

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-BSE-2005-20 and should be submitted on or before August 12, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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**SECURITIES AND EXCHANGE COMMISSION**

[Release No. 34-52044; File No. SR-CBOE-2005-28]

**Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing of a Proposed Rule Change Relating to DPM Obligations for Maintaining Backup Autoquote Systems**

July 15, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (“Act”) <sup>1</sup> and Rule 19b-4 thereunder, <sup>2</sup> notice is hereby given that on April 1, 2005, 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, II, and III below, which Items have been prepared by the CBOE. 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 Exchange submits this rule change filing, which proposes to amend CBOE rules to remove the requirement that Designated Primary Market-Makers maintain a back-up quoting system for Hybrid and non-Hybrid option classes.

The text of the proposed rule change is provided below. Additions are in *italics*; deletions are in [brackets].

\* \* \* \* \*

**CHAPTER VIII**

**Market-Makers, Trading Crowds and Modified Trading Systems (Rules 8.1-8.95)**

\* \* \* \* \*

**Rule 8.1-8.84 No Change.**

**Rule 8.85. DPM Obligations**

(a) Dealer Transactions. Each DPM shall fulfill all of the obligations of a Market-Maker under the Rules, and shall satisfy each of the following requirements in respect of each of the securities allocated to the DPM. To the extent that there is any inconsistency between the specific obligations of a DPM set forth in subparagraphs (a)(i) through (a)(xi) of this Rule and the general obligations of a Market Maker under the Rules, subparagraphs (a)(i) through (a)(xi) of this Rule shall govern. Each DPM shall:

(i)-(x) No Change.

[(xi) in the case of a DPM utilizing a proprietary autoquote system in a non-CBOE Hybrid System class, assure that the Exchange’s AutoQuote system is maintained as a back-up at all times and ready for immediate use.

(xii) in the case of a DPM utilizing a proprietary autoquote system in a Hybrid System class, the DPM must have available for immediate use an alternative autoquote system that is entirely independent of the DPM’s primary autoquote system.]

(b)-(e) No Change.

\* \* \* \* \*

**\* \* \* Interpretations and Policies:**

.01-.04 No Change.

\* \* \* \* \*

**Rule 17.50. Imposition of Fines for Minor Rule Violations**

(a)-(f) No Change.

(g) The following is a list of the rule violations subject to, and the applicable fines that may be imposed by the Exchange pursuant to this Rule:

(1)-(9) No Change.

[(10) *Violations of DPM Obligation to Assure that a Back-Up Auto Quote System is Maintained at all Times. (Rules 8.85(a)(xi) and (xii))*

(a) A fine shall be imposed upon a DPM that fails to assure that disseminated market quotations are accurate for any given trading station because of a failure of the DPM’s proprietary autoquote system during market hours coupled with the DPM’s failure to maintain a back-up autoquote system.

Number of Violations in any Rolling Twelve-Month Period	Fine Amount
1st Offense .....	\$100 to \$2,500 or Referral to Business Conduct Committee
2nd-3rd Offense .....	\$100 to \$5,000 or Referral to Business Conduct Committee
Subsequent Offenses	Referral to Business Conduct Committee]

[[11]](10) Communications to the Exchange or the Clearing Corporation (Rule 4.11)

No Change.

\* \* \* \* \*

**\* \* \* Interpretations and Policies:**

.01-.04 No Change.

\* \* \* \* \*

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

In its filing with the Commission, CBOE 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 CBOE 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**

Exchange Rules 8.85(a)(xi) and (xii) both impose an obligation on DPMs to maintain independent backup autoquote systems that can be employed in the event that a DPM’s proprietary autoquote system should fail or be otherwise unavailable. Rule 8.85(a)(xi) governs non-CBOE Hybrid System (“non-Hybrid”) classes and requires DPMs to maintain the Exchange’s AutoQuote system as a backup for non-Hybrid classes. Because of compatibility restrictions, the Exchange’s AutoQuote system cannot be used as a backup for Hybrid classes, so the Exchange adopted Rule 8.85(a)(xii), which requires DPMs to maintain an independent backup autoquote system that it may employ in the event its proprietary autoquote

<sup>5</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

system fails.<sup>3</sup> The Exchange believes that, under the current CBOE environment, these obligations are now both unnecessary and unduly burdensome on DPMs and, accordingly, should be repealed.

With regard to the non-Hybrid backup autoquote obligation, because the Exchange has converted all of its DPM option classes to the CBOE Hybrid System, there are no more non-Hybrid classes and, as such, CBOE Rule 8.85(a)(xi) no longer applies and should be deleted. Additionally, the Exchange believes that the recent adoption and implementation of the electronic DPM ("e-DPM") program<sup>4</sup> on the Exchange provides a more appropriate and cost effective safeguard against a DPM's inability to generate quotes in option classes traded on the Exchange in Hybrid classes and, as such, the Hybrid backup autoquote obligation under Rule 8.85(a)(xii) is no longer necessary.<sup>5</sup> The deletion of the backup autoquote rules would not affect a DPM's separate obligation to provide continuous market quotations for each of its allocated classes and respective series.<sup>6</sup>

Finally, the Exchange also proposes removing violations of the non-Hybrid backup autoquote rule (Rule 8.85(a)(xi)) and the Hybrid backup autoquote rule (Rule 8.85(a)(xii)) from the Exchange's Minor Rule Plan.<sup>7</sup>

## 2. Statutory Basis

Because the proposed rule change will refine and enhance the Exchange's rules relating to quoting obligations to make them more efficient and effective, the proposed rule change is consistent with Section 6(b) of the Act,<sup>8</sup> in general, and furthers the objectives of Sections 6(b)(5) and 6(b)(7) in particular,<sup>9</sup> in that it is designed to promote just and equitable principles of trade, to protect investors and the public interest, and enhances the effectiveness and fairness of the Exchange's disciplinary procedures.

<sup>3</sup> CBOE Rule 8.85(a)(xii) requires that the Hybrid backup autoquote system be independent from the DPM's proprietary autoquote system.

<sup>4</sup> See Exchange Act Release Nos. 49577 (April 19, 2004), 69 FR 22576 (April 26, 2004) (order approving the process for approving e-DPMs on the Exchange); 50003 (July 12, 2004), 69 FR 25647 (July 19, 2004) (order approving e-DPM trading rules).

<sup>5</sup> Exchange rules now allow CBOE to allocate an option class that is already allocated to a DPM to one or more e-DPMs. See *supra* note 4. See also CBOE Rules 8.92 and 8.93.

<sup>6</sup> See CBOE Rule 8.85(a)(i).

<sup>7</sup> See CBOE Rule 17.50(g)(10).

<sup>8</sup> 15 U.S.C. 78f(b).

<sup>9</sup> 15 U.S.C. 78f(b)(5) and 78f(b)(7).

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

This proposed rule change does not impose any burden on competition that is 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

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

### 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. 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](mailto:rule-comments@sec.gov). Please include File Number SR-CBOE-2005-028 on the subject line.

#### Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-9303.

All submissions should refer to File Number SR-CBOE-2005-028. 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 such filing also will be available for inspection and copying at the principal office 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-2005-028 and should be submitted by August 12, 2005.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>6</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-52049; File No. SR-NASD-2005-087]

### Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing of Proposed Rule Change To Reflect Nasdaq's Separation From NASD Upon Nasdaq's Anticipated Approval as a National Securities Exchange

July 15, 2005.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on July 11, 2005, the National Association of Securities Dealers, Inc. ("NASD") 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 by NASD. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

<sup>6</sup> 17 CFR 200.30-3(a)(12).

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.