

SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-50540; File No. SR-CBOE-2004-57)

October 14, 2004

Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by the Chicago Board Options Exchange, Incorporated Relating to the Permanent Approval of Autobook

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”)¹ and Rule 19b-4 thereunder,² notice is hereby given that on August 17, 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 and II below, which Items have been prepared by the CBOE. The Exchange filed Amendment No. 1 to the proposed rule change on October 8, 2004.³ The Commission is publishing this notice, as amended, to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposed rule change, as amended.

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

The CBOE proposes to adopt the Exchange’s automated limit order display facility (“Autobook”) on a permanent basis. The text of the proposed rule change is set forth below. Deletions are in brackets.

Rule 8.85 DPM Obligations

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Patrick Sexton, Assistant General Counsel, CBOE, to Deborah Flynn, Assistant Director, Division of Market Regulation, Commission, dated October 8, 2004 (“Amendment No. 1”). Amendment No. 1 amends the proposed rule change by deleting the word “all” in the second sentence of the seventh paragraph in Item 3.

(a) No change

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

(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 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.

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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 III below. The Exchange has prepared summaries, set forth in sections A, B, and C below, of the most significant parts of such statements.

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

1. Purpose

Autobook is an enhancement to the Designated Primary Market-Maker's ("DPM's") 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. As such, CBOE believes that Autobook assists and facilitates DPMs' compliance with their regulatory obligation relating to the display of eligible customer limit orders that improve the price or increase the size of the best disseminated CBOE quote as required by CBOE Rule 8.85(b).

On April 18, 2003, the Commission approved the implementation of Autobook on a one-year pilot basis.⁴ Subsequently, on April 20, 2004, the Commission extended the Autobook pilot until October 19, 2004 or such earlier time as the Commission has approved Autobook on a permanent basis.⁵

The Exchange believes that Autobook has been an effective tool for DPMs in that it has assisted DPMs to comply with their regulatory obligations relating to the display of eligible customer limit orders as required by CBOE rules. Accordingly, CBOE seeks permanent approval of Autobook.

As was previously described in CBOE's rule filing that initiated the Autobook pilot, Autobook does not relieve DPMs of their obligations to book eligible customer limit orders on their PAR workstations immediately per CBOE Rule 8.85.⁶ To the extent a DPM excessively

⁴ See Securities Exchange Act Release No. 47701, 68 FR 22426 (April 28, 2003) (approving SR-CBOE-2003-16.)

⁵ See Securities Exchange Act Release No. 49584, 69 FR 22893 (April 27, 2004) (granting accelerated approval to SR-CBOE-2004-22).

⁶ In its Adopting Release for the Display Rule in the equities markets, the Commission stated that to comply with the requirement that display take place "immediately,"

relies on Autobook to display eligible limit orders without attempting to address these orders immediately, it could violate its due diligence obligation. Brief or intermittent periods of reliance on Autobook out of necessity, however, would not violate the obligation.⁷ The Exchange periodically issues regulatory circulars discussing the issue of excessive reliance upon Autobook.⁸

Autobook is an exchange-mandated facility that operates only on DPM PAR workstations. The appropriate Exchange Committee is responsible for establishing the Autobook timer in all classes under that Committee's jurisdiction, and the timer may not exceed the customer limit order display requirement then in effect on the Exchange. The appropriate Exchange Committee also has the authority to determine whether to utilize Autobook to automatically display any other types of orders that are not subject to CBOE's limit order display requirements.

A DPM may deactivate Autobook as to a class or classes only upon approval by a floor official. The DPM must obtain floor official approval as soon as practicable but in no event later than three minutes from the time of deactivation. If the DPM does not receive approval within

specialists must display (or execute or re-route) eligible customer limit orders "as soon as practicable after receipt which under normal market conditions would require display no later than 30 seconds after receipt." Securities Exchange Act Release No. 37619A (September 6, 1996), 61 FR 48290 (September 12, 1996).

⁷ For example, a DPM for a class that experiences an unexpected surge in trading activity would not violate its obligations if, because the DPM is not physically able to address eligible limit orders within 30-seconds, Autobook displays such orders at the end of the time period.

⁸ The Exchange has provided statistics to Commission staff that demonstrate that DPMs have not excessively relied upon Autobook to display eligible limit orders without attempting to address these orders immediately. The Exchange will continue to surveil DPMs for excessive reliance on Autobook.

three minutes after deactivation, the Exchange will review the matter as a regulatory issue.⁹

Floor officials would grant approval only in instances when there is an unusual influx of orders or movement of the underlying that would result in gap pricing or other unusual circumstances.¹⁰

The Exchange would document all instances where a floor official grants approval.

The Exchange would continue to conduct surveillance to ensure that DPMs comply with their obligation to execute or book all eligible limit orders as required by CBOE rules. CBOE also commits to conducting surveillance designed to detect whether DPMs as a matter of course rely on Autobook to display eligible limit orders. A practice of excessive reliance upon Autobook would be reviewed by CBOE's Regulatory Division as a possible due diligence violation.

2. Statutory Basis

Because Autobook assists and facilitates DPMs' compliance with their regulatory obligations concerning the display of eligible customer limit orders as required by CBOE rules, the Exchange believes that the proposed rule change, as amended, is consistent with Section 6(b) of the Act¹¹ in general and furthers the objectives of Section 6(b)(5)¹² 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

⁹ The Exchange believes that this is consistent with NYSE treatment. See Securities Exchange Act Release No. 41386 (May 10, 1999), 64 FR 26809 (May 17, 1999).

¹⁰ The Exchange believes that this is consistent with Amex Rule 170, Commentary .10. See Securities Exchange Act Release No. 42952 (June 16, 2000), 65 FR 39210 (June 23, 2000).

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

requirement that an exchange's rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.

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

CBOE does not believe that the proposed rule change, as amended, 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

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. 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 [insert date 21 days from date of publication in the [Federal Register](#)].

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 Act¹³ and the objectives of Section 11A(a)(1)(c) of the Act.¹⁴ 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.¹⁵ With respect to Section 11A, Congress

¹³ 15 U.S.C. 78f(b)(5).

¹⁴ 15 U.S.C. 78k-1(a)(1)(C).

¹⁵ In approving the proposed rule, the Commission has considered the proposed rule's

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,¹⁶ 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,¹⁷ 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.¹⁸

Margaret H. McFarland
Deputy Secretary

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 15 U.S.C. 78s(b)(2).

¹⁸ 17 CFR 200.30-3(a)(12).