

*C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants or Others*

The Exchange neither solicited nor received comments on the proposal.

### III. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing, including whether the proposal, as amended, 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2004-57 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-2004-57. 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 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 Room. Copies of the filing also will be available for inspection and copying at the principal offices of the CBOE. 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-2004-57 and should be submitted on or before November 12, 2004.

### IV. Commission Findings and Order Granting Accelerated Approval of Proposed Rule Change

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange. In particular, the Commission believes that the proposed rule change is consistent with the requirements of sections 6(b)(5) of the Act<sup>13</sup> and the objectives of section 11A(a)(1)(c) of the Act.<sup>14</sup> Section 6(b)(5) requires, among other things, that the rules of the Exchange be designed to promote just and equitable principles of trade, 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.<sup>15</sup> With respect to section 11A, Congress found that it is in the public interest and appropriate for the protection of investors and the maintenance of fair and orderly markets to assure the availability to brokers, dealers and investors of information with respect to quotations for and transactions in securities, and to assure the practicability of brokers investing investors' orders in the best market.

Specifically, the Commission believes that the proposed rule change should help to ensure the availability of information with respect to quotations by assisting DPMs in displaying limit orders in a timely fashion. The Commission notes that Autobook is a tool designed to ensure that all customer limit orders are displayed no later than 30 seconds after receipt. Nonetheless, the Commission emphasizes that its approval of Autobook on a permanent basis does not relieve DPMs of their obligations to immediately display customer limit orders. To that end, the Commission expects the Exchange to actively surveil and appropriately discipline its members for excessive reliance on this tool.

The Commission finds good cause for accelerating approval of the proposed rule change, as amended, prior to the thirtieth day after publication in the **Federal Register**. The Commission notes the substance of the proposed rule change has previously been published for public comment and no comments were received. The Commission also notes that the proposal is substantially

similar to the rules of another self-regulatory organization. In addition, the Commission notes that accelerated approval of the proposed rule change will permit the continued use, without interruption, of Autobook, the pilot for which is scheduled to expire on October 19, 2004. Accordingly, the Commission finds good cause, consistent with section 19(b)(2) of the Act,<sup>16</sup> to approve the proposed rule change, as amended, prior to the thirtieth day after publication of the notice of filing.

### V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act,<sup>17</sup> that the proposed rule change (File No. SR-CBOE-2004-57), as amended, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

**Margaret H. McFarland,**  
*Deputy Secretary.*

[FR Doc. E4-2735 Filed 10-20-04; 8:45 am]

BILLING CODE 8010-01-P

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50542; File No. SR-CBOE-2004-50]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Inc. To Amend Its Rules Regarding Limitations on Designated Primary Market-Makers Putting Into Effect Stop and Stop-Limit Orders

October 14, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 29, 2004, 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, II, and III below, which items have been prepared by CBOE. CBOE amended the proposal on October 8, 2004.<sup>3</sup> The Commission is publishing

<sup>16</sup> 15 U.S.C. 78s(b)(2).

<sup>17</sup> 15 U.S.C. 78s(b)(2).

<sup>18</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> See letter from Angelo Evangelou, Managing Senior Attorney, Legal Division, CBOE, to John Roeser, Senior Special Counsel, Division of Market Regulation, Commission, dated October 6, 2004 ("Amendment No. 1"). In Amendment No. 1, CBOE amended the text of CBOE Rule 8.85(a)(viii) to

Continued

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 15 U.S.C. 78k-1(a)(1)(C).

<sup>15</sup> In approving the proposed rule, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

CBOE proposes to amend its rules regarding limitations on Designated Primary Market-Makers ("DPMs") putting into effect stop and stop-limit orders. New text is in italics.

\* \* \* \* \*

### **Chicago Board Options Exchange, Incorporated**

#### **Rules**

\* \* \* \* \*

#### **8.85 DPM Obligations**

(a) Dealer Transactions. Each DPM shall fulfill all of the obligations of a Market-Maker under the Rules, and shall satisfy each of the following requirements in respect of each of the securities allocated to the DPM. To the extent that there is any inconsistency between the specific obligations of a DPM set forth in subparagraphs (a)(i) through (a)(x) of this Rule and the general obligations of a Market Maker under the Rules, subparagraphs (a)(i) through (a)(x) of this Rule shall govern. Each DPM shall:

(i)–(vii) No change.

(viii) Not initiate a transaction for the DPM's own account that would result in putting into effect any stop or stop limit order which may be in the book or which the DPM represents as Floor Broker except with the approval of a Floor Official and when the DPM guarantees that the stop or stop limit order will be executed at the same price as the electing transaction. *The restrictions set forth in this paragraph do not apply to stop or stop limit orders received through the Hybrid System unless the terms of such orders are visible to the DPM, or unless such orders are handled by the DPM;*

(ix)–(xi) No change.

(b)–(e) No change.

\* \* \* Interpretations and Policies:

.01–.04 No change.

\* \* \* \* \*

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

In its filing with the Commission, CBOE 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. CBOE 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**

CBOE Rule 6.53 defines a stop order as a contingency order to buy (sell) that becomes a market order to buy (sell) when the option contract trades or is bid (offered) at or above (below) the stop price on CBOE. The sender of the stop order determines the stop price. Similarly, a stop-limit order becomes a limit order when the stop price is triggered.

CBOE Rule 8.85(a)(viii) currently prohibits DPMs from initiating a transaction for the DPM's own account that would result in putting into effect any stop or stop-limit order which may be in the book or which the DPM represents as Floor Broker except with the approval of a Floor Official and when the DPM guarantees that the stop or stop-limit will be executed at the same price as the electing transaction.

Currently, stop and stop-limit orders route to PAR terminals in the trading station for representation by the DPM as Floor Broker. This is the case for classes on CBOE's Hybrid trading system and for classes that are not on Hybrid. Thus, DPMs need to monitor for quotes and/or trades at the stop price to ensure that stop orders are properly elected when the stop price is triggered.

CBOE proposes to automate the handling of stop and stop-limit orders as an enhancement to CBOE's Hybrid trading system. According to CBOE, this will involve routing any electronic (non-paper) stop order to the Hybrid system (not to a PAR terminal) which will, in turn, elect the stop or stop-limit order when the stop price is triggered and automatically convert the order to a market order or limit order, as applicable. CBOE states that the purpose of this filing is to provide that the stop and stop-limit order DPM restrictions in CBOE Rule 8.85(a)(viii) should not apply to orders in classes that are on the Hybrid system that are routed to CBOE electronically, and not visible to or handled by the DPM.

CBOE, in general, believes that the restrictions in CBOE Rule 8.85(a)(viii) are overly cumbersome and unnecessary. CBOE believes that the proposed Hybrid stop and stop-limit order handling enhancement will

obviate the need for the restrictions in Hybrid classes. The stop and stop-limit orders will reside on the Hybrid system invisibly so that no DPM would know that it is triggering a stop or stop-limit order when with a trade or quote. Since according to the CBOE, the handling of the stop and stop-limit orders will be entirely automated, the DPM will no longer handle the stop order at any point or have any influence to purposefully affect triggering the stop or the ultimate execution price of the order.

##### **2. Statutory Basis**

CBOE 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 section 6(b)(5) of the Act,<sup>5</sup> in particular, in that it is designed to promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanisms of a free and open market and a national market system, and to protect investors and the public interest.

#### *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 that is 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**

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the Exchange consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

### **IV. Solicitation of Comments**

Interested persons are invited to submit written data, views, and arguments concerning the foregoing,

clarify its proposed scope and application. Amendment No. 1 is incorporated in this notice.

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

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

including whether the proposed rule change, as amended, 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2004-50 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-2004-50. 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 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. 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-2004-50 and should be submitted on or before November 12, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

[FR Doc. E4-2736 Filed 10-20-04; 8:45 am]

**BILLING CODE 8010-01-P**

## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-50548; File No. SR-CBOE-2004-25]

### Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated Relating to Designated Primary Market-Makers Obligations

October 15, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on April 23, 2004, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared by the CBOE. On September 30, 2004, the CBOE filed Amendment No. 1 to the proposed rule change.<sup>3</sup> The Commission is publishing this notice to solicit comments on the proposed rule change, as amended, from interested persons.

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

The CBOE proposes to amend its rules to clarify that CBOE Designated Primary Market-Makers ("DPMs") are required to make competitive markets on the Exchange and to otherwise promote the Exchange in a manner that is likely to enhance the ability of the Exchange to compete successfully for order flow in the classes they trade.<sup>4</sup>

Below is the text of the proposed rule change, as amended. Proposed new language is *italicized*; proposed deletions are in [brackets].

\* \* \* \* \*

#### Chapter VIII

Market-Makers, Trading Crowds and Modified Trading Systems (Rules 8.1-8.95)

##### Rule 8.85—DPM Obligations

Rule 8.85 (a)–(b) No Change.  
(c) Other Obligations. In addition to the obligations described in paragraphs (a) and (b) of this Rule, a DPM shall fulfill each of the following obligations:

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

<sup>2</sup> 17 CFR 240.19b-4.

<sup>3</sup> Amendment No. 1 replaces and supercedes the CBOE's original 19b-4 filing in its entirety.

<sup>4</sup> Telephone conversation between James M. Flynn, Attorney, CBOE, and Sapna C. Patel, Special Counsel, and Angela Muehr, Attorney, Division of Market Regulation, Commission, on October 14, 2004.

(i) Resolve disputes relating to transactions in the securities allocated to the DPM, subject to Floor Official review, upon the request of any party to the dispute;

(ii) *Make competitive markets on the Exchange and otherwise promote the Exchange in a manner that is likely to enhance the ability of the Exchange to compete successfully for order flow in the classes it trades* [provide high quality markets and services and promote the Exchange as a marketplace to customers and other market participants];

(iii) Promptly inform the MTS Committee of any desired change in the DPM Designees who represent the DPM in its capacity as a DPM and of any material change in the financial or operational condition of the DPM;

(iv) Supervise all persons associated with the DPM to assure compliance with the Rules;

(v) Segregate in a manner prescribed by the MTS Committee the DPM's business and activities as a DPM from the DPM's other businesses and activities; and

(vi) Continue to act as a DPM and to fulfill all of the DPM's obligations as a DPM or the MTS Committee terminates the DPM's approval to act as a DPM pursuant to Rule 8.90.

(d)–(e) 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 CBOE 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 CBOE 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

The Exchange proposes to amend its rules governing DPMs in order to create an obligation that would require a DPM to make competitive markets on the Exchange and otherwise to promote the Exchange in a manner that is likely to enhance the ability of the Exchange to compete successfully for order flow in the classes it trades. This is identical to an obligation that is currently imposed

<sup>6</sup> 17 CFR 200.30-3(a)(12).