principles of trade; (ii) serve to remove impediments to and perfect the mechanism of a free and open market and a national market system; and (iii) help ensure that the Exchange can attract well capitalized firms as specialists which in turn serves to protect investors and the public interest.

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

The CBOE does not believe that the proposed rule change will impose any burden on competition 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. 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 CBOE 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. Comments may be submitted by any of the following methods:

Electronic Comments

- Use the Commission's Internet comment form *(http://www.sec.gov/rules/sro.shtml)*; or
- Send an e-mail to *rule-comments@sec.gov*. Please include File Number SR–CBOE–2004–71 on the subject line.

Paper Comments

- Send paper comments in triplicate to Jonathan G. Katz, Secretary, Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549–0609.

All submissions should refer to File Number SR–CBOE–2004–71. This file number should be included on the subject line if e-mail is used. To help the Commission process and review your comments more efficiently, please use only one method. The Commission will post all comments on the Commission's Internet Web site *(http://www.sec.gov/rules/sro.shtml)*. 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, NW., Washington, DC 20549. Copies of such filing also will be available for inspection and copying at the principal office of the CBOE. All comments received will be posted without change; the Commission does not edit personal identifying information from submissions. You should submit only information that you wish to make publicly available. All submissions should refer to File Number SR–CBOE–2004–71 and should be submitted on or before December 22, 2004.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3406 Filed 11–30–04; 8:45 am]

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[8] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50725; File No. SR–CBOE–2004–25]

Self-Regulatory Organizations; Chicago Board Options Exchange, Incorporated; Order Granting Approval to Proposed Rule Change and Amendment No. 1 Relating to Designated Primary Market-Makers Obligations

November 23, 2004.

On April 23, 2004, the Chicago Board Options Exchange, Incorporated (''CBOE'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend its rules to clarify that CBOE Designated Primary Market Makers (''DPMs'') are required to make competitive markets on the Exchange and to otherwise promote the Exchange in a manner that is likely to enhance the ability of the Exchange to compete successfully for order flow in the classes they trade. On September 30, 2004, the CBOE filed Amendment No. 1 to the proposed rule change.[3]

The proposed rule change, as amended, was published for comment in the **Federal Register** on October 21, 2004.[4] The Commission received no comments on the amended proposal.

The Commission finds that the proposed rule change, as amended, is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange[5] and, in particular, the requirements of Section 6 of the Act[6] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change, as amended, is consistent with Section 6(b)(5) of the Act[7] in that it is designed to promote just and equitable principles of trade, 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.

The Commission notes that the CBOE is amending the language used to describe its DPMs' current obligation under CBOE Rule 8.85(c)(ii) by using specific language that was more recently approved by the Commission to describe a similar obligation applicable to electronic DPMs (''e-DPMs'') under CBOE Rule 8.93(vi). The Commission further notes that proposed rule change, as amended, is simply making a clarifying change and will not in any way change the substance of the DPMs' current obligation. The Commission believes that the proposed rule change, as amended, will conform the language used to describe the same current DPM and e-DPM obligations, and therefore finds the proposal to be consistent with the Act.

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

[2] 17 CFR 240.19b–4.

[3] Amendment No. 1 replaced and superseded the CBOE's original 19b–4 filing in its entirety.

[4] *See* Securities Exchange Act Release No. 50548 (October 15, 2004), 69 FR 61881.

[5] In approving this proposed rule change, as amended, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[6] 15 U.S.C. 78f.

[7] 15 U.S.C. 78f(b)(5).

It is therefore ordered, pursuant to section 19(b)(2) of the Act,[8] that the proposed rule change (File No. SR–CBOE–2004–25), as amended, be, and it hereby is, approved.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. E4–3407 Filed 11–30–04; 8:45 am]

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

[9] 17 CFR 200.30–3(a)(12).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–50714; File No. SR–NASD–2003–101]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Granting Approval to Proposed Rule Change, and Notice of Filing and Order Granting Accelerated Approval to Amendments No. 1 and 2 Thereto Relating to Time Limits for Submission of Claims in Arbitration

November 22, 2004.

I. Introduction

On June 19, 2003, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association''), through its wholly-owned subsidiary, NASD Dispute Resolution, Inc. (''NASD Dispute Resolution''), filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'') [1] and Rule 19b–4 thereunder,[2] a proposed rule change to amend Rule 10304 of the NASD Code of Arbitration Procedure (''Code'') to clarify, among other effects of the rule, that arbitration eligibility determinations are made by arbitrators.

The proposed rule change was published for comment in the **Federal Register** on August 1, 2003.[3] The Commission received eight comment letters on the proposal.[4] On September 23, 2003, NASD filed a response to the comment letters received as of that date and Amendment No. 1 to the proposed rule change.[5] On February 3, 2004, NASD filed Amendment No. 2 to the proposed rule change.[6] This order approves the proposed rule change, and issues notice of and grants accelerated approval to Amendments No. 1 and No. 2.

II. Description of the Proposal

A. Text of the Proposed Rule Change

NASD proposes to amend its rules governing arbitration to clarify and limit the effect of its six-year time limitation for the submission of claims. Below is the text of the proposed rule change. Proposed new language is *italicized* and proposed deletions are in [brackets].

* * * * *

Rule 10304. Time Limitation Upon Submission.

(a) No dispute, claim, or controversy shall be eligible for submission to arbitration under this Code where six (6) years have elapsed from the occurrence or event giving rise to the act of dispute, claim, or controversy. *The panel will resolve any questions regarding the eligibility of a claim under this Rule.*

(b) *Dismissal of a claim under this Rule does not prohibit a party from pursuing the claim in court. By requesting dismissal of a claim under this Rule, the requesting party agrees that if the panel dismisses a claim under the Rule, the party that filed the dismissed claim may withdraw any remaining related claims without prejudice and may pursue all of the claims in court.*

(*c*) This Rule shall not extend applicable statutes of limitations[, nor shall it apply to any case which is directed to arbitration by a court of competent jurisdiction.] *; nor shall the six-year time limit on the submission of claims apply to any claim that is directed to arbitration by a court of competent jurisdiction upon request of a member or associated person.*

* * * * *

B. Description of the Proposed Rule Change

NASD has proposed to amend Rule 10304 of the Code to clarify certain of its effects, particularly in light of the ruling of the United States Supreme Court in *Howsam* vs. *Dean Witter Reynolds, Inc.*[7] In *Howsam*, the Court held that the issue of whether a claim is ineligible for arbitration under Rule 10304 of the Code is presumptively a matter for arbitrators to decide. Rule 10304 of the Code provides that a claim is ineligible for arbitration in the NASD forum if six or more years have elapsed from the occurrence or event giving rise to the claim. Rule 10304 of the Code, however, currently does not state expressly whether the eligibility of a claim is determined by arbitrators or by the courts. In its proposal, NASD explained that under current NASD practice, arbitrators resolve questions concerning whether a particular claim falls with the six-year time limit, but noted that the issue has generated a significant amount of collateral litigation with differing results, leading to uncertainty and confusion among forum users until the Supreme Court's decision in *Howsam*.

NASD therefore has proposed several amendments to Rule 10304 of the Code. First, NASD proposes to amend Rule 10304 of the Code to state explicitly that eligibility determinations are made by the arbitrators. Second, NASD proposes to amend the provision in the current eligibility rule to provide that the rule does not apply to claims ordered to arbitration by a court at a member's or associated person's request. Finally, NASD proposes to amend Rule 10304 of the Code to provide that by requesting dismissal of a claim on eligibility grounds in the NASD forum, the requesting party is agreeing that the party that filed the dismissed claim may withdraw all related claims without prejudice and may pursue all of the claims in court. Moreover, by a companion rule filing being approved today, Rule 10304 of the Code and all other NASD arbitration rules would be incorporated into predispute arbitration agreements governing arbitrations proceedings that take place in NASD forums.[8]

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

[2] 17 CFR 240.19b–4.

[3] *See* Release No. 34–48225 (July 7, 2002), 68 FR 45299 (August 1, 2003).

[4] *See* letters to Jonathan G. Katz, Secretary, Commission, from J. Pat Sadler, President, Public Investors Arbitration Bar Association, dated August 18, 2003 (''PIABA Letter''); Stephen G. Sneeringer, Senior Vice President and Counsel, A.G. Edwards & Sons, Inc., dated August 22, 2003 (''A.G. Edwards Letter''); Gregory M. Scanlon, Vice President & Senior Corporate Counsel, Charles Schwab & Co., Inc., dated August 26, 2003 (''Schwab Letter''); Herbert E. Pounds, Jr., Law Offices of Herbert E. Pounds, Jr., P.C., dated November 1, 2004 (''Pounds Letter''); James D. Keeney, P.A., dated November 8, 2004 (''Second Keeney Letter''); William S. Sheperd, Sheperd Smith & Edwards, L.L.P., dated November 10, 2004 (''Sheperd Letter'') Rosemary J. Shockman, President, Public Investors Arbitration Bar Association, dated November 1, 2004 (''Second PIABA Letter''); and letter from James D. Keeney, P.A., to Mr. Robert Love, Division of Market Regulation (''Division''), Commission, dated July 17, 2003 (''Keeney Letter'').

[5] *See* Letter from Laura Gansler, Counsel, NASD Dispute Resolution, Inc., to Florence Harmon, Senior Special Counsel, Division, Commission, dated September 23, 2003, available at *http://www.nasdadr.com/rule_filings_index03.asp#03–101* (''Amendment No. 1'').

[6] *See* Letter from Laura Gansler, Counsel, NASD Dispute Resolution, Inc., to Catherine McGuire, Chief Counsel, Division, Commission, dated February 3, 2004, available at *http://www.nasdadr.com/rule_filings_index03.asp#03–101* (''Amendment No. 2'').

[7] 537 U.S. 79 (Dec. 10, 2002).

[8] *See* Release No. 34–50713.