rules” are defined as “the Cboe Clear Digital Rulebook, the Cboe Clear Digital Spot Rulebook, the Cboe Digital Exchange Rulebook, or any or all of the foregoing Rulebooks, as the context requires.”

provide for dispute resolution by arbitration. The Amendment seeks to resolve this inadvertent discrepancy by updating CCD Rule 707 and 708 to provide for mandatory arbitration for claims against Cboe Clear Digital so that the dispute resolution mechanism referenced, and to which Clearing Members agree, in the master membership agreement is appropriately reflected in CCD's rules. The Amendment updates CCD's dispute resolution rules in a manner that is consistent with its affiliated Exchange's Rule 1006.

Specifically, the Amendment removes CCD Rules 707(b) and (c)⁴ in their entirety. The Amendment adds subparagraphs (c) and (d) to CCD Rule 708 as new dispute resolution provisions, rather than legal proceeding provisions, for Clearing Member claims against the Clearinghouse. Amended CCD Rule 708(c) and (d) together provide that any dispute between the Clearinghouse and a Clearing Member (including an affiliate of a Clearing Member) arising from or in connection with the Cboe Clear Digital Rules must be brought to and settled by arbitration through the AAA arbitration program or another arbitration program permitted by Exchange Rule 1006.⁵ Further, amended Rule 707(c) provides that claims must be brought within two years from the occurrence of the event giving rise to the dispute, and that the amended Rule in no way creates a cause of action nor authorizes an action that would otherwise be prohibited by the CCD Rules. CCD Rule 708(d), as amended, also provides that the parties to a dispute will bear their own costs and expenses and will equally split the administrative and arbitrator fees. Further, if Rule 707(d) is held to be unenforceable in connection with any dispute, then exclusive jurisdiction resides in any state or federal court sitting in Chicago, Illinois (including for all actions to enforce any judgement or decision made in any court with such jurisdiction), and the parties involved in the dispute are presumed to have submitted to the personal jurisdiction of any such court. Finally, all Clearing Members unconditionally and irrevocably waive any and all right to trial by jury in connection with any such dispute.

The Amendment provides clarity and consistency between the dispute resolution procedures for claims against the Clearinghouse provided in the CCD Rules with the dispute resolution procedures to which the master membership agreement refers and Clearing Members agree. The Amendment also provides consistency across the dispute resolution procedures available for claims against the Clearinghouse with the dispute resolution procedures currently applicable to Clearing Member and Customer disputes, which, pursuant to Rule 708(a) and (b), must be arbitrated. Finally, the Amendment provides consistency between the Clearinghouse's dispute resolution rules and its affiliate Exchange's dispute resolution rules, to which Clearing Members and Exchange participants, respectively, agree to arbitrate claims pursuant to the master membership agreement.

CCD believes that the Amendment is consistent with the DCO Core Principles under Section 5 of the Act. In particular, CCD believes that the Amendment is consistent with DCO Core Principles H (Rule Enforcement) and L (Public Information) in that the Amendment updates the CCD Rulebook to provide clarity and consistency between the dispute resolution

⁴ Rule 707(c) governs expenses in relation to Clearing Member claims brought against CCD pursuant to Rule 707 (b).

⁵ Exchange Rule 1006 permits other arbitration programs permitted by the CFTC Regulations.

mechanism required for claims against the Clearinghouse in its rules and that required by the master membership agreement, to which Clearing Members agree to participate on CCD. As a result, the Amendment more clearly defines the adequate arrangements and resources for the resolutions of disputes (i.e., via mandatory arbitration) that are in place for any Clearing Member claims against the Clearinghouse. Further, as this update provides consistency between CCD's dispute resolution rule, dispute resolution provisions in the master membership agreement, and the CCD affiliate Exchange dispute resolution provisions, the Amendment provides clear comprehensive rules to market participants.

CCD believes that the impact of the Amendment will be beneficial to the public and market participants. CCD is not aware of any substantive opposing views to the Amendment. CCD hereby certifies that the Amendment complies with the Act and the regulations thereunder. CCD further certifies that it has posted a notice of pending certification with the Commission and a copy of this submission on the Cboe Digital website (<https://www.cboedigital.com/regulation/exchange-notices/>) concurrent with the filing of this submission with the Commission.

Questions regarding this submission may be directed to Rebecca Tenuta at (312) 786-7570.

Cboe Clear Digital, LLC

/s/ Katherine Kirkpatrick

By: Katherine Kirkpatrick
Chief Legal Officer

EXHIBIT A

The Amendment, marked to show additions in underlined text and deletions in ~~stricken~~ text, consists of the following:

Cboe Clear Digital, LLC Rulebook

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707. ~~Governing Law; Legal Proceedings.~~

- (a) These Rules, the Clearing Member Agreement and all rights and obligations under the foregoing (including the creation of security interests in margin and guaranty fund deposits), shall be governed by and construed in accordance with the internal laws of the State of Illinois, without giving effect to the conflict of law provisions thereof.
- ~~(b) Any action, suit or proceeding against Cboe Clear Digital, its Officers, directors, limited liability company members, employees, or agents, must be brought within one (1) year from the time that a cause of action has accrued. Any such action, suit or proceeding shall be brought in the State or Federal courts located within Chicago, Illinois. Each Clearing Member expressly consents, for itself and its Authorized Representatives, to the jurisdiction of any such court, waives any objection to venue therein, and waives any right it may have to a trial by jury.~~
- ~~(c) In the event that a Clearing Member or an affiliate of such Clearing Member fails to prevail in a lawsuit or other legal proceeding instituted by such Clearing Member against (i) Cboe Clear Digital or (ii) any affiliate of Cboe Clear Digital or any of their respective officers, directors, equity holders, employees, agents, or any member of any Committee, and related to the business of Cboe Clear Digital, such Clearing Member shall pay to Cboe Clear Digital all reasonable expenses, including attorneys' fees, incurred by Cboe Clear Digital in the defense of such proceeding. This paragraph (c) shall not apply to Cboe Clear Digital disciplinary actions, appeals thereof, or an instance in which the Board or the Officers have granted a waiver of the provisions hereof.~~

708. **Dispute Resolution**

- (a) All Clearing Members shall be required to arbitrate all disputes between or among themselves that relate to or arise out of any transaction submitted for clearing to Cboe Clear Digital in accordance with Exchange Rule 801. For these purposes, each Clearing Member shall be deemed a "Member" for purposes of Exchange Rule 801.
- (b) Disputes involving Customers may be arbitrated in accordance with Exchange Rule 801(c)
- (c) Any dispute between the Clearinghouse and a Clearing Member or an affiliate of a Clearing Member arising from or in connection with the Cboe Clear Digital Rules must be brought to arbitration through the American Arbitration Association ("AAA") arbitration program or another arbitration program permitted by Exchange Rule 1006 within two (2) years from the occurrence of the event giving rise to the dispute. This Rule shall in no way

create a cause of action nor authorize an action that would otherwise be prohibited by the Cboe Clear Digital Rules.

- (d) Any dispute between the Clearinghouse and a Clearing Member or an affiliate of a Clearing Member arising from or in connection with the Cboe Clear Digital Rules will be settled by arbitration administered through the AAA arbitration program or another arbitration program permitted by Exchange Rule 1006. Each party to the dispute will bear its own costs and expenses in connection with any arbitration hereunder, as well as an equal share of the administrative fees and the fees of the arbitrator; provided, however, that the arbitrator will be entitled to include in any award a full reimbursement for the prevailing party's costs and expenses, such party's share of the administrative fees and the fees of the arbitrator, or any combination of any or all of the above. In the event that this Rule 707(d) is held to be unenforceable in connection with any dispute, (i) exclusive jurisdiction for any such dispute will reside in any state or federal court sitting in the Chicago, Illinois, (ii) the Clearinghouse and the Clearing Member or Clearing Member affiliate involved in the dispute will be presumed to have submitted to the personal jurisdiction of any such court, and (iii) an action to enforce any judgment or decision of such court may be brought in the same court or in any other court with jurisdiction or venue. Finally, all Clearing Members and Clearing Member affiliates unconditionally and irrevocably waive any and all right to trial by jury in connection with any such dispute.

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