equity or debt of a publicly traded company that is either a Sub-Adviser or an entity that controls, is controlled by, or is under common control with a Sub-Adviser.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–1405 Filed 1–17–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Investment Company Act Release No. 24825; 812–12352]

CityFed Financial Corp.; Notice of Application

January 11, 2001.

AGENCY: Securities and Exchange Commission (''SEC'' or ''Commission'').

ACTION: Notice of application for an order under sections 6(c) and 6(e) of the Investment Company Act of 1940 (''Act'') for exemption from all provisions of the Act, except sections 9, 17(a) (modified as discussed in the application), 17(d) (modified as discussed in the application), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act and the rules thereunder.

SUMMARY OF APPLICATION: The requested order would exempt the applicant, CityFed Financial Corp. (''CityFed''), from certain provisions of the Act until the earlier of one year from the date the requested order is issued or such time as CityFed would no longer be required to register as an investment company under the Act. The order would extend an exemption granted until February 9, 2001.[1]

FILING DATES: The application was filed on December 4, 2000 and amended on January 10, 2001.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on February 5, 2001, and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons who wish to be notified of a hearing may request notification by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549–0609. CityFed, 4 Young's Way, P.O. Box 3126, Nantucket, MA 02584.

FOR FURTHER INFORMATION CONTACT: Bruce R. MacNeil, Senior Counsel, at (202) 942–0634, or Mary Kay Frech, Branch Chief, at (202) 942–0564 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch, 450 Fifth Street, NW., Washington, DC 20549–0102 (tel. no. 202–942–8090).

Applicant's Representations

1. CityFed was a savings and loan holding company that conducted its savings and loan operations through its wholly-owned subsidiary, City Federal Savings Bank (''City Federal''). During the five-year period ending December 31, 1988, City Federal was the source of substantially all of CityFed's revenues and income. As a result of substantial losses in its mortgage banking and real estate operations, City Federal was unable to meet its regulatory capital requirements. Accordingly, on December 7, 1989, the Office of Thrift Supervision (''OTS'') placed City Federal into receivership and appointed the Resolution Trust Corporation (''RTC'') as City Federal's receiver. City Federal's deposits and substantially all of its assets and liabilities were acquired by a newly created federal mutual savings bank, City Savings, F.S.B. (''City Savings''). The OTS appointed the RTC as receiver of City Savings.

2. Once City Federal was placed into receivership, CityFed no longer conducted savings and loan operations through any subsidiary. Thus, since December 8, 1989, almost all of CityFed's assets consisted of cash that has been invested in (i) money market instruments with a maturity of one year or less, and (ii) money market mutual funds.

3. On June 2, 1994, the OTS issued a Notice of Charges (''OTS Action'') against CityFed and certain current or former directors and, in some cases, officers of CityFed and City Federal (''Individual Respondents''). The OTS Action sought restitution from and a civil money penalty against both CityFed and the Individual Respondents. Also on June 2, 1994, the OTS issued a Temporary Order to Cease and Desist (''Temporary Order'') against CityFed. The Temporary Order sought to freeze CityFed's assets by placing them in various respects under the controls of the OTS. On October 26, 1994, CityFed and the OTS entered into an escrow agreement with CoreStates Bank, N.A. (now First Union National Bank (''First Union'')) (''Escrow Agreement'') pursuant to which CityFed transferred substantially all of its assets to First Union for deposit into an escrow account. The Escrow Agreement provided CityFed with $15,000 per month for operating expenses and allowed CityFed to sell and purchase securities in the escrow account.

4. On May 19, 2000, CityFed finalized with the OTS and the Federal Deposit Insurance Corporation (''FDIC''), the statutory successor to the RTC, a settlement of the OTS Action (''Settlement''). Pursuant to the Settlement, the OTS dismissed with prejudice the OTS Action and the FDIC gave full and complete releases to CityFed and the Individual Respondents. In turn, CityFed and the Individual Respondents gave full and complete releases to the OTS and the FDIC. The OTS also dissolved the Temporary Order and authorized First Union to release to CityFed all of its assets remaining in the escrow account.

5. On December 7, 1992, the RTC filed suit against CityFed and two former officers of City Federal seeking damages of $12 million for failure to maintain the net worth of City Federal (''First RTC Action''). In light of the filing of the OTS Action on June 2, 1994, the RTC and CityFed agreed to dismiss without prejudice the RTC's claim against CityFed in the First RTC Action. Pursuant to the Settlement, the FDIC released CityFed from all claims in the First RTC Action.

6. The RTC also filed suit against several former directors and officers of City Federal alleging gross negligence and breach of fiduciary duty with respect tot certain loans (''Second RTC Action''). The RTC sought in excess of $200 million in damages. CityFed states that all of the defendants in the Second RTC Action have settled with the RTC or the FDIC. Pursuant to the Settlement, the FDIC assigned any rights it acquired in these settlements to CityFed. Under its bylaws, CityFed may be obligated to indemnify these former officers and directors and pay their legal expenses, including settlement amounts. On the advice of counsel to a special committee of CityFed's board of directors, comprised of directors who have not been named in the First or Second RTC Action, CityFed advanced reasonable

[1] CityFed Financial Corp., Investment Company Act Release Nos. 24252 (Jan. 13, 2000) (notice) and 24283 (Feb. 9, 2000) (order).

defense costs to the former directors and officers named in the Actions. CityFed is unable to determine with any accuracy the extent of its liability with respect to these indemnification claims, although the amount may be material.

7. On August 7, 1995, CityFed, acting in its own right and as shareholder of City Federal, filed a civil action in the United States Court of Federal Claims seeking damages for loss of ''supervisory goodwill'' on its books as a result of various acquisitions by City Federal of troubled depository institutions. Pursuant to the Settlement, CityFed assigned to the FDIC all of CityFed's interest in its supervisory goodwill action, ceased to be a party to the case, and has no right to share in the recovery in that case, should there be one.

8. CityFed is subject to a number of loss contingencies for which it is currently unable to assess reasonably the probability or range of loss. CityFed intends to resolve all claims against it at the minimum cost possible. While CityFed's board of directors has considered from time to time whether to engage in an operating business, CityFed states that it cannot resume an operating business at the present time because the amount required to resolve its currently outstanding claims cannot be reasonably estimated and could exceed CityFed's assets. Following the Settlement, CityFed may undergo reorganization, perhaps involving a bankruptcy proceeding. It is anticipated that CityFed's outstanding claims, including its indemnification claims, will be addressed prior to, or as part of, any reorganization.

9. CityFed states that at present there is no public market for its stock and that it is traded sporadically in the over-the-counter market. Since City Federal's receivership, the operating expenses of CityFed have consisted of the employees' salaries, office expenses, and accounting and legal expenses. CityFed currently has one full-time employee and one office. As of September 30, 2000, CityFed held cash and securities of approximately $6.4 million.

Applicant's Legal Analysis

1. Section 3(a)(1)(A) defines an investment company as any issuer ''is or holds itself out as being engaged primarily * * * in the business of investing, reinvesting or trading in securities.'' Section 3(a)(1)(C) further defines an investment company as an issuer who is engaged in the business of investing in securities that have a value in excess of 40% of the issuer's total assets (excluding government securities and cash).

2. Section 6(c) of the Act provides that the SEC may exempt any person from any provision of the Act ''if and to the extent that such exemption is necessary or appropriate in the public interest.'' Section 6(e) provides that in connection with any SEC order exempting an investment company from any provision of section 7, certain specified provisions of the Act shall be applicable to such company, and to other persons in their transactions and relations with such company, as through such company were registered under the Act, if the SEC deems it necessary or appropriate in the public interest or for the protection of investors.

3. CityFed acknowledges that it may be deemed to fall within one of the Act's definitions of an investment company. Accordingly, CityFed requests an exemption under sections 6(c) and 6(e) from all provisions of the Act, subject to certain exceptions described below. CityFed requests an exemption until the earlier of one year from the date of the requested order or such time as it would no longer be required to register as an investment company under the Act.

4. In determining whether to grant an exemption for a transient investment company, the SEC considers such factors as whether the failure of the company to become primarily engaged in a non-investment business or excepted business or liquidate within one year was due to factors beyond its control; whether the company's officers and employees during that period tried, in good faith, to effect the company's investment of its assets in a non-investment business or excepted business or to cause the liquidation of the company; and whether the company invested in securities solely to preserve the value of its assets. CityFed believes that it meets these criteria.

5. CityFed believes that its failure to become primarily engaged in a non-investment business by February 9, 2001, is due to factors beyond its control. CityFed asserts that the amount required to resolve its currently outstanding claims cannot be reasonably estimated and could exceed its assets. If CityFed is unable to resolve these claims successfully, it states that it may seek protection from the bankruptcy courts or liquidate. CityFed also asserts that it probably will not be in a position to determine what course of action to pursue until most, if not all, of its contingent liabilities are resolved. Additionally, CityFed states that its circumstances are unlikely to change over the requested one-year period in light of the number of claims currently pending against it. Since the filing of its initial application for exemptive relief under sections 6(c) and 6(e) on October 19, 1990, CityFed has invested in money market instruments and money market mutual funds solely to preserve the value of its assets.

6. During the term of the proposed exemption, CityFed states that it will comply with sections 9, 17(a) and (d) (subject to the modifications described in condition 4, below), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act and the rules thereunder.

Applicant's Conditions

CityFed agrees that the requested order will be subject to the following conditions:

1. CityFed will not purchase or otherwise acquire any securities other than short-term U.S. government securities, certificates of deposit, commercial paper rated A–1/P–1, and shares of registered money market funds; except that CityFed may acquire equity securities of an issuer that is not an investment company as defined in section 3(a) of the 1940 Act or is relying on an exclusion from the definition of investment company under section 3(c) of the 1940 Act other than section 3(c)(1) or 3(c)(7), in connection with the acquisition of an operating business as evidenced by a resolution approved by CityFed's board of directors.

2. CityFed will not hold itself out as being engaged in the business of investing, reinvesting, owning, holding, or trading in securities.

3. CityFed's Form 10–KSB, Form 10–QSB and annual reports to shareholders will state that an exemptive order has been granted pursuant to sections 6(c) and 6(e) of the Act and that CityFed and other persons, in their transactions and relations with CityFed, are subject to sections 9, 17(a), 17(d), 17(e), 17(f), 36 through 45, and 47 through 51 of the Act, and the rules thereunder, as if CityFed were a registered investment company, except as permitted by the order requested hereby.

4. Notwithstanding sections 17(a) and 17(d) of the Act, an affiliated person (as defined in section 2(a)(3) of the Act) of CityFed may engage in a transaction that otherwise would be prohibited by these sections with CityFed:

a. If such proposed transaction is first approved by a bankruptcy court on the basis that (i) The terms thereof, including the consideration to be paid or received, are reasonable and fair to CityFed, and (ii) the participation of CityFed in the proposed transaction will not be on a basis less advantageous to CityFed than that of other participants; and

b. In connection with each such transaction, CityFed shall inform the

bankruptcy court of (i) the identity of all of its affiliated persons who are parties to, or have a direct or indirect financial interest in, the transaction; (ii) the nature of the affiliation; and (iii) the financial interests of such persons in the transaction.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 01–1484 Filed 1–17–01; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–43827; File No. SR–CBOE–00–60]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Chicago Board Options Exchange, Inc. To Change Its Membership Application Posting Process and Clarify Its Membership Rules

January 9, 2001.

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 November 22, 2000, the Chicago Board Options Exchange, Inc. (''CBOE'' or ''Exchange'') 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 the Exchange. 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 CBOE proposes to change its membership application posting process and to make some clarifying revisions to its membership rules.

Below is the text of the proposed rule change. Proposed new language is italicized and proposed deletions are in brackets.

Chicago Board Options Exchange, Incorporated—Rules

* * * * *

Chapter III—Membership

* * * * *

Application Procedures and Approval or Disapproval

Rule 3.9.

(a)–(d) Unchanged.

(e) Within a reasonable time following receipt of an application for membership *from an applicant that has not been a member within 6 months prior to the date of receipt of the application by the Membership Department*[, an application to change membership capacity statutes set forth in Rule 3.2(b) or 3.3(b),] or an application to change Clearing Members, the name of the applicant and the application request shall be published in the Exchange Bulletin and posted on the Exchange Bulletin Board. The Membership Committee shall determine for each type of the foregoing applications the required time period that the above information must be posted on the Exchange Bulletin Board, provided that in no event shall any such required posting period be less than 10 days. Notwithstanding the foregoing, the required posting period for a member's application to change Clearing Members shall be waived if the Clearing Member(s) that will no longer be guaranteeing the member's Exchange transactions consent to such waiver in a form and manner prescribed by the Exchange. The Membership Committee may also determine to implement a posting period requirement for other types of applications submitted pursuant to paragraph (a) of this Rule. The Membership Committee may shorten or waive a required posting period for an applicant if the Membership Committee determines that doing so is warranted due to extenuating circumstances.

(f) The Membership Department shall investigate each applicant applying to be a member organization, each associated person required to be approved by the Membership Committee pursuant to Rule 3.6(b), and each applicant applying to be an individual member (with the exception of *any associated person applicant that is a current member*, any [individual] member applicant *that* [who] was *a* [an individual] member within 6 months prior to the date of receipt of that applicant's membership application by the Membership Department, *and any member or associated person applicant that was investigated by the Membership Department within 6 months prior to the date of receipt of that applicant's application by the Membership Department*). The Membership Department may [also] investigate *any applicant that is not required to be investigated pursuant to this paragraph (f) and* any other person or organization that submits an application pursuant to paragraph (a) of this Rule.

(g) Unchanged.

(h) The Membership Committee may approve an application submitted pursuant to paragraph (a) of this Rule only if any applicable posting period requirement pursuant to paragraph (e) of this Rule has been satisfied, any investigation pursuant to paragraph (f) of this Rule has been completed, and any applicable orientation and exam requirements pursuant to paragraph (g) of this Rule have been satisfied.

* * * Interpretations and Policies:

.01–.02 Unchanged.

* * * * *

Purchase of Membership

Rule 3.13.

(a)–(b) Unchanged.

(c) Payment. Not later than the second business day following the acceptance of a bid pursuant to paragraph (a) of this Rule or the matching of a bid and offer pursuant to paragraph (b) of this Rule, the purchaser shall deliver to the Membership Department a certified or cashier's check *in the amount of the purchase price* made payable to the Exchange [covering the purchase price of the membership] *or complete a wire transfer in the amount of the purchase price to an Exchange account designated the Exchange.*

Sale and Transfer of Membership

Rule 3.14.

(a)–(b) Unchanged.

(c) Transfer by Owner. The owner of a transferable membership may transfer the membership without adhering to the provisions contained in Rule 3.13(b) and paragraph (a) of this Rule so long as one of the following qualifying circumstances is applicable to and descriptive of the desired transfer and the transferee is approved to be an owner or lessor:

(i) The owner of a transferable membership (whether or not the membership is registered for a member organization) requests the transfer of the membership to the member's spouse, brother, sister, parent, child, grandparent, or grandchild;

(ii) The owner of a transferable membership requests the transfer of the membership to an organization which has succeeded, through statutory merger, exchange of stock, or acquisition of assets to the business of the transferor;

(iii) The owner of a transferable membership requests the transfer of the

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

[2] 17 CFR 240.19b–4.