

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-49584; File No. SR-CBOE-2004-22)

April 20, 2004

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the Chicago Board Options Exchange, Inc. to Extend the Exchange's Automated Limit Order Display Facility Pilot Program Until October 19, 2004

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),¹ and Rule 19b-4 thereunder,² notice is hereby given that on April 15, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to extend the Exchange's automated limit order display facility ("Autobook") pilot until October 19, 2004 or such earlier time as the Commission may approve Autobook on a permanent basis. The text of the proposed rule change appears below. Additions are in *italics*. Deletions are in [brackets].

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Rule 8.85 DPM Obligations

(a) No change

(b)(i)-(vi) No Change.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

(vii) Autobook Pilot. Maintain and keep active on the DPM's PAR workstation at all times the automated limit order display facility ("Autobook") provided by the Exchange. The appropriate Exchange Floor Procedure Committee will determine the Autobook timer in all classes under that Committee's jurisdiction. A DPM may deactivate Autobook as to a class or classes provided that Floor Official approval is obtained. The DPM must obtain such approval no later than three minutes after deactivation. The Autobook Pilot expires on [April 21, 2004] October 19, 2004, or such earlier time as the Commission has approved Autobook on a permanent basis.

To the extent that there is any inconsistency between the specific obligations of a DPM set forth in subparagraph (b)(i) through (b)(vii) of this Rule and the general obligations of a Floor Broker or of an Order Book Official under the Rules, subparagraph (b)(i) through (b)(vii) of this Rule shall govern.

(c) – (e) No change.

. . . Interpretations and Policies:

.01 - .04 No change.

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

In its filing with the Commission, the Exchange 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. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant aspects of such statements.

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

1. Purpose

On April 18, 2003, the Commission approved, on a pilot basis, the implementation of Autobook.³ Autobook is an enhancement to the Designated Primary Market Maker's ("DPM") PAR workstation that automatically facilitates the entry of eligible customer limit orders into the limit order book at the end of a configurable period of time provided such limit orders have not previously been addressed manually by the DPM. Specifically, Autobook assists and facilitates DPMs' compliance with their regulatory obligation and the display of eligible customer limit orders in the disseminated quotations as required by CBOE rules and Regulatory Circulars.⁴

The Autobook pilot is due to expire on April 21, 2004. The Exchange proposes to extend the Autobook pilot until October 19, 2004 or such earlier time as the Commission has approved Autobook on a permanent basis.

The Exchange intends to submit a rule filing to the Commission proposing permanent approval of Autobook in the next several weeks. Therefore, the Exchange proposes to extend the Autobook pilot program until October 19, 2004 so that the pilot may continue in effect while the Commission considers the Exchange's upcoming permanent approval proposal.

³ See Securities Exchange Act Release No. 47701 (April 18, 2003), 68 FR 22426 (April 28, 2003) (Order approving SR-CBOE-2003-16 on a pilot program basis until April 21, 2004) ("Autobook Pilot Release"). Autobook is governed by CBOE Rule 8.85(b)(vii). The Commission notes that the representations made by CBOE in the Autobook Pilot Release regarding a DPM's ability to turn off Autobook, impermissibly rely on Autobook and CBOE's surveillance for impermissible reliance on Autobook continue to apply.

⁴ Currently, CBOE's DPMs are required to execute or book 95% of all eligible customer limit orders "immediately" but not later than 30-seconds after receipt under normal market conditions.

2. Statutory Basis

The Exchange believes that because Autobook assists and facilitates DPMs' compliance with their regulatory obligations and the display of eligible customer limit orders in the disseminated quotations as required by CBOE rules and Regulatory Circulars, the proposed rule change is consistent with Section 6(b) of the Act,⁵ in general, and furthers the objectives of Section 6(b)(5),⁶ in particular, in that it is designed to promote just and equitable principles of trade and to protect investors and the public interest. Furthermore, the Exchange believes that the proposed changes are consistent with the Act's requirement that an exchange's rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.⁷

B. Self-Regulatory Organization's Statement on Burden on Competition

CBOE 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.

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 foregoing rule change, as amended, has become effective pursuant to Section

⁵ 15 U.S.C. 78f(b).

⁶ 15 U.S.C. 78f(b)(5).

⁷ Id.

19(b)(3)(A) of the Act⁸ and subparagraph (f)(6) of Rule 19b-4⁹ thereunder because it does not: (i) significantly affect the protection of investors or the public interest; (ii) impose any significant burden on competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

Under Rule 19b-4(f)(6)(iii) of the Act,¹⁰ the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest and the Exchange is required to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. The Exchange has requested that the Commission waive the five-day pre-filing notice requirement and accelerate the operative date of the proposal to April 21, 2004 so that the Autobook pilot program may continue without interruption after it would have otherwise expired on April 21, 2004. For this reason, the Commission, consistent with the protection of investors and the public interest, has determined to waive the five-day pre-filing

⁸ 15 U.S.C. 78s(b)(3)(A).

⁹ 17 CFR 240.19b-4(f)(6).

¹⁰ 17 CFR 240.19b-4(f)(6)(iii).

notice requirement and accelerate the operative date of the proposal to April 21, 2004,¹¹ and, therefore, the proposal is effective and operative on that date.

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 e-mail to rule-comments@sec.gov. Please include File Number SR-CBOE-2004-22 on the subject line.

Paper comments:

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW, Washington, DC 20549-0609.

All submissions should refer to File Number SR-CBOE-2004-22. This file number should be included on the subject line if e-mail 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

¹¹ For purposes only of waiving the five-day pre-filing notice requirement and accelerating the 30-day operative period for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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 inspection and copying in the Commission's Public Reference Section, 450 Fifth Street, NW, Washington, DC 20549. 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-CBOE-2004-22 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

Margaret H. McFarland
Deputy Secretary

¹² 17 CFR 200.30-3(a)(12).