

another exchange, the SBT DPM or LMM would be required to handle the order manually.<sup>172</sup> CBOE represented its view that the SBT DPM or SBT LMM handling public customer orders under these circumstances would be acting as agent for such orders.<sup>173</sup> Accordingly, the SBT DPM or LMM would be required to accord priority to such public customer order over its own orders as principal, unless the customer who placed the order has consented to not being accorded such priority.<sup>174</sup> Finally, to comply with its obligations under the Options Linkage Plan, CBOE rules 6.80 through 6.85<sup>175</sup> would apply to trading on the SBT System.

### K. Trade Reporting and Data Dissemination

#### 1. Executed Orders

The System would send executed orders to the Exchange's Trade Match System as matched trades. The System would send fill reports for executed orders to the SBT workstations for display to SBT traders.<sup>176</sup>

#### 2. Internal Dissemination of Quote and Best Bid/Offer

Any subscriber to CBOE*direct* would be able to view the System's best bid and offer for any options series traded on the System.<sup>177</sup> The System would send quote/order information—i.e., series, price, and size—to the SBT workstations that are trading a given class.

#### 3. Dissemination of Quotes to OPRA

The series and price of an option would be disseminated for each quote; the size of the quote also would be disseminated. Every change to CBOE*direct*'s best bid or ask would generate a quote report to OPRA and/or some other network that has been

price for that series in another market that participates in the OPRA plan. Telephone conversation between Angelo Evangelou, CBOE, and Michael Gaw, Division of Market Regulation, Commission, on August 16, 2002. Current CBOE rules would not permit another exchange's quotes to be excluded from the best prices identified by the System. Telephone conversation between Angelo Evangelou, Legal Division, CBOE, and Elizabeth King, Division of Market Regulation, Commission, on February 21, 2003.

<sup>172</sup> See CBOE rules 44.4, Interpretation .01(a)(6) and 44.14(b)(6).

<sup>173</sup> See Amendment No. 4. The Commission notes that the Exchange committed to file in the near future a proposed rule change under section 19(b) of the Act to expressly state that the SBT DPM and LMM act as agent when handling customer orders manually.

<sup>174</sup> See *id.*

<sup>175</sup> See Securities Exchange Act Release No. 47294 (January 31, 2003), 68 FR 6527 (February 7, 2003) (approving SR-CBOE-2002-61).

<sup>176</sup> See notice, *supra* note 4, 67 FR at 31026.

<sup>177</sup> See CBOE rule 46.1(a).

approved by the Commission.<sup>178</sup> Changes in best quote and size due to all-or-none or fill-or-kill contingency orders would not result in a message to OPRA to update the CBOE*direct* quote.<sup>179</sup>

#### 4. Last Sale Information

CBOE*direct* would internally disseminate last sale information—including series, price, and size—to subscribers that have indicated interest in a given class.<sup>180</sup> All SBT market makers assigned to a given class would be provided this information, but other individuals and firms could subscribe to this information as well.<sup>181</sup> CBOE*direct* also would disseminate last sale information externally to OPRA and/or another distribution network to the extent permitted by agreement or by rule.

#### 5. Booked Order Dissemination

When an SBT trader requests information for an option class, the System would provide the information that presents the SBT book's best bids and asks and the aggregate size for each series of the class requested.<sup>182</sup> CBOE could add or delete categories of disseminated information as it deemed appropriate.<sup>183</sup> Although CBOE believes that such information generally would be available, it may determine not to provide such information if the System were nearing its message capacity and degradation of the System could result. CBOE may charge fees for such information; different fees may be charged to different categories of SBT traders.<sup>184</sup>

## II. Amendment No. 4

The foregoing discussion incorporated revisions proposed in Amendment No. 4 to the proposed rule change. Specifically, in Amendment No. 4, CBOE:

- Revised the definitions of “fill-or-kill” and “immediate-or-cancel” orders

<sup>178</sup> The Commission notes that the OPRA plan does not presently permit an options exchange to disseminate quotes to another network without also disseminating such quotes to OPRA.

<sup>179</sup> See notice, *supra* note 4, 67 FR at 31041.

<sup>180</sup> See CBOE rule 46.1(b).

<sup>181</sup> See *id.*

<sup>182</sup> See CBOE rule 46.1(c).

<sup>183</sup> See *id.* For example, CBOE could determine to provide book depth to a certain number of levels, but later determine to reduce the number of levels provided as circumstances warranted. Telephone conversation between Angelo Evangelou and Andy Lowenthal, CBOE, and Nancy Sanow and Michael Gaw, Division of Market Regulation, Commission, on November 7, 2002.

<sup>184</sup> Any proposal to charge such a fee would have to be filed with the Commission pursuant to section 19(b) of the Act, 15 U.S.C. 78s(b).

to clarify that such orders must be filled immediately upon receipt or canceled;

- Clarified the definitions of “RFQ” and “Special RFQ” and explained why RFQs would be sent only to SBT market makers;

- Added a provision that SBT DPMs and LMMs will not receive any trade participation right until public customers' orders at the best price have been executed, and clarified that an SBT DPM's or LMM's trade participation right will apply only to the portion of an order remaining after all higher priorities are satisfied;

- Substantially revised the trade nullification procedures to include specific objective criteria as to when a trade may be broken;

- Specified that non-broker dealer market orders and marketable limit orders will not be automatically executed at prices inferior to the best bid or offer on another exchange, as those best prices are identified in the System;

- Added provisions requiring SBT brokers to expose orders that they represent as agent for at least 30 seconds or, if appropriate, to use the crossing mechanism;

- Revised the crossing procedures to require orders to be for at least 50 contracts to be eligible for the crossing mechanism, to establish minimum time periods for which such proposed crosses must be exposed, and to specify that cross transactions may be effected only in increments equal to or greater than the Exchange's minimum quoting increments;

- Added an interpretation regarding a member's duty of best execution, prohibited circumvention of the rules on crossing orders, and represented that CBOE will surveil for violations of the crossing rules;

- Added a rule relating to responsible brokers' and dealers' firm quotation obligations in CBOE*direct* and eliminated the application of CBOE rule 8.51, the firm quote requirements of trading crowds on the floor, to SBT market makers;

- Revised the obligations of SBT standard market makers and SBT DPMs and LMMs, including adding requirements relating to RFQ response rates;

- Eliminated the special rules relating to the processing of spread orders;

- Deleted a rule relating to the Exchange's position that information sent over the SBT System is the Exchange's proprietary information;

- Represented that CBOE rule 4.18 requires SBT market makers to maintain information barriers with any affiliates that may act as a specialist or market