

stocks underlying options on the Index.¹⁹

F. Accelerated Approval of Amendment No. 1

The Commission finds good cause to approve Amendment No. 1 to the proposed rule change prior to the thirtieth day after the date of publication of notice of filing thereof in the **Federal Register**. The Commission notes that Amendment No. 1 does not change, but rather clarifies, the proposed rule change, and thus does not raise any new regulatory issues. Specifically, among other things, Amendment No. 1 clarified that the Dow Jones' internal surveillance procedures apply to the Index as well, included the full list of the Index components, amended Rule 24.4.01(e) to include a hedge exemption of 625,000 contracts on the Index, and clarified that the maintenance standard of 80% is by weight. In addition, the Commission notes that no comments were received on the original CBOE proposal, which was subject to the full 21-day notice and comment period. Accordingly, the Commission believes that it is consistent with Sections 6(b)(5) and 19(b)(2) of the Act to approve Amendment No. 1 to the proposal on an accelerated basis.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 1 to the rule proposal. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 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 at 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 submissions should refer to File No. SR-CBOE-98-49 and should be submitted by March 2, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,²⁰ that the proposed rule change (SR-CBOE-98-49), including Amendment No. 1, is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.²¹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-3031 Filed 2-8-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-40982; File No. SR-CSE-99-01]

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

January 26, 1999.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934,¹ and Rule 19b-4 thereunder,² notice is hereby given that on January 26, 1999 the Cincinnati Stock Exchange, Incorporated ("CSE" or "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 CSE. 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 adopt new Rule 4.5, *Mandatory Year 2000 Testing*, that would require member firms to participate in testing of computer systems designed to prepare for Year 2000 and to file reports regarding the testing with the Exchange.

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

* * * * *

CHAPTER IV

Books and Records

Rule 4.5 Mandatory Year 2000 Testing

This rule will expire automatically on January 1, 2001.

(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-on-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.*³

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

In its filing with the Commission, CSE 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 place specified in Item IV below. The CSE has prepared

¹⁹ See e.g., Securities Exchange Act Release No. 30944 (July 21, 1992), 57 FR 33376 (July 28, 1992) (order approving position limits for European-style Standard & Poor's 500 Stock Index options settled based on the opening prices of component securities).

²⁰ 15 U.S.C. 78s(b)(2).

²¹ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ Technical corrections to the rule language were made during a telephone conversation between Robert Ackerman, Vice President Regulatory Services, CSE, and Joshua Kans, Attorney, Division of Market Regulation, Commission, January 26, 1999.

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 change from "12/31/99" to "01/01/00." Absent the necessary changes to the computers' codes, a number of errors could occur in even the most routine processing as 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 not widespread problems.

The CSE, in cooperation with the SEC and other self regulatory organizations ("SROs"), has been working to raise awareness of the Year 2000 problem in the industry. The proposed rule, Rule 4.5, would require CSE members to participate in testing of computer systems and file reports with the Exchange regarding the testing, in a manner and frequency prescribed by the Exchange. Other SROs, including NASD Regulation, the New York Stock Exchange, the Chicago Board Options Exchange and the American Stock Exchange, already have rules to require mandatory Year 2000 testing by their members. The Exchange is proposing that the rule expire automatically on January 1, 2001.

Proposed Rule 4.5(a) requires any firm with an electronic interface with the Exchange to conduct point-to-point testing with the Exchange. Point-to-point testing means testing between two entities, in this case between the member with the electronic interface and the Exchange. The Rule allows for exemptions if certain conditions are met by the member.

Additionally, 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. Testing will include, among others, exchanges, registered clearing corporations, data processors and broker-dealers. The first test is scheduled for March 6, 1999. Proposed

Rule 4.5(b) will require certain CSE members to participate in these tests. Proposed Rule 4.5(c) would also require members to file reports with the CSE concerning the required tests in the manner and frequency required by the Exchange.

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

(2) Basis

By helping to ensure the participation of Exchange members in important industry testing to prepare for Year 2000, the proposed rule change is consistent with Section 6(b) of the Act⁴ in general, and in particular will further the objectives of Section 6(b)(5),⁵ 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 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.

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

The CSE does not believe the proposed rule change will impose any burden on competition that is not necessary or appropriate in furtherance 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 the CSE'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 industry-wide tests will soon begin, and the Exchange wants to ensure that members are able to comply with point-to-point and industry testing schedules and file reports with the Exchange concerning the required tests, and meet the deadline for correcting Year 2000 problems. 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 the CSE 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 the CSE 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 the CSE's Year 2000 efforts are successful. The proposed rule change will also help the CSE 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, D.C. 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

⁴ 15 U.S.C. 78f(b).

⁵ 15 U.S.C. 78f(b)(5).

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, D.C. Copies of such filing will also be available for inspection and copying at the principal office of CSE. All submissions should refer to File No. SR-CSE-99-01 and should be submitted by March 2, 1999.

V. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act⁶ that the proposed rule change (SR-CSE-99-01) is hereby approved on an accelerated basis.⁷

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁸

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 99-3029 Filed 2-8-99; 8:45 am]

BILLING CODE 8010-01-M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-41015; File No. SR-NASD-99-03]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Eliminate the Aggregation Presumption for SOES Orders Entered Within Five Minutes of Each Other

February 3, 1999.

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 January 14, 1999, the National Association of Securities Dealers, Inc. ("NASD" or "Association") through its wholly owned subsidiary the Nasdaq Stock Market, Inc. ("Nasdaq") 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 Nasdaq. Nasdaq has designated this proposal as one constituting a stated policy, practice, or interpretation with respect to the meaning, administration or enforcement of an existing rule to take effect upon filing with the Commission pursuant to

Section 19(b)(3)(A)(i) of the Act,³ and Rule 19b-4(e)(1)⁴ promulgated thereunder, which renders the rule effective upon the Commission's receipt of this filing. 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

The proposed rule change would eliminate the single investment decision aggregation presumption for Small Order Execution System ("SOES") orders entered for accounts under the control of an associated person or public customer within five minutes of each other. This presumption is discussed in NASD Notice To Members ("NTM") 88-61.

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

In its filing with the Commission, Nasdaq 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. Nasdaq 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

Nasdaq is proposing to eliminate the presumption, contained in NASD NTM 88-61, that any two or more orders entered into Nasdaq's SOES system within any five minute period are part of a single investment decision and thus subject to aggregation for purposes of determining if the order as a whole violates the prohibition on the entry or orders in excess of the maximum SOES tier size assigned to a particular security. While eliminating the single investment decision presumption, NTM 88-61's interpretation concerning what constitutes an order from a public customer will remain in effect.

The proposal responds to recent Nasdaq rule changes that now allow market makers to display the actual size of their trading interest rather than a required minimum size. Nasdaq believes that the removal of these artificial mandatory minimum quote

increments, and the resulting increased ability of market makers to manage their exposure to automatic order execution, reduces the concerns about inappropriate splitting of orders too large for SOES into smaller, SOES-eligible amounts that served as the basis for the establishment of the aggregation presumption. Nasdaq notes that the prohibition on splitting up larger orders to obtain SOES access contained in NASD Rule 4730(c)(3) remains in effect and, if violated, may still serve as the basis for disciplinary action by NASD Regulation, Inc.

Based on the above, Nasdaq believes that the proposed rule change is consistent with the provisions of section 15A(b)(6) of the Act⁵ in that the proposal is designed to prevent fraudulent and manipulative acts and practices, promote just and equitable principles of trade, and to facilitate transactions in securities.

(B) Self-Regulatory Organization's Statement on Burden on Competition

Nasdaq does not believe that the proposed rule change will result in 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

Written comments were neither solicited nor received.

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

The foregoing rule change has become immediately effective pursuant to Section 19(b)(3)(A)(i) of the Act,⁶ and Rule 19b-4(e)(1)⁷ thereunder, in that it constitutes a stated policy, practice, or interpretation with respect to the meaning, administration or enforcement of an existing rule. At any time within 60 days of the filing of a rule change pursuant to Section 19(b)(3)(A) of the Act,⁸ the Commission may summarily abrogate the 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.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views, and

⁶ 15 U.S.C. 78s(b)(2).

⁷ In approving the proposal, the Commission has considered the rule's impact on efficiency, competition and capital formation. 15 U.S.C. 78c(f).

⁸ 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)(i).

⁴ 17 CFR 240.19b-4(e)(1).

⁵ 15 U.S.C. 78o-3(b)(6).

⁶ 15 U.S.C. 78s(b)(3)(A)(i).

⁷ 17 CFR 249.19b-4(e)(1).

⁸ 15 U.S.C. 78s(b)(3)(A).