makes certain editorial changes to clarify CBOE Rule 8.60 without affecting its substance.

The Exchange believes the proposed rule change is consistent with and promotes the objectives of Section 6(b)(5) of the Act[5] in that it is designed to enhance the ability of the appropriate Market Performance Committee to regulate standards of member performance on the Exchange, while providing due process standards to members who appear before the appropriate Committee, thereby promoting just and equitable principles of trade and protecting 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.

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

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) as the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(a) by order approve such proposed rule change, or

(b) institute proceedings to determine whether the proposed rule change should be disapproved.

**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. 552, will be available for inspection and copying in the Commission's Public Reference Room. 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–98–46 and should be submitted by December 31, 1998.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[6]

**Margaret H. McFarland,**

*Deputy Secretary.*

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[5] 15 U.S.C. 78f(b)(5).

[6] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–40736; File No. SR–CBOE–98–37]**

## Self-Regulatory Organizations; Chicago Board Options Exchange, Inc.; Order Approving Proposed Rule Change To Allow the Chairman of the Equity Floor Procedure Committee, or the Chairman's Designee, To Increase the Eligible Order Size for Entry into RAES

December 1, 1998.

On August 21, 1998, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') submitted to the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] a proposed rule change to permit the Chairman of the appropriate Floor Procedure Committee (''Committee''), or the Chairman's designee, to exercise the authority of the Committee to increase the size of orders eligible for entry into CBOE's Retail Automatic Execution System (''RAES'') in certain circumstances.[2] The Exchange amended the proposed rule change on October 5, 1998.[3]

The proposed rule change was published for comment in the **Federal Register** on October 30, 1998.[4] The Commission received no comments on the proposal. This order approves the proposal, as amended.

**Description of the Proposal**

The Exchange is proposing to amend Exchange Rule 6.8, by adding Interpretation and Policy .05, to permit the Chairman of the Committee, or the Chairman's designee, to exercise the authority of the Committee to increase the size of orders eligible for entry into RAES when the Chairman or his or her designee believes that the action could alleviate a potential backlog of unexecuted orders where an options class is experiencing a large influx of orders. This decision may not extend for longer than one trading day. If the situation extends into a second day, the Chairman or his or her designee would have to make an independent decision to increase the RAES eligible order size for that subsequent day. The Equity Floor Procedure Committee (''EFPC'') will review any decision to approve an increase for consecutive days. Pursuant to its discretion under Exchange Rule 6.8, the EFPC has established an eligible RAES order size of ten contracts for most equity options traded on the floor.

The EFPC has discovered through experience in overseeing the operation of RAES in equity options, however, that it is often beneficial to temporarily raise the eligible order size to the allowable limit of twenty contracts in situations where a particular class of equity options is experiencing a large influx of orders. By increasing the eligible order size, a large percentage of the order flow can be filled immediately at the Exchange's quotes or at the National Best Bid or Offer (''NBBO'').[5] The Exchange notes that such increase will allow the trading crowd to concentrate on filling the non-RAES eligible orders in a more expeditious manner.

**Discussion**

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange and, in particular, the requirements of Section 6 of the Act[6] and the rules and regulations

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

[2] RAES accepts, through the Exchange's Order Routing System, small public customer market or marketable limit orders for automatic execution. An Exchange marketmaker on RAES is assigned as the contraparty to these trades.

[3] Letter from Timothy H. Thompson, Director, Regulatory Affairs, CBOE, to Sonia Patton, Attorney, Division of Market Regulation, Commission, dated September 15, 1998 (''Amendment No. 1'').

[4] *See* Exchange Act Release No. 40596 (Oct. 23, 1998), 63 FR 58434 (Oct. 30, 1998).

[5] The Commission recently approved a proposed rule change that provides that in classes designated by the EFPC, RAES orders will be executed at the NBBO to the extent the NBBO is no more than one tick better than the CBOE quote. Exchange Act Release No. 40096 (June 16, 1998), 63 FR 34209 (June 23, 1998) (approving SR–CBOE–98–13).

[6] 15 U.S.C. 78f(b).

thereunder.[7] Section 6(b) of the Act states that the rules of an exchange must be designed to facilitate securities transactions and to remove impediments to and perfect the mechanism of a free and open market. The Commission believes that permitting the Exchange to allow the Chairman of the Committee, or the Chairman's designee, to exercise the authority of the Committee to determine the size of orders eligible for entry into RAES will help to expedite the execution of orders for more than 10 contracts, which should free market makers to handle more complex or larger orders that are not RAES eligible. The Commission believes that EFPC review of decisions to increase the size of orders eligible for entry into RAES for consecutive days will help to ensure that the Chairman or his or her designee only uses the discretion in those limited circumstances set forth in the Interpretation.

## Conclusion

*It is therefore ordered,* pursuant to Section 19(b)(2) of the Act,[8] that the proposed rule change (SR–CBOE–98–37) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[9]

**Margaret H. McFarland,**

*Deputy Secretary.*

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[7] In approving this rule change, the Commission has considered the proposal's impact on efficiency, competition, and capital formation, consistent with Section 3 of the Act. 15 U.S.C. 78c(f).

[8] 15 U.S.C. 78s(b)(2).

[9] 17 CFR 200.30–3(a)(12).

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## SECURITIES AND EXCHANGE COMMISSION

**[Release No. 34–40745; File No. SR–NASD–09–75]**

## Self-Regulatory Organizations; Notice of Filing and Order Granting Accelerated Approval to Proposed Rule Change and Amendment No. 1 Thereto by National Association of Securities Dealers, Inc. Requiring Certain NASD Member Firms To Participate in the Integrated, Industry-Wide, Year 2000 Tests

December 3, 1998.

On December 3, 1998, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, NASD Regulation, Inc. (''NASD Regulation''), submitted to the Securities and Exchange Commission (''SEC'' or ''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Exchange Act'')[1] and Rule 19b–4 thereunder,[2] Amendment No. 1 to a proposed rule change described in Items I, II, and III below, which Items have been prepared by NASD Regulation.[3] The Commission is publishing this notice and order to solicit comments on the proposed rule change from interested persons and to grant accelerated approval to the proposal and Amendment No. 1 thereto.

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

NASD Regulation proposes to add a new rule, NASD Rule 3410, to the Conduct Rules of the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), to require certain NASD members to conduct or participate in computer tests designed to address the Year 2000 problem. Below is the text of the proposed rule change. Proposed new language is in italics; proposed deletions are in brackets.

* * * * *

**3400. COMPUTER SYSTEMS**

**3410. Mandatory Year 2000 Testing**

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

*(a) Members of the Association that determine their minimum net capital requirement according to paragraphs (a)(2)(i) and/or (a)(4) of Securities Exchange Act Rule 15c3–1, or are registered with the Securities and Exchange Commission as government securities brokers or dealers under Section 15C of the Securities Exchange Act of 1934 must conduct or participate in such testing of computer systems as the Association may prescribe.*

*(b) Every member required by the Association to conduct or participate in testing of computer systems shall provide to the Association such reports relating to the testing as the Association may prescribe.*

*(c) Every member of the Association that clears securities transactions on behalf of other broker-dealers must take reasonable measures to ensure that each broker-dealer for which it clears securities transactions conducts testing with such member.*

* * * * *

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

[2] 17 CFR 240.19b–4.

[3] The initial filing, which was received on October 5, 1998, was not noticed in the **Federal Register**.

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

In its filing with the Commission, NASD Regulation 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. NASD Regulation 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*

(a) Purpose

The NASD is proposing to adopt a rule that would establish with NASD's specific authority to require certain members to participate in Year 2000 tests and to require reporting on the tests.[4] The NASD is proposing that the rule will expire in the year 2001 so that the NASD 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 collect 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 ensuring that the markets will operate with minimal disruption after January 1, 2000. To facilitate testing on an

[4] The proposed rule is not intended to limit the NASD's existing authority by rule, contract, or otherwise, to mandate testing or require reports from members. For example, the Nasdaq Workstation II® Subscriber Agreement, Section 1 states that Nasdaq agrees to provide services to a subscriber on the terms and conditions set forth in the agreement, which could include testing.