

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46397; File No. SR-CBOE-2002-44]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Incorporated To Amend its Rules To Eliminate the "Book Indicator"

August 21, 2002.

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 August 19, 2002, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the CBOE. 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 amend its rules to eliminate the "Book Indicator."

#### 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. 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 is proposing to eliminate the "Book Indicator." This indicator is affixed to the CBOE disseminated quotation when an order in the Exchange's book represents the best bid or offer on the Exchange. It alerts brokers and the public that the bid, offer or both are being generated by orders in the book, not by market-maker quotes. The Book Indicator was adopted as part of the Exchange's initiative to provide split-price Retail Automatic Execution System ("RAES") executions for incoming customer orders when the prevailing best bid (offer) is generated by an existing customer order in the CBOE book.<sup>3</sup> At the time split-price execution functionality was adopted, CBOE's disseminated quote did not display size. Thus, the Book Indicator served to alert customers that an RAES eligible order might not be executed in its entirety at CBOE's displayed price. For example, if the RAES limit was 50 contracts, and the best bid was a customer order in the book for 3 contracts, an incoming RAES order to sell 40 contracts would only be entitled to the book price for 3 contracts. However, because a customer would not know that the CBOE best bid was a booked order, the customer might expect his 40 contract order to execute in its entirety at the bid disseminated by CBOE. The Book Indicator alerted the customer that he might receive a split-price execution.

Now that CBOE disseminates quotes with size, it no longer needs the Book Indicator. Today, in the above example, CBOE's disseminated bid would contain a size of 3 contracts. Thus, the customer would know that an RAES sell order would receive only 3 contracts at the disseminated bid price. This obviates the need for the Book Indicator; therefore CBOE proposes to eliminate it.

##### 2. Statutory Basis

The Exchange believes 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)<sup>5</sup> in particular in that it should promote just and equitable principles of trade, serve to remove impediments to and perfect the mechanism of a free and open market and a national market system,

and protect investors and the public interest.

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

This proposed rule change does not 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 self-regulatory organization 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, including whether the proposed rule change is consistent with the Act. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549-0609. 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 will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to the File No. SR-CBOE-2002-44 and should be submitted by September 19, 2002.

<sup>11</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 Securities Exchange Act Release No. 43932 (February 6, 2001), 66 FR 10332 (February 14, 2001).

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

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

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

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-46415; File No. SR-DTC-2002-04]

### Self-Regulatory Organizations; The Depository Trust Company; Order Granting Approval of a Proposed Rule Change Relating to the Application of a Receiver-Authorized Delivery-Like Function to Maturity Presentments for Money Market Instruments in Times of Unusual Market Stress

August 23, 2002.

#### I. Introduction

On March 25, 2002, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") proposed rule change SR-DTC-2002-04 pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> Notice of the proposal was published in the **Federal Register** on May 28, 2002.<sup>2</sup> No comment letters were received. For the reasons discussed below, the Commission is granting approval of the proposed rule change.

#### II. Description

##### (i) Current Maturity Presentments

Under DTC's current procedures for the processing of maturity presentments of money market instruments ("MMIs") that are in DTC's custody, early on the maturity date (generally around 2 a.m.) DTC initiates deliveries of the maturing paper from the accounts of participants having position in the maturing paper to the MMI participant account of the issuing/paying agent ("IPA"). These maturity presentments are processed as the equivalent of book-entry deliveries versus payment. If the net debit cap or collateralization controls applicable to the IPA's account prevents the delivery from being completed, maturity presentments will "recycle" just as any delivery would. If recycled, the maturity presentment delivery would be completed once additional funds such as settlement obligation prepayments or new issuances are credited to the IPA's

account. Attempts to complete deliveries of recycling maturity presentments occur randomly without regard to the identity of the offsetting prepayment/issuance transactions. For example, an issuance of Issuer A's commercial paper ("CP") into the IPA's account might establish collateral in the IPA's account that could be used to support the processing of a maturity presentment of Issuer B's CP. This arrangement has operated successfully since MMIs first became DTC-eligible in 1990.

DTC's MMI procedures provide that the IPA can "refuse to pay" for maturing paper of a particular issuer by communicating that intention to DTC before 3 p.m. (ET) on the maturity date. This intention will be communicated to all participants by DTC. DTC will then reverse any completed maturity presentments by recrediting them to presenting participants' accounts, which offsets the associated settlement credits in those accounts. DTC will also unwind the following transactions it may have processed earlier that day in the same and other MMIs of that "defaulting issuer": uncompleted maturity presentments; any valued issuances; any periodic income (interest or dividend) and principal presentments; and any reorganization presentments. In addition, DTC will mark down the collateral value of all of the defaulting issuer's MMIs in the system to zero and will block further issuances of that issuer's paper through DTC.

##### (ii) Application of Receiver-Authorized Delivery-like Function

Currently, the Receiver-Authorized Delivery (RAD) function enables each participant to limit and consider certain securities deliveries (those obligating the participant to pay \$15 million or more) and certain payment orders (those obligating the participant to pay \$1 million or more) which are directed to its account by any other participant before its account is updated. Certain other transactions, including substantially overvalued deliveries and deliveries initiated just prior to cutoff, are automatically subject to the RAD function.

However, under DTC's current procedures, RAD is not available for maturity presentments initiated by DTC on behalf of presenting participants because maturity presentments are known in advance and can generally be presumed to be valid obligations due and payable. Moreover, the processing of maturity presentments occurs early in the processing day in the expectation that the associated money credits posted

to the accounts of presenting participants will be available to support the efficient subsequent processing of new MMI issuances. Finally, subjecting all MMI maturities to RAD would impose an operational burden on IPAs who would be required to authorize each maturity presentment in order for the transaction to be completed.

Since the events of September 11, IPAs have raised a concern that in such emergency situations the random nature of DTC's process for updating recycling maturity presentments prevents the IPAs from aligning the funding of maturities with offsetting issuances of the same issue or with decisions to activate back-up lines of credit in order to fund a particular issuer's maturing obligations.

The proposed rule change provides to IPAs in the event of a systemic, operational, or other crisis that could result in MMI maturities not being funded in the normal course a mechanism for dealing with the nonpayment of maturities that does not have the consequences of a "refusal to pay." Under the proposed rule change, in extraordinary circumstances<sup>3</sup> and only after consultation with its regulators, DTC at its option may subject maturity presentments for MMIs maturing on the days following the crisis to a new contingency RAD-like feature. This would afford the IPA an opportunity to review and approve maturity presentments prior to having them processed into its account and would provide the IPA additional measures of control over its financial obligations to particular MMI issuers in times of unusual market stress. DTC would continue this procedure at its option until processing conditions returned to a more normal state.

#### III. Discussion

Section 17A(b)(3)(F) of the Act requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions.<sup>4</sup> By implementing a RAD-like function in times of unusual market stress for maturity presentments of MMIs, DTC will enable IPAs to control the presentation of maturing paper into their accounts and thereby better manage their exposures in times of unusual market stress. As a result, the risk that an IPA will have to refuse to pay a maturity presentment, along with the serious issuer default procedures

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

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

<sup>2</sup> Securities Exchange Act Release No. 45969 (May 20, 2002), 67 FR 36945.

<sup>3</sup> Such circumstances would be evidenced by the closing of one or more national securities exchanges (e.g., the New York Stock Exchange or Nasdaq).

<sup>4</sup> 15 U.S.C. 78q-1(b)(3)(F).