25% of the total system capacity of 32,000 mps. Furthermore, to date, the options exchanges have not exceeded 11,000 mps for any extended period of time. Therefore, the Exchange believes that implementing the Pilot Program would not have a negative impact on OPRA system capacity.

2. Statutory Basis

The BSE believes that the proposed rule change is consistent with section 6(b) of the Act [6] in general and furthers the objectives of section 6(b)(5) [7] in particular in that it is designed to promote just and equitable principles of trade, to remove impediments to and perfect the mechanism of a free and open market and a national market system, and protect investors and the public interest by granting the Exchange authority to implement a Pilot Program to list options under certain circumstances at one-point intervals.

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

The BSE does not believe that the proposed rule change will impose any burden on competition.

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

The BSE has neither solicited nor received comments on the proposed rule change.

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

The foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act [8] and subparagraph (f)(6) of Rule 19b–4 [9] 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.

Under Rule 19b–4(f)(6)(iii) of the Act, [10] 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. The Exchange has requested that the Commission waive the 30-day operative date so that the Exchange may remain competitive with other exchanges that currently have similar rules in effect. The proposed rule change is virtually identical to a CBOE pilot program ("CBOE Pilot") that the Commission approved. [11] Notice of the CBOE Pilot was published for comment [12] and the Commission received one comment letter, which supported the CBOE's proposal. Accordingly, the Commission believes that the proposed rule change raises no new issues of regulatory concern. The Commission, consistent with the protection of investors and the public interest, has determined to waive the 30-day operative period, [13] and, therefore, the proposal is effective and operative upon filing with the Commission.

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–BSE–2004–01. 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, 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 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–BSE–2004–01 and should be submitted by March 18, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority. [14]

Margaret H. McFarland,
Deputy Secretary.
[FR Doc. 04–4269 Filed 2–25–04; 8:45 am]
BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49287; File No. SR–CBOE–2003–23]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc., Relating to its Autoquote Triggered Ebook Execution System

February 19, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), [1] and Rule 19b-4 thereunder, [2] notice is hereby given that on June 2, 2003, the Chicago Board Options Exchange, Inc. ("CBOE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II and III below, which Items have been prepared by CBOE. On September 10, 2003, the Exchange filed Amendment No. 1 to the proposed rule change. [3] On December 29, 2003, the Exchange filed Amendment No. 2 to the proposed rule change. [4] The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

---

[6] 15 U.S.C. 78f(b).

[7] 15 U.S.C. 78f(b)(5).

[8] 15 U.S.C. 78s(b)(3)(A).

[9] 17 CFR 240.19b–4(f)(6).

[10] 17 CFR 240.19b–4(f)(6)(iii).

[11] *See* Securities Exchange Act Release No. 47991 (June 5, 2003), 68 FR 35243 (June 12, 2003) (order approving File No. SR–CBOE–2001–60).

[12] *See* Securities Exchange Act Release No. 47753 (April 29, 2003), 68 FR 23784 (May 5, 2003).

[13] For purposes only of waiving the 30-day operative period for this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b-4.

[3] *See* letter from Steve Youhn, Senior Attorney, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated September 9, 2003.

[4] *See* letter from Steve Youhn, Senior Attorney, CBOE, to Nancy Sanow, Assistant Director, Division of Market Regulation, Commission, dated December 22, 2003.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The Exchange proposes to amend CBOE Rule 6.8(d)(v) governing the operation of its "Trigger" functionality. Below is the text of the proposed rule change. Proposed new language is *italicized.* Proposed deletions are in [brackets].

* * * * *

Chicago Board Options Exchange, Inc.

Rules

* * * * *

Chapter VI—Doing Business on the Exchange Floor

Section A: General

This Rule governs RAES operations in all classes of options, except to the extent otherwise expressly provided in this or other Rules in respect of specified classes of options.

RULE 6.8

(a)–(c) No change.
(d) Execution on RAES
(i)–(iv) No change.
(v) Notwithstanding sub-paragraph (d)(iv), for classes of options as determined by the appropriate Floor Procedure Committee *("FPC"),* for any series of options where the bid or offer generated by [the Exchange's] Autoquote [system (or any] (Exchange *or* [approved] proprietary [quote generation system used in lieu of the Exchange's Autoquote system]) is equal to or crosses the Exchange's best bid or offer as established by an order in the Exchange's limit order book, orders in the book for options of that series will be automatically executed against participants on RAES ("Trigger") up to a size not to exceed the number of contracts equal to the applicable maximum size of RAES-eligible orders for that series of options ("Trigger Volume"). The appropriate [Floor Procedure Committee] *FPC* is responsible for determining the Trigger Volume for a particular series of options. In the event a member in the trading crowd verbally initiates a trade with a book order prior to the time the book staff announces to the trading crowd that the order has been removed from the book by Trigger, the book staff will manually endorse the book order to that member(s).

In the event the order in the book is for a larger number of contracts than the applicable Trigger Volume, the balance of the book order [will] *may* be executed manually by the trading crowd. In the limited circumstance where contracts remain in the book after an execution *(or partial execution)* of a book order up to the applicable Trigger Volume, [and the disseminated quote] *the bid or offer generated by Autoquote will be one-tick inferior to the price of the book order such that the disseminated quote will not* [remains] cross[ed] or lock[ed] with the Autoquote bid or offer. *In these instances,* or for any series where Trigger has not yet been implemented by the appropriate [Floor Procedure Committee] *FPC,* orders in RAES for options of that series will not be automatically executed but instead will be rerouted on ORS to the crowd PAR terminal or to another location in the event of system problems or contrary firm routing instructions.

* * * * *

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 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

The Exchange proposes to amend Rule 6.8(d)(v), which governs the operation of the Autoquote Triggered EBook Execution system ("Trigger").[5] Trigger allows orders resting in the book to be automatically executed in the limited situation when the Autoquote (Exchange or proprietary) bid (offer) for a series would equal or cross the Exchange's best offer (bid) for that series as established by a booked order.[6] In these instances, Trigger removes from the book and automatically executes and assigns to market makers orders up to the RAES eligible order size for that series ("Trigger Volume"). If the size of the order in the book exceeds the applicable Trigger Volume size, the balance of the booked order is executed manually by the trading crowd, in full, at the book price.

The operation of Trigger results in the full size of the booked order being executed, regardless of its size and without regard to the Autoquote disseminated size. For example, if the order in the book is for 200 contracts and the Trigger Volume level is set at 50 contracts, all 200 contracts in the book receive execution (50 via Trigger and the balance via open outcry). This has the result of requiring crowds to execute orders of a size greater than their disseminated firm quote size. To address this, CBOE proposes to amend the Rule to provide that Trigger will continue to provide automatic execution up to the Trigger volume level but that the crowd may determine to execute manually any remaining balance of the order in open outcry. Any unexecuted balance of the book order in excess of the Trigger Volume level will remain in the book (as is the case today) and the Autoquote will remain crossed or locked. This proposal would have the effect of giving the crowd the ability to execute the remaining contracts (in excess of the Trigger Volume level) without obligating them to do so.

For illustrative purposes, consider the following example:

	Price	Size
AQ	1.00 × 1.20	100 × 100
Book	0.95 × 1.10	10 × 2500

[5] The Commission approved the rule governing the Trigger system in Securities Exchange Act Release No. 44462 (June 21, 2001), 66 FR 34495 (June 28, 2002) (approving SR–CBOE–00–22) ("Original Order"). For a detailed description of the operation of the Trigger system, see the Original Order and Securities Exchange Act Release No. 45992 (May 29, 2002), 67 FR 38530 (June 4, 2002) (approving SR–CBOE–2002–12).

[6] Although Autoquote would cross or lock the order in the book, the Exchange does not disseminate the crossed or locked market. Instead, the disseminated bid (offer) will be one tick away from the book offer (bid). For example, if the Autoquote bid would lock the book offer at 1.30, the disseminated quote will be 1.25 × 1.30, with the 1.25 representing Autoquote and the 1.30 representing the book. Additionally, for Trigger-situations, the DPM typically sets a default size (*e.g.*, 10 contracts) that is smaller than the actual disseminated size for non-Trigger situations.

	Price		Size
Bestquote	1.00 × 1.10		100 × 2500

Trigger Vol.: 50 contracts

AQ Default Size: 10 contracts

Assume a move in the underlying causes AQ to want to move to 1.10 × 1.30. This activates Trigger (*i.e.*, AQ bid would lock the book offer—1.10 × 1.10). In this instance, Trigger automatically executes the book order up to the Trigger Volume level (50 contracts) and assigns the contracts to market makers in the crowd. Because the Exchange will not disseminate a locked market, however, the disseminated quote will be 1.05—1.10, 10×2450. The 1.10 offer represents the balance of order in the book. The 1.05 bid represents the Autoquote price and default size. The crowd will have the ability to manually execute the remaining contracts at 1.10. When the balance of the book order trades, the new disseminated Autoquote price will be 1.10 × 1.30.

The Exchange submits that Rule 11Ac1–1 under the Act (the ''Quote Rule''),[7] in its simplest form, requires the responsible broker or dealer (''responsible BD'') to be firm for its quotes (for price and size). The Exchange notes that in Trigger situations, the responsible BD on the Exchange is firm for all of its disseminated quotes. CBOE notes that there are three relevant periods relating to Trigger and explains how the operation of Trigger during each period is consistent with the Quote Rule, as follows.

Immediately Prior to Trigger Activation: Prior to the change in the underlying price that causes a change in the Autoquote price, the Exchange disseminates a 1.00 × 1.10, 100 × 2500 size market, for which it is firm. The $1.00 bid represents the crowd's autoquote while the $1.10 offer represents an order in the book.

At the time of Trigger Activation and Immediately Thereafter: When a Trigger situation occurs (*i.e.*, the autoquote bid would lock the book offer), it is important to note that the Exchange does NOT disseminate a locked or crossed market. Instead of sending a $1.10 bid, autoquote internally calculates a price that is one tick lower than the locked price ($1.05) and then sends that quote, which the Exchange collects and disseminates to quotation vendors as a firm quote. In this instance, the Exchange's disseminated offer is still for the balance of the book order (2450 contracts) at $1.10. Because

Autoquote does not send and hence CBOE does not disseminate a $1.10 bid, CBOE states that there is no firm quote liability for a 1.10 bid. The disseminated 1.10 offer is still firm.

The operation of Trigger results in the removal of contracts from the book for execution by the crowd. Today, the whole size of the book order is removed from the book. This has the result of forcing the trading crowd to buy (sell) all 2500 contracts in the book, even if they do not desire to purchase (sell) all of them and even though their disseminated size was substantially smaller. While the Quote Rule requires the responsible BD to be firm for quotes it disseminates, CBOE states that nothing in this rule requires an entity to purchase (sell) the entire size of the disseminated quote (*i.e.*, the BD who puts up the quote must be firm, not the person who tries to hit it). In fact, according to CBOE, this is completely inconsistent with the Quote Rule, as it imposes an unfair obligation upon the trading crowd (*i.e.*, to buy (sell) the entire size of the book order) where there rightly is none.

The Exchange notes that the filing proposes to amend what it views as an inequitable operation of Trigger such that only a number of contracts equal to the Trigger Volume Size would now be removed. The remainder of the contracts would stay in the book where they may be executed against by either the crowd or any other person that wants to trade with that order. The proposed change to the rule language of Rule 6.8(d)(v), which states ''the balance of the book order may be executed manually by the trading crowd'' clarifies this point.

Additionally, CBOE states that, because CBOE's own Quote Rule [8] is based on, and operates in compliance with, the SEC's Quote Rule, its proposal is also consistent with the SEC's Quote Rule. The Exchange represents that it is firm for all of the quotes it disseminates. Furthermore, the Exchange submits that Rule 11Ac1–1(b)(1)(i)[9] requires an Exchange to, among other things, ''* * * collect, process and make available to quotation vendors the best bid, the best offer, and aggregate quotation sizes for each subject security * * *'' In this regard, the Exchange states that it collects and disseminates all quotes sent to it. Autoquote does not send, and hence CBOE states that it does

not have an obligation to collect and disseminate, a quote that would lock the book price. For this reason, the Exchange submits that its proposal satisfies all of the Exchange's obligations under the Quote Rule.

2. Statutory Basis

According to CBOE, the proposal would continue to ensure that customers receive automatic executions of their booked orders up to the Trigger Volume level. The proposal is also consistent with the Quote Rule in that the CBOE crowd, as the responsible BD, will continue to honor its disseminated quotes. Therefore, the Exchange believes the proposed rule change 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.[10] Specifically, the Exchange believes that the proposed rule change is consistent with the section 6(b)(5) [11] 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.

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 that is not necessary or appropriate in furtherance of 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:

---

[7] 17 CFR 240.11Ac1–1.

[8] CBOE Rule 851.

[9] 17 CFR 240.11Ac1–1(b)(1)(i).

[10] 15 U.S.C. 78f(b).

[11] 15 U.S.C. 78f(b)(5).

(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 proposal 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 should be submitted electronically at the following e-mail address: *rule-comments@sec.gov.* All comment letters should refer to File No. SR–CBOE–2003–23. 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, comments should be sent in hard copy 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 Room. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should be submitted by March 18, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[12]

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 04–4270 Filed 2–25–04; 8:45 am]

BILLING CODE 8010–01–P

---

[12] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–49283; File No. SR–CHX–2003–25]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change and Amendments No. 1 and No. 2 Thereto by the Chicago Stock Exchange, Incorporated Relating to Stop Order Handling Rules

February 19, 2004.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),[1] and Rule 19b–4 thereunder,[2] notice is hereby given that on August 11, 2003, the Chicago Stock Exchange, Incorporated ("CHX" 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 Exchange. On January 29, 2004, the Exchange filed Amendment No. 1 to the proposed rule change.[3] On February 17, 2004, the Exchange filed Amendment No. 2 to the proposed rule change.[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 CHX Article XXX, Rule 22, which governs handling of stop orders. Specifically, the proposed rule change would add a general provision defining a stop order, in the context of listed securities, and confirming that a stop order, once "elected" by a price penetration on a national securities exchange or association, should be treated as a market order for purposes of determining the execution price due the order.

Below is the text of the proposed rule change, as amended. Proposed new language is *italicized.*

* * * * *

---

[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated January 28, 2004 ("Amendment No. 1"). Amendment No. 1 replaced the originally filed proposal in its entirety.

[4] *See* letter from Kathleen M. Boege, Associate General Counsel, CHX, to Nancy J. Sanow, Assistant Director, Division of Market Regulation ("Division"), Commission, dated February 13, 2004 ("Amendment No. 2"). Amendment No. 2 replaced the originally filed proposal, as superceded by Amendment No. 1, in its entirety.

Chicago Stock Exchange Rules

Article XXX

Specialists

* * * * *

Stop Orders

RULE 22. *A stop order to buy becomes a market order when a transaction in the security occurs on the Exchange or another national securities exchange or association at or above the stop price. A stop order to sell becomes a market order when a transaction in the security occurs on the Exchange or another national securities exchange at or below the stop price.* A specialist must not initiate a transaction for his own account in a stock in which he is registered that would result in putting into effect any stop order he may have on his book. However, a specialist may be party to the election of a stop order only when his bid or offer made with the approval of a Floor Official has the effect of bettering the market and when he guarantees that the stop order will be executed at the same price as the electing sale.

* * * * *

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 CHX included statements concerning the purpose of and basis for the proposed rule change, as amended, and discussed any comments it received regarding the proposal. The text of these statements may be examined at the places specified in Item IV below. The CHX 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

The proposed rule change, as amended, would amend CHX Article XXX, Rule 22, which governs the handling of stop orders. Specifically, the proposed rule change, as amended, would add a general provision defining a stop order, in the context of listed securities, and confirming that a stop order, once "elected" by a price penetration on a national securities exchange or association, would be treated as a market order for purposes of determining the execution price due the order.