The CBOE proposes to amend CBOE Rule 15.9 to provide that as long as a CBOE member or person associated with a CBOE member is subject to the CBOE's jurisdiction, the CBOE member or person associated with a CBOE member is obligated to furnish testimony, documentary evidence or other information to the full extent provided in CBOE Rule 17.2(b), 'Conduct of Investigation,' whether or not the Exchange has initiated the investigation, if the information is requested by the Exchange in connection with any inquiry resulting from an agreement entered into by the Exchange with a domestic or foreign self-regulatory organization or regulator pursuant to CBOE Rule 15.9. A CBOE member or person associated with a CBOE member from whom such information is requested possesses the same procedural protections which would apply to a request made pursuant to an investigation initiated by the

According to the Exchange, the amendments to CBOE Rule 15.9 are designed to clarify the CBOE's existing rules, which do not clearly delineate the obligation of CBOE members or persons associated with CBOE members to furnish information when the provision of information is required in connection with regulatory agreements where the CBOE has not itself initiated an investigation.

In addition, the CBOE proposes to amend CBOE Rule 17.2 to state clearly that each CBOE member and person associated with a CBOE member is obligated, upon the Exchange's request, to testify, respond in writing to interrogatories, and furnish documentary materials and other information requested by the Exchange in connection with an investigation initiated pursuant to CBOE Rule 17.2(a), a hearing or appeal conducted pursuant to CBOE Chapter 17 or an inquiry resulting from an agreement entered

procedural protections in responding to the request as the member would have in the case of any other request for information initiated by the CBOE pursuant to CBOE Rule 17.2(b). In addition, the CBOE notes that the proposal authorizes the CBOE to request information and compel testimony from its members or associated persons whenever the CBOE deems such a request to be appropriate and consistent with its agreements to cooperate with other regulatory organizations. The CBOE notes, further, that when the CBOE requests any such information or testimony on behalf of another regulatory body, the CBOE continues to be the requesting regulatory body in relation to the CBOE member and all such requests are subject to the CBOE's rules. See Letter from James R. McDaniel, Schiff Hardin & Waite, to Michael Walinskas, Branch Chief, Options Regulation, Division of Market Regulation, Commission, dated February 15, 1995 ("Amendment No. 1").

The CBOE also proposes to amend CBOE Rule 17.2, Interpretation and Policy .01 to provide that the failure to furnish testimony, documentary evidence, or other information requested by the CBOE in the course of an Exchange inquiry within the time period specified by the Exchange shall be deemed to be a violation of CBOE Rule 17.2.

The Exchange states that the amendments to CBOE Rule 17.2 delineate clearly the obligation of CBOE members and persons associated with CBOE members to furnish information in connection with an investigation initiated by the CBOE itself, including information requested in connection with a hearing or appeal or the Exchange's preparation for a hearing or appeal. The amendments to CBOE Rule 17.2 are designed to set forth the CBOE's longstanding interpretation of existing CBOE rules.

The Commission believes 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(b)(5) 7 in that it is designed to prevent fraudulent and manipulative acts and practices and to protect investors and the public interest. Specifically, the Commission believes that the proposed amendment to CBOE Rule 15.9 will strengthen CBOE Rule 15.9 and enhance the CBOE's disciplinary system by indicating clearly that the Exchange may require CBOE members and persons associated with CBOE members to furnish testimony, documentary evidence or other information pursuant to regulatory agreements entered into pursuant to CBOE Rule 15.9(a). At the same time, the Commission believes that the proposal maintains procedural safeguards for CBOE members by providing that members from whom such information is requested possess the same procedural protections that would apply to a request made pursuant to an investigation initiated by the CBOE.8

By clarifying the obligation of CBOE members to furnish testimony and other information in connection with such investigations, the Commission believes that the proposal will facilitate investigations commenced pursuant to CBOE Rule 15.9, thereby furthering the protection of investors and the public interest by helping to ensure the prompt

investigation of possible trading violations and other regulatory improprieties. In addition, the Commission believes that the proposal will help the Exchange to coordinate with domestic and foreign selfregulatory organizations in implementing a surveillance system appropriate to today's increasingly linked and globalized markets.9 In addition, the Commission believes that the proposed amendments to CBOE Rule 17.2(b) will clarify the obligation of members to appear and testify, respond in writing to interrogatories and furnish information requested by the Exchange in connection with an investigation initiated pursuant to CBOE Rule 17.2(a), a hearing or appeal conducted pursuant to CBOE Chapter 17, or an inquiry resulting from an agreement entered into by the Exchange pursuant to CBOE Rule 15.9. The Commission believes that the amendments to CBOE Rule 17.2(b) and Interpretation and Policy .01 should protect investors and the public interest by facilitating the prompt resolution of disciplinary matters.

Specifically, by clearly stating members' obligation to testify and to provide information requested by the Exchange, and by making noncompliance with such requests a violation of CBOE Rule 17.2, the Commission believes that the proposal will encourage CBOE members to comply fully with CBOE requests for information and will enhance the Exchange's ability to conduct investigations in a timely manner, without burdening the members being investigated. The Commission believes that the CBOE must have the ability to obtain such information so that the Exchange will have access to all relevant facts necessary for the Exchange to act on a fully informed basis when making decisions concerning the disciplining of members.

At the same time, the Commission believes that the proposal is consistent with the CBOE's maintenance of a fair disciplinary process for its members. In this regard, the Commission notes that all existing due process safeguards relating to CBOE disciplinary proceedings remain in place.

The Commission finds good cause for approving 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** because Amendment No. 1 clarifies the proposal and helps to safeguard the procedural

into by the Exchange pursuant to CBOE 15.9.

<sup>715</sup> U.S.C. 78f(b)(5) (1988).

<sup>&</sup>lt;sup>8</sup> See Amendment No. 1, supra note 5.

<sup>&</sup>lt;sup>9</sup> See Securities Exchange Act Release No. 28498 (October 1, 1990), 55 FR 41286 (October 10, 1990) (order approving File No. SR–CBOE–90–23).