

The Exchange notes that Autobook does not relieve DPMs of their obligation to book eligible customer limit orders on their PAR workstation immediately but not later than 30-seconds after receipt.<sup>12</sup> To the extent a DPM excessively 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.<sup>13</sup> Upon approval of this rule filing, the Exchange will issue a regulatory circular discussing the issue of excessive reliance upon Autobook.

Autobook will be an Exchange-mandated facility that will operate only on DPM PAR workstations. The appropriate Exchange Committee will be 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.

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 three minutes after deactivation, the Exchange will review the matter as a regulatory issue.<sup>14</sup> Floor officials will 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.<sup>15</sup> The Exchange will document all instances where a floor official grants approval.

The Exchange will continue to conduct surveillance to ensure that DPMs comply with their obligation to execute or book all eligible limit orders within the time period then in effect. CBOE also commits to conduct surveillance designed to detect whether DPMs as a matter of course rely on Autobook to display all eligible limit

orders. A practice of excessive reliance upon Autobook will be reviewed by CBOE's Regulatory Division as a possible due diligence violation. As part of the proposed one-year pilot program, the Exchange will provide to the Commission every three months the statistical data it uses to determine whether there has been impermissible reliance on Autobook by DPMs.

## 2. Statutory Basis

Autobook provides a mechanism to ensure eligible customer limit orders do not remain on PAR beyond a specified amount of time. As such, the Exchange believes the proposal is consistent with the Act and the rules and regulations under the Act applicable to a national securities exchange and, in particular, the requirements of section 6(b) of the Act.<sup>16</sup> Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)<sup>17</sup> requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts and, in general, to protect investors and the public interest. Furthermore, the Exchange believes that the proposed changes are consistent with the Act's requirement that an exchange's rules not be designed to permit unfair discrimination between customers, issuers, brokers, or dealers.<sup>18</sup>

### 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 not necessary or appropriate in furtherance of the purposes of the Exchange 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

The foregoing rule change, as amended, has become effective pursuant to section 19(b)(3)(A) of the Act<sup>19</sup> and subparagraph (f)(6) of rule 19b-4<sup>20</sup> thereunder because it does not: (i) Significantly affect the protection of investors or the public interest; (ii) impose any significant burden on

competition; (iii) become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate; and the Exchange has given the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. At any time within 60 days of the filing of such proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.<sup>21</sup>

Under rule 19b-4(f)(6)(iii) of the Act,<sup>22</sup> the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest and the Exchange is required to give the Commission written notice of its intention to file the proposed rule change at least five business days prior to filing. The Commission notes that beginning on April 21, 2003, DPMs will be required to execute or book 95% of all eligible customer limit orders immediately, but not later than 30-seconds after receipt under normal market conditions. The Exchange has requested that the Commission accelerate the 30-day operative date to April 21, 2003, so that it may implement the proposed rule change on that date to assist and facilitate DPMs' compliance with their regulatory obligation and ensure that eligible customer limit orders are displayed in the disseminated quotations immediately. The Exchange contends that this proposed rule is substantially similar to comparable rules the Commission approved for the Amex and NYSE, which were published for public notice and comment.<sup>23</sup> As a result, the Exchange believes that the proposed rule change does not raise any new regulatory issues. The Commission, consistent with the protection of investors and the public interest, has determined to accelerate the 30-day operative date to April 21, 2003,<sup>24</sup> and,

<sup>12</sup> See Amendment No. 1, *supra* note 3.

<sup>13</sup> 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.

<sup>14</sup> This is consistent with Supplementary Material .15 to New York Stock Exchange, Inc. ("NYSE") rule 79A. See Securities Exchange Act Release No. 41386 (May 10, 1999), 64 FR 26809 (May 17, 1999).

<sup>15</sup> This is consistent with Commentary .10 to American Stock Exchange LLC ("Amex") rule 170. See Securities Exchange Act Release No. 42952 (June 16, 2000), 65 FR 39210 (June 23, 2000).

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

<sup>17</sup> 15 U.S.C. 78f(b)(5).

<sup>18</sup> *Id.*

<sup>19</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>20</sup> 17 CFR 240.19b-4(f)(6).

<sup>21</sup> For purposes of calculating the 60-day abrogation date, the Commission considers the 60-day period to have commenced on April 18, 2003, the date CBOE filed Amendment No. 2.

<sup>22</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>23</sup> See Securities Exchange Act Release Nos. 42952 (June 16, 2000), 65 FR 39210 (June 23, 2000) (Commentary .10 to Amex rule 170); and 41386 (May 10, 1999), 64 FR 26809 (May 17, 1999) (Supplementary Material .15 to NYSE rule 79A).

<sup>24</sup> For purposes only of accelerating the 30-day operative period for this proposal, the Commission has considered the proposed rule's impact on