

2003,<sup>3</sup> and April 18, 2003.<sup>4</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 Exchange proposes to amend CBOE rule 8.85 to implement Autobook on a pilot program basis. The text of the proposed rule change appears below. Additions are in *italics*.

\* \* \* \* \*

#### Rule 8.85 DPM Obligations

(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 April 21, 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.

<sup>3</sup> See letter from Patrick Sexton, Assistant General Counsel, CBOE, to Christopher Solgan, Attorney, Commission, Division of Market Regulation ("Division"), dated April 16, 2003 ("Amendment No. 1"). In Amendment No. 1, the Exchange made a technical change to the proposed rule text and stated that on April 21, 2003, the time period in which DPMs are required to execute or book eligible customer limit orders will decrease from 60-seconds to immediately, but no later than 30-seconds from receipt under normal market conditions. Lastly, the Exchange amended the proposed rule change to designate it as filed under section 19(b)(3)(A) and rule 19b-4(f)(6) thereunder, rather than section 19(b)(2), of the Act.

<sup>4</sup> See letter from Patrick Sexton, Assistant General Counsel, CBOE, to Deborah Flynn, Assistant Director, Commission, Division of Market Regulation, dated April 17, 2003 ("Amendment No. 2"). In Amendment No. 2, the Exchange requested the Commission accelerate the 30-day operative date under section 19(b)(3) of the Act, and rule 19b-4(f)(6) thereunder to April 21, 2003. The Exchange also amended the proposed rule text to indicate that the pilot program will expire on April 21, 2004.

\* \* \* Interpretations and Policies:  
.01—.03 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

CBOE rule 8.85(b) states, in part, that each Designated Primary Market Maker ("DPM") shall fulfill all the obligations of an Order Book Official ("OBO") under CBOE rules.<sup>5</sup> Further, CBOE rule 8.85(b)(i) specifically requires each DPM to enter into the limit order book any order in the possession of the DPM which is eligible for entry into the book unless the DPM executes the order upon its receipt, or the customer who placed the order has requested that the order not be booked provided the DPM announces in open outcry the order that would be displayed.<sup>6</sup>

In addition, pursuant to subparagraph IV.B.f of the Commission's September 11, 2000, Order,<sup>7</sup> CBOE was required to enhance and improve its surveillance, investigative and enforcement processes for order handling, including the display of customer limit orders in the disseminated quotes. In connection with this specific undertaking, in January 2002, CBOE issued Regulatory Circular RG02-03 which advised that effective January 15, 2002, each DPM was required to execute or book 90% of all

<sup>5</sup> CBOE rule 7.7 requires that an OBO, "in so far as practicable," display limit orders contained in the OBO's Limit Order Book when such limit orders represent the best bid or offer on the book.

<sup>6</sup> In June 2002, CBOE submitted draft rule change to the Commission to implement a limit order display requirement that it believes is similar to Exchange Act rule 11Ac1-4 ("Display rule"). 17 CFR 240.11Ac1-4. CBOE is currently discussing its draft filing with Commission staff and anticipates filing a proposed rule change in the near future.

<sup>7</sup> Order Instituting Public Administrative Proceedings Pursuant to section 19(h)(1) of the Act. See Securities Exchange Act Release No. 43268 (September 11, 2000), Administrative Proceeding File No. 3-10282 (the "Order").

eligible customer limit orders within 90 seconds of receipt or less. Regulatory Circular RG02-03 further advised that beginning in July 2002, DPMs were expected to execute or book (with certain exceptions) 95% of all eligible customer limit orders within 60 seconds of receipt or less. DPMs are currently subject to this latter 60-second requirement, and beginning on April 21, 2003, DPMs will be required to execute or book 95% of all eligible customer limit orders "immediately"<sup>8</sup> but not later than 30-seconds after receipt under normal market conditions.<sup>9</sup>

To assist and facilitate DPMs' compliance with their regulatory obligation and ensure that eligible customer limit orders are displayed in the disseminated quotations as required by CBOE rules and Regulatory Circulars, CBOE proposes to institute Autobook on a one-year pilot basis. Autobook is an enhancement to the DPM's Public Automated Routing ("PAR") workstation that will automatically facilitate 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.<sup>10</sup> When an eligible customer limit order routes to PAR, the DPM addresses that order by attempting to execute, display, or route that order (through linkage), as appropriate. If there are instances where the DPM has not yet addressed the order within the applicable 30-second period,<sup>11</sup> Autobook will automatically display the eligible customer limit order in the limit order book at or close to the end of that period. As such, Autobook will help to ensure that eligible customer limit orders are displayed within the required time period then in effect.

<sup>8</sup> 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," 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." See Securities Exchange Act Release No. 37619 (August 29, 1996), 61 FR 48290 (September 12, 1996), 17 CFR 240.11Ac1-4.

<sup>9</sup> Exchange Regulatory Circulars RG02-03, RG02-49, and RG03-03 discuss the requirement to book limit orders within these time periods and describe the sanctioning guidelines for violations.

<sup>10</sup> This configurable time period will not exceed the standard then in effect on the Exchange. As of April 21, 2003, the configurable time period may not exceed 30-seconds, as discussed above.

<sup>11</sup> On April 21, 2003, the time period in which DPMs are required to execute or book eligible customer limit orders will decrease from 60-seconds to no later than 30-seconds from receipt under normal market conditions. See Amendment No. 1, *supra* note 3.