

Commission's rules to file the material with the Exchange and that retention of such information in the EDGAR system will satisfy the Exchange's record retention requirements under Rule 17a-1 under the Act. 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.<sup>8</sup>

#### 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. 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. 522, will be available for inspection and copying at the Commission's Public Reference Room in Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR-CHX-98-28 and should be submitted by January 28, 1999.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>9</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40838; File No. SR-CBOE-98-40]

### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change and Amendment No. 1 Thereto by Chicago Board Options Exchange, Incorporated, Relating to Mandatory Year 2000 Testing

December 28, 1998.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on September 22, 1998, as amended on December 24, 1998,<sup>3</sup> the Chicago Board Options Exchange, Incorporated ("CBOE" or the "Exchange") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I and II below, which Items have been prepared by the CBOE. The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to approve the proposal and Amendment No. 1 thereto on an accelerated basis.

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

CBOE proposes to adopt new Rule 15.11, *Mandatory Year 2000 Testing*, that would require member firms to participate in computer system testing designed to prepare for the Year 2000 and to file reports with CBOE regarding Year 2000 testing.

The test of the proposed rule change is below. Proposed new language is italicized.

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#### Chapter XV

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#### Records, Reports and Audits

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#### Mandatory Year 2000 Testing

##### Rule 15.11

*[This rule will expire automatically on January 1, 2001.]*

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

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

<sup>3</sup> See Letter from Timothy Thompson, Director-Regulatory Affairs, Legal Department, CBOE, to Michael Walinskas, Deputy Associate Director, Division of Market Regulation, Commission, dated December 22, 1998 ("Amendment No. 1"). The original filing was not noticed in the **Federal Register**.

(a) *Point-to-Point Testing.* Each member that has an electronic interface with the Exchange shall participate in point-to-point testing with the Exchange of its computer systems designed to ascertain Year 2000 compatibility of those computer systems, in a manner and frequency as prescribed by the Exchange. A member that has its electronic interface through a service provider need not participate in point-to-point testing if, by a time designated by the Exchange, (i) the service provider conducts successful tests with the Exchange on behalf of the firms it serves, (ii) the member conducts successful point-to-point testing with the service provider and (iii) the Exchange agrees that further testing is not necessary.

(b) *Industry Wide Testing.* The Exchange may require certain of its members to participate in industry wide testing of computer systems for Year 2000 compatibility. The Exchange may require any member who will participate in industry wide testing to also participate in any tests necessary to ensure preparedness to participate in industry wide testing.

(c) *Reports.* Members participating in point-to-point testing (whether between the firm and the Exchange, between the firm and its service provider, or between the firm's service provider and the Exchange) or industry wide testing shall file reports with the Exchange concerning the required tests in the manner and frequency required by the Exchange. The Exchange may require reports before the testing is begun to ensure that the member or its service provider is prepared to participate in the tests.

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

In its filing with the Commission, CBOE included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item III 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

On January 1, 2000, the internal date in computers throughout the world will

<sup>8</sup> In reviewing this proposal, the Commission has considered its impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>9</sup> 17 CFR 200.30-3(a)(12).

change from "12/31/99" to "01/01/00." Absent the necessary changes to those computers' codes, then those computers could make errors in even the most routine processing, because the computers may read the two digit "00" year code as 1900 instead of as 2000. This "Year 2000" problem could have disastrous consequences for a number of businesses, including the securities industry, if businesses do not make the necessary changes and perform the necessary testing prior to the Year 2000. The constituents of the securities industry will need to coordinate extensive testing to ensure there are no widespread problems.

The CBOE, in cooperation with the SEC and with other self regulatory organizations ("SROs"), has been working to raise awareness of the Year 2000 problem in the industry. The proposed CBOE Rule 15.11(a) would require each CBOE member that has an electronic interface with CBOE to participate in point-to-point testing with the Exchange of computer systems, in a manner and frequency prescribed by the Exchange.<sup>4</sup> Generally, point-to-point testing means testing between two entities. In this case, the requirement refers to testing between the member with the electronic interface and the Exchange.

A member can be exempted from this requirement if the member has its electronic interface through a service provider is, by a time designated by the Exchange, the service provider conducts successful tests with the Exchange on behalf of the firms it serves, if the member conducts successful point-to-point testing with the service provider by a time designated by the Exchange, and if the Exchange agrees that no further testing is necessary.

<sup>4</sup> It should be noted that the Exchange believes that it currently has the authority without the approval of this Rule to require testing and reporting with respect to Year 2000 under its broad authority to enforce the provisions of the Exchange Act and to ensure the safety of its marketplace. More specifically, Rule 4.2 prohibits members from engaging in conduct that violates the Exchange Act; Rule 4.3 permits the Exchange to approve the maintenance of wire connections with other members or with non-members; and Rule 4.10 gives the President or the Chairman of the Exchange the right to impose such conditions and restrictions on a member as either may consider reasonably necessary for the protection of the Exchange and the customers of such member. Because a Year 2000 problem with a member's computers could have such serious impact on the Exchange or the conduct of customer business, the Exchange believes it could rely on these rules to require all the testing and reporting required by proposed Rule 15.11 or to prohibit any wire connections involving computers for non-compliance of the Exchange's requests. The Exchange believes, however, that its membership is better served by having the specifics of its intention with respect to Year 2000 testing and reporting defined in a separate rule.

CBOE understands that other SROs, including NASD Regulation, the New York Stock Exchange, and the American Stock Exchange are also proposing rules to require mandatory Year 2000 testing by their members.

To ensure that the securities industry is adequately prepared to meet the "Year 2000" problem, the Securities Industry Association ("SIA") has undertaken to coordinate industry-wide testing. Participants will include, among others the stock exchanges, Nasdaq, registered clearing corporations, data processors and broker-dealers. The first industry-wide test is scheduled for March 6, 1999. The proposed CBOE Rule 15.11(b) specifically authorizes CBOE to require certain CBOE members to participate in those industry-wide tests.<sup>5</sup>

Proposed CBOE Rule 15.11(c) would also require members participating in point-to-point and/or industry testing to file reports with CBOE concerning the required tests in the manner and frequency required by the Exchange. The Exchange may require reports of its members participating in either the point-to-point testing (whether between the firm and the Exchange, between the firm and its service provider, or between the firm's service provider and the Exchange) or the industry wide testing. Moreover, the Exchange may require reports before the testing is begun to ensure that the member or its service provider is prepared to participate in the tests.

A member that is subject to the rules and fails to participate in the tests or fails to file any required reports, may be subject to disciplinary action pursuant to Chapter XVII of the Exchange's rules.

## (2) Basis

The Exchange believes that, by helping to ensure the participation of Exchange members in important testing to prepare for Year 2000, the proposed rule change is consistent with section 6(b) of the Act<sup>6</sup> in general, and in particular will further the objectives of section 6(b)(5),<sup>7</sup> which requires that the rules of an exchange be designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in

<sup>5</sup> The Exchange will encourage its members to participate in industry wide testing to the extent those firms can be accommodated into the testing schedule. The Exchange also makes clear in the Rule that it may require its members to participate in the industry wide testing. The Exchange would exercise this authority in the event it was deemed important for those members to participate and to the extent those firms chose not to participate voluntarily.

<sup>6</sup> 15 U.S.C. 78f(b).

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

regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, to remove impediments and to perfect the mechanism of a free and open market and a national market system, 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 the purposes of the Act.

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

No written comments were solicited or received with respect to the proposed rule change.

## III. Commission's Findings and Order Granting Accelerated Approval of Proposed Rule Change

After careful consideration, the Commission has concluded, for the reasons set forth below, that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder. Mandating Year 2000 testing and reporting is consistent with section 6(b)(5) of the Act, which, among other aspects, requires that the rules of an exchange promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and remove impediments to and perfect the mechanism of a free and open market and a national market system. The Commission believes that the proposed rule change will facilitate CBOE's and member firms' efforts to ensure the securities markets' continued smooth operation during the period leading up to and beyond January 1, 2000.

The Exchange has requested that the Commission approve the proposed rule change prior to the 30th day after the date of publication of notice of the filing in the **Federal Register** because, in light of the industry wide tests that will soon begin and the tests that the Exchange is conducting, the Exchange wants to ensure that it can promptly deal with any problems that arise. The Commission finds good cause for approving the proposed rule change prior to the 30th day after the date of publication of notice of the filing in the **Federal Register**. It is vital that SROs

such as CBOE have the authority to mandate that their member firms participate in Year 2000 testing and that they report test results (and other Year 2000 information) to the SROs. The proposed rule change will help CBOE participate in coordinating Year 2000 testing, including industry-wide testing, and in remediating any potential Year 2000 problems. This, in turn, will help ensure that the industry-wide tests and CBOE's Year 2000 efforts are successful. The proposed rule change will also help CBOE work with its member firms, the SIA, and other SROs to minimize any possible disruptions the Year 2000 may cause.

#### 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, Washington, DC 20549. 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 Section, 450 Fifth Street, Washington, DC. Copies of such filing will also be available for inspection and copying at the principal office of CBOE. All submissions should refer to File No. SR-CBOE-98-40 and should be submitted by January 28, 1999.

#### V. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act<sup>8</sup> that the proposed rule change (SR-CBOE-98-40) and Amendment No. 1 thereto is thereby approved On an accelerated basis.<sup>9</sup>

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**  
Deputy Secretary.

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### SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40839; File No. SR-CHX-92-32]

#### Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change by the Chicago Stock Exchange, Incorporated Relating to Mandatory Year 2000 Testing

December 28, 1998.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that on December 21, 1998, the Chicago Stock Exchange, Incorporated ("CHX" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I and II below, which Items have been prepared by the Exchange. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons and to approve the proposal on an accelerated basis.

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

The Exchange proposes to add a new rule, Article XI, Rule 11, to require certain CHX members to conduct or participate in computer tests designed to address the Year 2000 problem and to file reports with the CHX.

The text of the proposed rule change is below. Proposed new language is italicized.

\* \* \* \* \*

#### ARTICLE XI

##### Rule 11. Mandatory Year 2000 Testing

[Note: This rule will expire automatically on January 1, 2001]

(a) *Each member and member organization shall conduct or participate in testing of computer systems designed to prepare for Year 2000, in a manner and frequency prescribed by the Exchange, and shall provide to the Exchange reports related to such testing as requested by the Exchange.*

(b) *The Exchange may exempt a member or member organization from*

*this requirement if that member or member organization cannot be accommodated in the schedule by the organization conducting the test or if the member does not employ computers in its business or for other reasons acceptable to the Exchange.*

#### 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 Exchange 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 Exchange 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 CHX is proposing to adopt a rule that would establish the CHX's specific authority to require certain members to participate in Year 2000 tests and to require reporting on the tests.<sup>3</sup> The CHX is proposing that the rule will expire in the year 2001 so that the CHX will have specific authority to mandate testing and reporting, as necessary, to correct problems that are not resolved prior to January 1, 2000, or to correct problems that arise after January 1, 2000.

On January 1, 2000, the internal date in computers should roll-over from "12/31/99" to "01/01/00." At that moment, if corrective measures have not been taken, the program logic in the vast majority of these computer systems will begin to produce erroneous results because the systems will read the date as beginning in the year 1900 rather than 2000. This problem, known as the "Year 2000 Problem," could cause significant disruption in the securities industry. There are several stages involved in correcting the Year 2000 Problem, including: assessing the problem; implementing corrective measures; conducting internal, point-to-point, and integrated or industry-wide testing; and establishing contingency plans.

The testing stage of correcting the Year 2000 Problem will be critical to

<sup>8</sup> 15 U.S.C. 78s(b)(2).

<sup>9</sup> In approving the proposal, the Commission has considered the rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

<sup>10</sup> 17 CFR 200.30-3(a)(12).

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

<sup>2</sup> 17 CFR 240.194b-4.

<sup>3</sup> The proposed rule is not intended to limit the CHX's existing authority by rule, contract, or otherwise, to mandate testing or require reports from members.