

residual radioactivity at the Facility and concluded that the proposed action will not have a significant effect on the quality of the human environment.

#### Environmental Impacts of the Alternatives to the Proposed Action

Due to the largely administrative nature of the proposed action, its environmental impacts are small. Therefore, the only alternative the staff considered is the no-action alternative, under which the staff would leave things as they are by simply denying the amendment request. This no-action alternative is not feasible because it conflicts with 10 CFR 30.36(d), requiring that decommissioning of byproduct material facilities be completed and approved by the NRC after licensed activities cease. The NRC's analysis of the Licensee's final status survey data confirmed that the Facility meets the requirements of 10 CFR 20.1402 for unrestricted release. Additionally, denying the amendment request would result in no change in current environmental impacts. The environmental impacts of the proposed action and the no-action alternative are therefore similar, and the no-action alternative is accordingly not further considered.

#### Conclusion

The NRC staff has concluded that the proposed action is consistent with the NRC's unrestricted release criteria specified in 10 CFR 20.1402. Because the proposed action will not significantly impact the quality of the human environment, the NRC staff concludes that the proposed action is the preferred alternative.

#### Agencies and Persons Consulted

NRC provided a draft of this Environmental Assessment to the State of New Jersey, Department of Environmental Health for review on November 8, 2007. On November 26, 2007, the Department of Environmental Health responded by letter. The State agreed with the conclusions of the EA, and otherwise had no comments.

The NRC staff has determined that the proposed action is of a procedural nature, and will not affect listed species or critical habitat. Therefore, no further consultation is required under Section 7 of the Endangered Species Act. The NRC staff has also determined that the proposed action is not the type of activity that has the potential to cause effects on historic properties. Therefore, no further consultation is required under Section 106 of the National Historic Preservation Act.

#### III. Finding of No Significant Impact

The NRC staff has prepared this EA in support of the proposed action. On the basis of this EA, the NRC finds that there are no significant environmental impacts from the proposed action, and that preparation of an environmental impact statement is not warranted. Accordingly, the NRC has determined that a Finding of No Significant Impact is appropriate.

#### IV. Further Information

Documents related to this action, including the application for license amendment and supporting documentation, are available electronically at the NRC's Electronic Reading Room at <http://www.nrc.gov/reading-rm/adams.html>. From this site, you can access the NRC's Agencywide Document Access and Management System (ADAMS), which provides text and image files of NRC's public documents. The documents related to this action are listed below, along with their ADAMS accession numbers.

1. NUREG-1757, "Consolidated NMSS Decommissioning Guidance;"

2. Title 10 Code of Federal Regulations, Part 20, Subpart E, "Radiological Criteria for License Termination;"

3. Title 10, Code of Federal Regulations, Part 51, "Environmental Protection Regulations for Domestic Licensing and Related Regulatory Functions;"

4. NUREG-1496, "Generic Environmental Impact Statement in Support of Rulemaking on Radiological Criteria for License Termination of NRC-Licensed Nuclear Facilities;" and

5. Merck & Co. Inc. Amendment Request Letter dated August 24, 2007. [ML072550100]

If you do not have access to ADAMS, or if there are problems in accessing the documents located in ADAMS, contact the NRC Public Document Room (PDR) Reference staff at 1-800-397-4209, 301-415-4737, or by e-mail to [pdr@nrc.gov](mailto:pdr@nrc.gov). These documents may also be viewed electronically on the public computers located at the NRC's PDR, O 1 F21, One White Flint North, 11555 Rockville Pike, Rockville, MD 20852. The PDR reproduction contractor will copy documents for a fee.

Dated at 475 Allendale Road, King of Prussia this 11th day of December 2007.

For the Nuclear Regulatory Commission.

**James P. Dwyer,**

*Chief, Commercial and R&D Branch, Division of Nuclear Materials Safety, Region I.*

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#### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-56951; File No. SR-CBOE-2007-74]

#### Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval of Proposed Rule Change, as Modified by Amendment No. 1 Thereto, To Amend CBOE Rule 6.13A To Modify the Simple Auction Liaison Auction Process and Incorporate Specific Provisions for Hybrid 3.0 Classes

December 12, 2007.

#### I. Introduction

On July 2, 2007, the Chicago Board Options Exchange, Incorporated ("CBOE" or "Exchange"), filed with the Securities and Exchange Commission ("Commission") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act")<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> a proposed rule change to amend CBOE Rule 6.13A to modify the Simple Auction Liaison ("SAL") auction process. On October 16, 2007, CBOE filed Amendment No. 1 to the proposed rule change. The proposed rule change, as amended, was published for comment in the **Federal Register** on November 7, 2007.<sup>3</sup> The Commission received no comments on the proposal. This order approves the proposed rule change, as amended.

#### II. Description of the Proposal

CBOE Rule 6.13A governs the operation of the Exchange's SAL system. SAL is a feature on CBOE's Hybrid system that auctions certain marketable orders for price improvement over the National Best Bid and Offer ("NBBO"). The SAL rules provide for an auction, for a period of time not to exceed two seconds as determined by the Exchange on a class-by-class basis, for any qualifying order ("Agency Order") that is eligible for automatic execution by CBOE's Hybrid System.<sup>4</sup> CBOE Rule 6.13A(b) outlines the procedures regarding how a response shall be submitted during the auction and provides that the response may be submitted in one-cent increments. CBOE proposes to modify this rule to allow the auction response in all option classes in which SAL is activated to be submitted in one-cent increments or standard increments, as determined by

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

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

<sup>3</sup> See Securities Exchange Act Release No. 56730 (November 1, 2007), 72 FR 62883 (November 7, 2007) (the "Notice").

<sup>4</sup> See CBOE Rule 6.13(b)(C)(i).

the Exchange.<sup>5</sup> CBOE believes that this modification may encourage market makers and other market participants to quote more aggressively overall.

The Exchange believes that applying SAL to Hybrid 3.0 classes will provide a more automated order handling process in those classes. CBOE proposes to modify the operation of SAL, however, with respect to Hybrid 3.0 classes. The existing SAL rules provide that Agency Orders are to be allocated in two rounds.<sup>6</sup> For Hybrid 3.0 Classes, CBOE proposes to conduct only one round of allocations, because the Designated Primary Market Maker or Lead Market Maker ("DPM" or "LMM") is the only "quoter" on the Hybrid 3.0 Platform.<sup>7</sup> Specifically, the first round allocation specified in Rule 6.13A(c)(i) will not apply; rather, in Hybrid 3.0 Classes, the single allocation round will be conducted pursuant to the criteria in Rule 6.13A(c)(ii) for Hybrid and Hybrid 2.0 classes, with a few differences.

The current SAL rule allocates the Agency Order pursuant to the matching algorithm that is in effect for the class pursuant to Rule 6.45A or Rule 6.45B.<sup>8</sup> CBOE's proposal will allow the matching algorithm as applied to SAL to be different from the matching algorithm that is currently in effect for the Hybrid 3.0 Class. Therefore, for Hybrid 3.0 Classes, the Exchange proposes to allow the appropriate Exchange Procedure Committee to determine, on a class-by-class basis, which electronic matching algorithm will apply to SAL executions. The matching algorithm applied to SAL in Hybrid 3.0 Classes will continue to be pursuant to Rule 6.45B.

The existing SAL rule also provides for a Market-Maker to receive a participation entitlement only if the applicable matching algorithm (from Rule 6.45A or 6.45B) that is in effect for the class includes a participation entitlement.<sup>9</sup> Currently, Hybrid 3.0 does not permit an LMM or DPM to receive a participation entitlement as it pertains to the allocation of incoming electronic orders.<sup>10</sup> Since the LMM or DPM does

not receive a participation entitlement with regard to incoming electronic orders, CBOE proposes to permit the appropriate Exchange Market Performance Committee to establish, on a class-by-class basis, an LMM or DPM participation entitlement applicable only to SAL executions in Hybrid 3.0 Classes. Incorporating SAL on the Hybrid 3.0 Platform will provide Market-Makers with electronic access to the Agency Order since Market-Makers will be able to electronically respond to the Agency Order through SAL. The Exchange stated in its Notice that with Market-Makers having access to electronically respond to the Agency Order, incorporating a LMM/DPM participation entitlement to SAL executions may provide for more aggressive quoting. The participation entitlement, if any, will be in compliance with the provisions of Rule 6.45B(a)(i)(2).

When the SAL system is enabled, the Exchange will conduct a SAL auction in Hybrid 3.0 classes only when the Exchange's quote is represented by the DPM/LMM quote. The Exchange will not conduct a SAL auction when the Exchange's quote is represented by a manual quote.<sup>11</sup> All other aspects of SAL pursuant to CBOE Rule 6.13A will apply to Hybrid 3.0 Classes.

### III. Discussion and Commission Findings

The Commission has carefully reviewed the proposed rule change and finds that it is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange.<sup>12</sup> In particular, the Commission finds that the proposed rule change is consistent with Section 6(b)(5) of the Act,<sup>13</sup> which, among other things, requires that the rules of a national securities exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating transactions in securities, to remove impediments to and perfect the mechanism of a free and open market

and a national market system and, in general, to protect investors and the public interest.

The Commission notes that SAL is a feature which auctions certain orders for price improvement over the NBBO. The Commission believes that it is reasonable and consistent with the Act to allow the Exchange flexibility to determine the minimum trading increment in which responses in the auction—responses to provide price improvement—can be submitted. The Commission notes that orders that participate in a SAL auction will, at a minimum, receive executions at the NBBO.

Applying the SAL functionality to Hybrid 3.0 classes should serve to further automate the order handling process for certain orders in those classes. Automation may increase efficiency in the marketplace, which would be in the interest of the Exchange, its members, and the investing public. Further, the Commission believes the differences in the application of SAL to Hybrid 3.0 classes are reasonable and consistent with the Act, in part because of the differences in the operation of Hybrid 3.0. The Commission notes, however, that the Exchange has the duty to surveil for compliance with its own rules and Rule 602 of Regulation NMS<sup>14</sup> in all instances, including when an order is received when the Exchange's quote is represented by a manual quote.

### IV. Conclusion

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>15</sup> that the proposed rule change (SR-CBOE-2007-74), as modified by Amendment No. 1, be, and hereby is, approved.

For the Commission, by the Division of Trading and Markets, pursuant to delegated authority.<sup>16</sup>

**Florence E. Harmon,**  
Deputy Secretary.

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<sup>5</sup> See proposed changes to CBOE Rule 6.13A(b)(ii).

<sup>6</sup> See CBOE Rule 6.13A(c).

<sup>7</sup> Pursuant to CBOE Rule 1.1(aaa), the Hybrid 3.0 Platform is an electronic trading platform on the Hybrid trading system that allows a single quoter to submit an electronic quote which represents the aggregate Market-Maker quoting interest in a series for the trading crowd.

<sup>8</sup> See CBOE Rule 6.13A(c)(1).

<sup>9</sup> See CBOE Rule 6.13A(c)(3).

<sup>10</sup> In Hybrid 3.0 Classes, pursuant to existing rules, all eligible orders pursuant to Rule 6.13 can receive automatic execution against public customer orders in the electronic book. The remaining balance of the eligible order, if any, may

be represented in the electronic book, provided such order is eligible for book entry pursuant to Rule 7.4; if not book eligible, the remaining balance of the eligible order will route to PAR, BART, or the order entry firm's booth printer. See CBOE Rule 6.13(b)(i)(A)(2). Orders not eligible for automatic execution will route on a class-by-class basis to PAR, BART, or the order entry firm's booth printer. See CBOE Rule 6.13(b)(i)(B).

<sup>11</sup> See proposed CBOE Rule 6.13A.04(iii).

<sup>12</sup> 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).

<sup>13</sup> 15 U.S.C. 78f(b)(5).

<sup>14</sup> 17 CFR 242.602.

<sup>15</sup> 15 U.S.C. 78s(b)(2).

<sup>16</sup> 17 CFR 200.30-3(a)(12).