

with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Amex Rules 26, 29, 171, and 950 to revise specialist capital requirements and the method for computing specialist capital requirements, and to create an early warning level with respect to specialist capital. The proposed rule change was published for comment in the **Federal Register** on March 14, 2003.³ The Commission received no comments on the proposal.

After careful review, the Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.⁴ Specifically, the Commission finds that the proposal is consistent with section 6(b)(5) of the Act,⁵ which requires, among other things, that the Amex's rules be designed to prevent fraudulent and manipulative acts and practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, 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.

The Commission believes that the Amex's proposal to modify the specialist capital requirements and the specialist capital computation method should provide an accurate measure of a specialist's financial strength. In addition, the Commission believes that creating an "early warning level" should allow the Amex to take appropriate action with respect to a specialist's financial condition before the specialist falls out of compliance with capital requirements.

The Commission notes that the rule change will not take effect until one year after approval by the Commission in order to give specialist firms sufficient time to adjust to the new requirements.

It is therefore Ordered, pursuant to section 19(b)(2) of the Act⁶, that the

proposed rule change (File No. SR-Amex-2002-104) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47702; File No. SR-Amex-2002-105]

Self-Regulatory Organizations; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Thereto by the American Stock Exchange LLC To Amend Amex Rule 17 To Provide for "Cash" in Addition to "Next Day" Settlement of Transactions in Rights and Warrants During the Trading Days Prior to Expiration

April 18, 2003.

On December 12, 2002, the American Stock Exchange LLC ("Amex") filed with the Securities and Exchange Commission ("Commission"), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")¹ and Rule 19b-4 thereunder,² a proposed rule change to amend Amex Rule 17 to provide for "cash" in addition to "next day" settlement of transactions in rights and warrants during the trading days prior to expiration. The Amex filed an amendment to the proposed rule change on January 23, 2003.

The proposed rule change, as amended, was published for comment in the **Federal Register** on March 13, 2003.³ The Commission received no comments on the proposed rule change.

After careful review, 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.⁴ Specifically, the Commission finds that the proposal, as amended, is consistent with section 6(b)(5) of the Act,⁵ which requires, among other things, that the Amex's rules be designed to prevent fraudulent and manipulative acts and

practices, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, to protect investors and the public interest. The Commission believes that permitting "cash" settlement of rights and warrants transactions should provide the Amex's members with an appropriate amount of flexibility in settling such transactions.

It is therefore Ordered, pursuant to section 19(b)(2) of the Act,⁶ that the proposed rule change and Amendment No. 1 (File No. SR-Amex-2002-105) be, and it hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁷

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47701; File No. SR-CBOE-2003-16]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment Nos. 1 and 2 Thereto by the Chicago Board Options Exchange, Inc. To Implement Autobook on a Pilot Program Basis

April 18, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act" or "Exchange Act"),¹ and rule 19b-4 thereunder,² notice is hereby given that on April 8, 2003, the Chicago Board Options Exchange, Inc. ("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 Exchange. The Exchange amended the proposal on April 17,

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 47469 (March 7, 2003), 68 FR 12393.

⁴ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 47446 (March 5, 2003), 68 FR 12110.

⁴ In approving this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁵ 15 U.S.C. 78f(b)(5).

⁶ 15 U.S.C. 78s(b)(2).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

2003,³ and April 18, 2003.⁴ 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.

³ 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.

⁴ 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.

* * * * *

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.⁵ 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.⁶

In addition, pursuant to subparagraph IV.B.f of the Commission's September 11, 2000, Order,⁷ 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

⁵ 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.

⁶ 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.

⁷ 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"⁸ but not later than 30-seconds after receipt under normal market conditions.⁹

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.¹⁰ 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,¹¹ 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.

⁸ 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.

⁹ 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.

¹⁰ 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.

¹¹ 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.

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.¹² 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.¹³ 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.¹⁴ 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.¹⁵ 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.¹⁶ Specifically, the Exchange believes the proposed rule change is consistent with the section 6(b)(5)¹⁷ 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.¹⁸

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 Act¹⁹ and subparagraph (f)(6) of rule 19b-4²⁰ 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.²¹

Under rule 19b-4(f)(6)(iii) of the Act,²² 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.²³ 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, 2003,²⁴ and,

¹² See Amendment No. 1, *supra* note 3.

¹³ 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.

¹⁴ 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).

¹⁵ 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).

¹⁶ 15 U.S.C. 78f(b).

¹⁷ 15 U.S.C. 78f(b)(5).

¹⁸ *Id.*

¹⁹ 15 U.S.C. 78s(b)(3)(A).

²⁰ 17 CFR 240.19b-4(f)(6).

²¹ 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.

²² 17 CFR 240.19b-4(f)(6)(iii).

²³ 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).

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

therefore, the proposal is effective and operative on that date.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning the foregoing, including whether the proposed rule change, as amended, 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 at the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the Exchange. All submissions should refer to File No. SR-CBOE-2003-16 and should be submitted by May 19, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²⁵

Jill M. Peterson,

Assistant Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-47712; File No. SR-DTC-2002-18]

Self-Regulatory Organizations; The Depository Trust Company; Notice of Filing and Immediate Effectiveness of a Proposed Rule Change Relating to the Fee Schedule Revisions for 2003

April 21, 2003.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on December 26, 2002, The Depository Trust Company ("DTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in items I, II, and III below, which items have been prepared primarily by DTC. 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 proposed rule change consists of revisions to DTC's fee schedule for 2003.²

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

In its filing with the Commission, DTC 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. DTC has prepared summaries, set forth in sections (A), (B), and (C) below, of the most significant aspects of such statements.³

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

The purpose of the proposed rule change is to adjust the fees DTC charges for various services so that the fees may be aligned with their respective estimated service costs for 2003. The revised fees will be effective with respect to services provided on and after January 1, 2003.

DTC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to DTC because the fees will more equitably be allocated among users of DTC services.

(B) Self-Regulatory Organization's Statement on Burden on Competition

DTC perceives no impact on competition by reason of the proposed rule change.

(C) Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others

Written comments from DTC participants or others have not been solicited or received on the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Because the foregoing rule change establishes or changes fees to be imposed by DTC, it has become effective pursuant to section 19(b)(3)(A)(ii) of the Act⁴ and rule 19b-4(f)(2).⁵ At any time within sixty days of the filing of the 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.

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. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-DTC-2002-18. This file number should be included on the subject line if e-mail is used. To help us process and review comments more efficiently, comments should be sent in hardcopy or by e-mail but not by both methods. 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 Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of DTC. All submissions should refer to the File No. SR-DTC-2002-18 and should be submitted by May 19, 2003.

efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

²⁵ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² DTC's revised schedule of service fees is attached as an exhibit to the filing.

³ The Commission has modified parts of these statements.

⁴ 15 U.S.C. 78s(b)(3)(A)(ii).

⁵ 17 CFR 240.19b-4(f)(2).