SECURITIES AND EXCHANGE COMMISSION
(Release No. 34-54229; File No. SR-CBOE-2005-90)

July 27, 2006

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

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

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

[2]   17 CFR 240.19b-4.

[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").

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

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[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.

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 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

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[9]   See Amendment No. 1, supra note 6.

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

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[10]   See id.

[11]   See Amendment No. 2, supra note 7.

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 Act[15] also requires that the rules the rules of an exchange not be designed to permit unfair discrimination among customers, issuers, brokers, or dealers.

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[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.

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 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

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[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.

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

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[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.

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

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[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.

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

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[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.

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 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.

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

[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.

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

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[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.

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-throughs[44] 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

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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).

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

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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 [__], 2006.

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 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 [insert date 21 days from publication in the

Federal Register].

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

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[47]   15 U.S.C. 78s(b)(2).

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]

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[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).

[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.

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]

Nancy M. Morris
Secretary

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[51]   15 U.S.C. 78s(b)(2).

[52]   17 CFR 200.30-3(a)(12).