

Federal Register.¹¹ The Commission believes that granting accelerated approval of the proposed rule change will preserve the Exchange's existing pilot program for Linkage fees without interruption as the Exchange and the Commission further considers the appropriateness of Linkage fees.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹² that the proposed rule change (SR-BSE-2006-26) is hereby approved on an accelerated basis for a pilot period to expire on July 31, 2007.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

J. Lynn Taylor,

Assistant Secretary.

[FR Doc. E6-12525 Filed 8-2-06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54229; File No. SR-CBOE-2005-90]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of a Proposed Rule Change and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 1, 2, and 3 Thereto To Adopt a Simple Auction Liaison System to Auction Qualifying Marketable Orders for Potential Price Improvement

July 27, 2006.

I. Introduction

On October 26, 2005, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC"), 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 seeking to amend its rules to adopt a Simple Auction Liaison ("SAL") system to auction qualifying inbound orders for potential price improvement.

The proposed rule change was published in the **Federal Register** on

November 29, 2005.³ The Commission received two comment letters on the proposed rule change.⁴ The Exchange responded to the comments, in part, on January 26, 2006.⁵ On March 2, 2006, the Exchange submitted Amendment No. 1 to the proposed rule change ("Amendment No. 1");⁶ on May 25, 2006, the Exchange submitted Amendment No. 2 to the proposed rule change ("Amendment No. 2");⁷ and on May 31, 2006, the Exchange submitted Amendment No. 3 to the proposed rule change ("Amendment No. 3").⁸ This order approves the proposed rule change; issues notice of, and solicits comments on, Amendments No. 1, 2, and 3; and approves the amendments on an accelerated basis.

II. Description of the Proposed Rule Change

The Exchange proposes to amend its rules to implement SAL, a penny auction system for price improvement over the NBBO for eligible inbound orders, and to clarify the Exchange's policy of automatically executing

eligible orders in a crossed market when the Exchange is at the NBBO.

SAL would automatically initiate an auction process for any order that is eligible for automatic execution by the Hybrid System ("Agency Order"), unless the Exchange's disseminated quotation on the opposite side of the market from the Agency Order does not contain sufficient quotation size from CBOE Market-Makers to satisfy the entire Agency Order. SAL would stop the Agency Order at the NBBO against the market maker quotations displayed at the NBBO and would not allow such quotations to be cancelled or to move to an inferior price or size throughout the duration of the auction. The Agency Order would not be stopped against customer orders that are displayed at the NBBO because the Exchange does not have the ability to prevent a customer order from being cancelled or changed to an inferior price or size.

The auction would last for a period of time to be determined by the Exchange, but would not exceed two seconds. Auction responses would be permitted to be submitted by market makers with an appointment in the relevant option class and by CBOE Members acting as agent for orders resting at the top of the Exchange's book opposite the Agency Order. With respect to responses, the following would apply: (i) Responses would not be visible to other auction participants and would not be disseminated to the Options Price Reporting Authority ("OPRA"); (ii) responses would be submitted in one-cent increments (and not less than one-cent increments); (iii) multiple responses would be allowed; (iv) responses would be permitted to be cancelled prior to the conclusion of the auction; and (v) responses would not be permitted to cross the Exchange's disseminated quotation on the opposite side of the market.

At the conclusion of the auction period, the Agency Order would be executed at the best auction response prices and could be executed at multiple prices, if necessary. The Agency Order would be allocated in two rounds at each price point. Participation in the first round (the "First Allocation Round") would be limited to those parties that constituted the Exchange's NBBO quote (on the side of the market opposite the Agency Order) at the time the SAL auction commenced ("Original Quoters"). During the First Allocation Round: (i) The Agency Order would be allocated pursuant to the matching algorithm in effect for the class under CBOE Rules 6.45A or 6.45B, as appropriate; (ii) an Original Quoter would be permitted to participate in a

³ See Securities Exchange Act Release No. 52823 (November 22, 2005), 70 FR 71565 (November 29, 2005).

⁴ See letters to Jonathan G. Katz, Secretary, Commission, from Matthew B. Hinerfield, Managing Director and Deputy General Counsel, Citadel Investment Group, L.L.C. ("Citadel"), dated December 19, 2005 ("Citadel Letter") and Will Easley, Senior Managing Director, Boston Options Exchange Group LLC, dated December 22, 2005 ("BOX Letter").

⁵ See letter to Nancy Morris, Secretary, Commission, from Angelo Evangelou, Assistant General Counsel, Legal Division, Exchange, dated January 26, 2006 ("Response Letter").

⁶ In Amendment No. 1, the Exchange further responds to comments, clarifies the way the proposed rule would work in practice, and proposes to revise the rule text. The proposed revisions submitted in Amendment No. 1 include a provision stating that SAL would not allow market maker quotes comprising the National Best Bid or Offer ("NBBO") to be cancelled during an auction, provisions describing how orders would be executed in the event a SAL auction terminates early because of a quote lock or a response that matches the Exchange's disseminated quote on the opposite side of the market from the response, and several other minor clarifications of the proposed rule text.

⁷ In Amendment No. 2, the Exchange proposes amendments to the rule text to clarify that the Exchange will submit eligible orders for SAL auctioning and automatically execute eligible orders even if the Exchange's disseminated market is crossed by, or crosses, the disseminated market of another options exchange, provided that the Exchange is at the NBBO for the relevant side of the market.

⁸ In Amendment No. 3, the Exchange proposes an amendment to the text of its order protection rule to add an exception to trade-through liability in the case of a trade-through that results from an automatic execution when the Exchange's disseminated market is the NBBO and is crossed by, or crosses, the disseminated market of another options exchange. See *infra* Part II for a complete discussion of the proposed rule change, as amended.

¹¹ BSE requested that the Commission find good cause, pursuant to Section 19(b)(2) of the Act, for approving the proposed rule change prior to the thirtieth day after publication of notice thereof in the **Federal Register**. Telephone conversation between Bill Meehan, General Counsel, BSE, and Ronesha A. Butler, Special Counsel, Division of Market Regulation, Commission on July 24, 2006.

¹² *Id.*

¹³ 17 CFR 200.30-3(a)(12).

¹⁴ 15 U.S.C. 78s(b)(1).

¹⁵ 17 CFR 240.19b-4.

First Allocation Round at each allocation price only up to its size at the NBBO at the time the auction commenced; and (iii) if the applicable matching algorithm includes a participation entitlement, then market makers that would have qualified for a participation entitlement at the NBBO price would receive a participation entitlement in a First Allocation Round if they match the execution price for that round.

If an Agency Order were not fully executed during the First Allocation Round, then a second round ("Second Allocation Round") would occur at the same price point. During the Second Allocation Round, there is no participation right, and all responses received during the auction at the execution price of the immediately preceding First Allocation Round that were not eligible for that preceding round would participate in accordance with the matching algorithm in effect for the class. If the Agency Order were not fully allocated in the Second Allocation Round, then allocation of the Agency Order would proceed at the next best response price. To the extent that any portion of an Agency Order is executed at the NBBO price that was disseminated at the time the auction commenced, such execution will be effected against the participants at that NBBO price that were quoting at the time the auction commenced, using the matching algorithm in effect for the class, without regard as to whether any of those participants submitted responses in the auction.

The auction would conclude early under certain circumstances:

- First, if the Hybrid System receives an unrelated non-marketable limit order on the opposite side of the market from the Agency Order that improves any auction responses, the auction would conclude and the unrelated order would trade with the Agency Order (after any responses that were priced better than the unrelated order have traded) to the fullest extent possible at the midpoint of the best remaining auction response and the unrelated order's limit price (rounded towards the unrelated order's limit price when necessary).

- Second, if the Hybrid System receives an unrelated market or marketable limit order on the opposite side of the market from the Agency Order, the auction would conclude and the unrelated order would trade with the Agency Order to the fullest extent possible at the midpoint of the best auction response and the NBBO on the opposite side of the market from the auction responses (rounded towards the disseminated quote when necessary).

- Third, if the Hybrid System receives an unrelated order on the same side of the market as the Agency Order that is marketable against the NBBO, then the auction would conclude and the Agency Order would trade against the best auction responses.

- Fourth, any time there is a quote lock on the Exchange pursuant to CBOE Rule 6.45A(d) or CBOE Rule 6.45B(d), the auction would conclude. If the quote lock occurs at a price favorable to the Agency Order, then the Agency Order would trade against the quote lock interest to the fullest extent possible. If the quote lock is at a price that is inferior to the auction responses, then the Agency Order would trade against the best auction responses.⁹

- Fifth, any time a response matches the Exchange's disseminated quote on the opposite side of the market from the response, the auction would conclude. In this situation, if the disseminated quote on the opposite side of the market from the response does not contain a customer order, then the response would trade against the Agency Order. If it does contain a customer order, then, if there is sufficient size in the response to execute both orders, both orders would execute at that price. If not, then the Agency Order would execute against the response at one cent worse than the response price and any balance would trade against the customer order in the book at such order's limit price.¹⁰

The Exchange also proposes to adopt provisions providing that a pattern or practice of submitting unrelated orders that cause an auction to conclude early and disseminating information regarding auctioned orders to third parties would be deemed conduct inconsistent with just and equitable principles of trade and a violation of CBOE Rule 4.1 and other Exchange Rules.

Finally, the Exchange proposes to adopt provisions that clarify that the Exchange's Hybrid System will automatically execute eligible orders while the Exchange's disseminated market is crossed with the disseminated market of another exchange, provided that the Exchange is the NBBO for the relevant side of the market at the time the eligible order is received.¹¹ This situation might arise either with an automatic execution on Hybrid in connection with a SAL auction or with an automatic execution on Hybrid that is not eligible for SAL. A related proposed amendment to the Exchange's order protection rule adds an exception

to trade-through liability in cases where the trade-through was the result of an automatic execution when the Exchange's disseminated market is the NBBO and is crossed with the disseminated market of another exchange.¹²

The text of the changes proposed in Amendments No. 1, 2, and 3 is available on CBOE's Web site (<http://www.cboe.org/legal>), at CBOE's office of the Secretary, and at the Commission's Public Reference Room.

III. Discussion and Commission Findings

After careful review of the amended proposal and consideration of the comment letters and the Response Letter, 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.¹³ In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,¹⁴ which requires, among other things, that the rules of an exchange be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, 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. Section 6(b)(5) of the Act¹⁵ also requires that the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

A. SAL Auctions

The Commission believes that approving the Exchange's proposal to establish SAL auctions should confer benefits to the public by providing the Exchange's customers with the opportunity for price improvement over the NBBO for qualifying orders, which would result in better executions for investors. The Commission also believes that access to the SAL auction for those eligible market participants who wish to compete for an Agency Order should be sufficient to provide opportunities for

¹² See Amendment No. 3, *supra* note 8.

¹³ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. See 15 U.S.C. 78c(f).

¹⁴ 15 U.S.C. 78f(b)(5).

¹⁵ *Id.*

⁹ See Amendment No. 1, *supra* note 6.

¹⁰ See *id.*

¹¹ See Amendment No. 2, *supra* note 7.

meaningful, competitive auctions, consistent with Section 3(f) of the Act.¹⁶ The Commission therefore finds, for the reasons discussed below, that the Exchange's proposal is consistent with the Act.

1. Transparency of the Auction

In its comment letter, Citadel argues that SAL would hinder price discovery because auction responses would not be disseminated to OPRA, and the true price and size of executions on CBOE would not be known to other market participants.¹⁷ In its Response Letter, CBOE states that the SAL auction is invisible to OPRA because OPRA does not accept penny quoting at this time, and the Exchange cannot disseminate quotations outside of OPRA that are superior to quotations provided to OPRA.¹⁸ In addition, CBOE states that responses to the SAL auction are blind in order to enhance price discovery. CBOE believes a blind auction will maximize the winning responses, providing greater price improvement for the Agency Order.¹⁹

The Commission notes that non-electronic auction responses in traditional open outcry floor auctions are not disseminated to OPRA by any market. The Commission has found these auctions consistent with the Act, notwithstanding that responses in open outcry are not disseminated to OPRA.²⁰ The Commission believes that the SAL auction is analogous to the open outcry auctions currently conducted on floor-based exchanges, where auction prices are not widely disseminated and are available only for the order that initiated the auction and other orders in the crowd at that particular time. Accordingly, the Commission finds the SAL auction to be consistent with the Act.

2. Eligibility of Orders for the Auction

BOX and Citadel both argue that the Exchange would be granted too much discretion under the proposal.²¹ Citadel argues that SAL would permit discrimination because the Exchange could determine which categories of orders may be entered into the auction for potential price improvement. Specifically, CBOE's Floor Procedure Committee could choose not to permit the orders of certain types of market participants—i.e., public customer

orders, non-market maker broker-dealer orders, and market maker broker-dealer orders—from being eligible for a SAL auction.²²

In response, CBOE states that the options markets have a long history of providing enhanced executions to some categories of orders over others (e.g., public customer orders over broker-dealer orders and market maker orders), and that SAL simply provides this same flexibility to the Exchange.²³ The Commission agrees that the options markets have, in certain circumstances, treated different categories of orders disparately, restricting, for example, the types of orders that may be executed via their automated facilities.²⁴ The proposed rule change would, similarly, permit the Exchange's Floor Procedure Committee to determine the types of market participants that would be eligible to have their orders auctioned for price improvement. The proposal would not, however, permit the Committee to discriminate among individual market participants of the same type (e.g., permit certain public customer orders but not others to be eligible for the SAL auction). In addition, the proposal would not permit the Committee to limit those who may enter auction responses; auction responses may be submitted by market makers with an appointment in the relevant option class and members acting as agent for orders resting at the top of the Exchange's book.

The Act does not prohibit exchange rules from discriminating; it requires only that the rules of an exchange not be designed to unfairly discriminate.²⁵ Therefore, the Commission finds that providing an Exchange committee with the discretion to determine the types of market participants provided the opportunity to have their orders automatically executed at a better price than the NBBO does not unfairly discriminate among market participants, and is consistent with the Act.

BOX commented that the SAL proposal fails to designate the orders that would be eligible to participate in

the auction or to describe how CBOE plans to communicate the eligibility criteria to the public.²⁶ In Amendment No. 1, CBOE clarifies that, prior to deploying SAL, it would announce via a regulatory circular all applicable parameters relating to order eligibility and auction duration.²⁷

The Commission believes that CBOE's announcement via regulatory circular of all applicable parameters relating to the conduct of auctions prior to deploying SAL should provide sufficient notice. Furthermore, the Commission has approved other rules that grant an exchange limited flexibility in determining the details of its market structure.²⁸ In this case, too, the Commission believes that granting the Exchange a limited degree of flexibility in the application of its rules is consistent with the Act.

3. Incentives for Aggressive Quoting

Citadel expressed its belief that SAL would discourage aggressive quoting and would raise baseline prices over time.²⁹ According to Citadel, market participants quoting at the NBBO would reserve the best prices not for display to the general market but for use in the SAL auction, and the NBBO would be set artificially wide of the "true" prices at which market makers are willing to trade.³⁰

In response, CBOE notes that SAL would encourage aggressive quoting at the NBBO by market makers because market makers at the NBBO would have allocation priority in the SAL auction.³¹ The First Allocation Round is open only to market makers and customers whose quotes or orders represented the Exchange's NBBO at the time the auction commenced.³² Consequently, it would be advantageous for market makers who plan to participate in SAL auctions to quote aggressively to be at the Exchange's NBBO and thus be eligible for participation in the First Allocation Round. CBOE notes that participation in the First Allocation Round is not a "participation right" or "market maker preference." Rather, CBOE believes, it is an incentive for participants to aggressively quote at the

¹⁶ 15 U.S.C. 78c(f).

¹⁷ See Citadel Letter, *supra* note 4, at 2.

¹⁸ See Response Letter, *supra* note 5, at 2.

¹⁹ See *id.*

²⁰ See CBOE Rule 6.74A(b)(1)(F); BOX Rules, Chapter V, Sec. 18(j); and ISE Rule 723(c).

²¹ See BOX Letter, *supra* note 4, at 2, and Citadel Letter, *supra* note 4, at 2.

²² See Citadel Letter, *supra* note 4, at 2.

²³ See Response Letter, *supra* note 5, at 2.

²⁴ See, e.g., American Stock Exchange LLC ("Amex") Rule 933(a) (stating only non broker-dealer customer orders shall be eligible for execution on Amex's Automatic Execution System, but that the Amex Floor Committee may allow broker-dealer orders on a case-by-case basis); and Philadelphia Stock Exchange ("Phlx") Rule 1080(b) and (c) (naming the types of orders eligible for entry into AUTOM and for automatic executions via AUTO-X; Phlx's Options Committee "may determine to accept additional types of orders as well as to discontinue accepting certain types of orders").

²⁵ 15 U.S.C. 78f(b)(5).

²⁶ See BOX Letter, *supra* note 4, at 2.

²⁷ See Amendment No. 1, *supra* note 6.

²⁸ See, e.g., CBOE Rules 6.45A and 6.45B (regarding allocation priority; exchange committee granted the flexibility to determine what rules of priority to apply for each class) and AMEX Rule 933 (Automatic Execution of Options Orders; exchange committee granted the flexibility to determine, on an issue-by-issue basis, what order types are eligible for Auto-Ex).

²⁹ See Citadel Letter, *supra* note 4, at 3.

³⁰ See *id.*

³¹ See Amendment No. 1, *supra* note 6.

³² See proposed CBOE Rule 6.13A(c)(i).

NBBO throughout the trading day, since those Original Quoters will have priority at each price point over participants who are not Original Quoters.³³ The Commission similarly believes that the proposed allocation algorithm should not discourage market makers from quoting aggressively on the Exchange and is consistent with the Act.

4. Compliance with the Quote Rule

Citadel raises a concern that SAL would increase risk and decrease aggressive quoting by freezing market maker NBBO quotes for the duration of the auction.³⁴ CBOE responds by noting that the stop feature is necessary to ensure market makers' compliance with firm quote obligations.³⁵ The Commission believes that the proposal to stop market maker NBBO quotes for the duration of the auction is designed to ensure compliance with Rule 602 under the Act,³⁶ known as the Commission's Quote Rule, and is consistent with the Act.

5. Opportunity for Market Manipulation

BOX comments that the proposed rule as originally filed was unclear, ambiguous, and provided excessive opportunities for price and market manipulation by market participants.³⁷ CBOE notes that manipulation causing early termination is possible with any auction, and points out that the proposed SAL rule prohibits such conduct.³⁸ The Commission believes that the proposed rule, as amended, provides sufficient clarity and guidelines. In addition, the Commission expects the Exchange to surveil and discipline its members for improper conduct, which would constitute a violation of Exchange rules,³⁹ as well as the Act and the rules thereunder.⁴⁰

6. Locked Markets

Finally, BOX questions both the rationale for terminating SAL early when an auction response locks CBOE's quote on the opposite side of the market and why the order that creates the quote lock would not be treated as an unrelated order and permitted to interact with the SAL auction.⁴¹ In Amendment No. 1, CBOE clarified that

if a quote lock on the Exchange terminates a SAL auction early at a price that is favorable to the auctioned order, then the auctioned order would trade at that price to the fullest extent possible.⁴² If the quote lock occurs at a price that is inferior to the auction responses, then the Agency Order would trade against the best auction responses.⁴³

B. Automatic Executions During Crossed Markets

In today's increasingly electronic marketplace, crossed markets reflect the number and speed of electronic quotations and the number of market makers submitting such quotations. The Commission believes that permitting automatic executions during crossed markets when the Exchange is at the NBBO for the relevant side of the market, as proposed by the Exchange, will allow investors' orders to be handled more promptly and expedite the resolution of locked markets.

The Commission notes, however, that in the event the Exchange automatically executes orders when its disseminated market is crossed by, or crosses, the disseminated market of another options exchange, the Exchange would be permitting trade-throughs⁴⁴ in contravention of Section 8(c) of the Plan for the Purpose of Creating and Operating in Intermarket Options Linkage ("Linkage Plan") and CBOE Rule 6.83.⁴⁵ The Commission believes that it is appropriate and in the public interest for the Exchange to except members from trade-through liability in the event that the trade-through occurred as a result of an automatic execution when the Exchange's disseminated market is the NBBO and crossed by, or crosses, the disseminated market of another options exchange. The Commission believes that, in this limited circumstance, the benefit of providing an automatic execution of orders in a crossed market will outweigh the harm of the resultant trade-through. Therefore, concurrent with this order, the Commission is granting CBOE an exemption from the requirement under Exchange Act Rule 608(c) of the Linkage Plan, which provides that, "absent reasonable justification and during normal market

conditions, members in [Participants'] markets should not effect trade-throughs," and from Section 4(b) of the Linkage Plan, which requires the Exchange to enforce compliance by its members with Section 8(c) of the Linkage Plan.⁴⁶

IV. Solicitation of Comments Concerning Amendments No. 1, 2, and 3

Interested persons are invited to submit written data, views and arguments concerning Amendments No. 1, 2, and 3, including whether the amendments are 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. Please include File Number SR-CBOE-2005-90 on the subject line.

Paper Comments

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE., Washington, DC 20549-1090.

All submissions should refer to File Number SR-CBOE-2005-90. 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 Exchange. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You

³³ See Amendment No. 1, *supra* note 6.

³⁴ See Citadel Letter, *supra* note 4, at 2-3.

³⁵ See Response Letter, *supra* note 5, at 2.

³⁶ 17 CFR 242.602.

³⁷ See BOX Letter, *supra* note 4, *passim*.

³⁸ See Response Letter, *supra* note 5, at 3.

³⁹ See proposed CBOE Rule 6.13A, Interpretation & Policy .01, and CBOE Rule 4.1.

⁴⁰ See, e.g., Section 10(b) of the Act, 15 U.S.C. 78j(b), and Rules 10b-3 and 10b-5 thereunder, 17 CFR 240.10b-3 and -5.

⁴¹ See BOX Letter, *supra* note 4, at 8.

⁴² See Amendment No. 1, *supra* note 6.

⁴³ See *id.*

⁴⁴ A "Trade-Through" is defined in Section 2(29) of the Linkage Plan as "a transaction in an options series at a price that is inferior to the NBBO."

⁴⁵ The Linkage Plan is a national market system plan approved by the Commission pursuant to Section 11A of the Exchange Act, 15 U.S.C. 78k-1, and Exchange Act Rule 608. See Securities Exchange Act Release No. 43086 (July 28, 2000), 65 FR 48023 (August 4, 2000).

⁴⁶ See letter from Robert L.D. Colby, Acting Director, Division of Market Regulation, Commission, to William J. Brodsky, Chairman and CEO, CBOE, dated June 27, 2006.

should submit only information that you wish to make available publicly. All submissions should refer to File Number SR-CBOE-2005-90 and should be submitted on or before August 24, 2006.

V. Accelerated Approval of Amendments No. 1, 2, and 3

The Commission finds good cause to approve Amendments No. 1, 2, and 3 to the proposed rule change prior to the thirtieth day after the amendments are published for comment in the **Federal Register** pursuant to Section 19(b)(2) of the Act.⁴⁷ As discussed in detail above, in Amendment No. 1, CBOE proposed revisions to the proposed rule change to address some of the concerns raised by Citadel and BOX. In addition, CBOE proposed in Amendment No. 1 to clarify, among other things, how CBOE would notify its members with respect to order eligibility for SAL, when SAL would not be automatically initiated, and how orders would be handled upon early termination of SAL due to a quote lock or a response matching the Exchange's disseminated quote on the opposite side of the market. In Amendment No. 2, the Exchange proposed amendments to clarify that the Exchange will submit eligible orders for SAL auctioning and automatically execute eligible orders even if disseminated market in the subject option class is crossed, provided that the Exchange is at the NBBO for the relevant side of the market. In Amendment No. 3, the Exchange proposed to except members from trade-through liability in the case of a trade-through that results from an automatic execution when the Exchange's disseminated market is the NBBO and is crossed by, or crosses, the disseminated market of another options exchange.

The Commission believes that the proposed changes in Amendment No. 1 are necessary for understanding the operation of SAL, are responsive to issues raised in the comment letters, and raise no new issues of regulatory concern. In addition, the proposed changes in Amendments No. 2 and 3 are necessary to the operation of SAL and are similar to rule changes previously approved by the Commission for the Philadelphia Stock Exchange.⁴⁸ Accordingly, pursuant to Section 19(b)(2) of the Act,⁴⁹ the Commission finds good cause exists to approve Amendments No. 1, 2, and 3 prior to the

thirtieth day after notice of the amendments in the **Federal Register**.

VI. Conclusion

For the foregoing reasons, 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, and, in particular, with Section 6(b)(5) of the Act.⁵⁰

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,⁵¹ that the proposed rule change (SR-CBOE-2005-90) is approved, and that Amendments No. 1, 2, and 3 thereto are approved on an accelerated basis.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁵²

J. Lynn Taylor

Assistant Secretary.

[FR Doc. E6-12527 Filed 8-2-06; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-54236; File No. SR-CBOE-2006-68]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Its Marketing Fee Program

July 28, 2006.

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 July 18, 2006, 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 Exchange. CBOE has designated this proposal as one establishing or changing a due, fee, or other charge imposed by CBOE under Section 19(b)(3)(A)(ii) of the Act³ and

⁵⁰ 15 U.S.C. 78f(b)(5). In connection with the issuance of this approval order, neither the Commission nor its staff is granting any exemptive or no-action relief from the requirements of Rule 10b-10 under the Act. 17 CFR 240.10b-10. Accordingly, a broker-dealer executing a customer order through the SAL auction or otherwise on the Exchange will need to comply with all applicable requirements of that Rule.

⁵¹ 15 U.S.C. 78s(b)(2).

⁵² 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ 15 U.S.C. 78s(b)(3)(A)(ii).

Rule 19b-4(f)(2) thereunder,⁴ which renders the proposal effective upon filing with the Commission. 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

CBOE proposes to amend its marketing fee program. Below is the text of the proposed rule change. Proposed new language is in *italics*; deleted language is in [brackets].

CHICAGO BOARD OPTIONS EXCHANGE, INC. FEES SCHEDULE [JUNE 30]/JULY 18, 2006

1. No Change.
2. MARKETING FEE (6)(16)—\$.65
- 3.-4. No Change.

FOOTNOTES:

(1)-(5) No Change.

(6) The Marketing Fee will be assessed only on transactions of Market-Makers, RMMs, e-DPMs, DPMs, and LMMs resulting from orders for less than 1,000 contracts (i) from payment accepting firms, or (ii) that have designated a "Preferred Market-Maker" under CBOE Rule 8.13 at the rate of \$.65 per contract on all classes of equity options, options on HOLDERS, options on SPDRs, options on DIA, options on NDX, and options on RUT. The fee will not apply to: Market-Maker-to-Market-Maker transactions including transactions resulting from orders from non-member market-makers; transactions resulting from inbound P/A orders or a transaction resulting from the execution of an order against the DPM's account if an order directly related to that order is represented and executed through the Linkage Plan using the DPM's account; transactions resulting from accommodation liquidations (cabinet trades); and transactions resulting from dividend strategies, merger strategies, and short stock interest strategies as defined in footnote 13 of this Fees Schedule. This fee shall not apply to index options and options on ETFs (other than options on SPDRs, options on DIA, options on NDX, and options on RUT). A Preferred Market-Maker will only be given access to the marketing fee funds generated from a Preferred order if the Preferred Market-Maker has an appointment in the class in which the Preferred order is received and executed.

[DPM/LMM] Rebate/Carryover Process. If less than 80% of the marketing fee funds collected in a given month [are] is paid out by the DPM/

⁴ 17 CFR 240.19b-4(f)(2).

⁴⁷ 15 U.S.C. 78s(b)(2).

⁴⁸ See Securities Exchange Act Release No. 53449 (March 8, 2006), 71 FR 13441 (March 15, 2006) (File No. SR-Phlx-2005-45).

⁴⁹ 15 U.S.C. 78s(b)(2).