

falls within the six year time limit. However, this issue has generated a significant amount of collateral litigation, with a number of courts ruling that, in absence of more specific guidance from NASD, courts should determine the eligibility of a claim under the rule. Collateral litigation over the eligibility rule has been expensive and time-consuming, and has caused uncertainty and confusion among forum users.

In December 2002, the United States Supreme Court ruled in *Howsam v. Dean Witter Reynolds, Inc.*,<sup>3</sup> that the issue of whether a claim is time-barred under Rule 10304 is presumptively a matter for arbitrators to decide. To conform the Code to the Court's ruling, and to provide additional notice and guidance to parties on this issue, NASD proposes to amend Rule 10304 to state explicitly that eligibility determinations are made by the arbitrators.

Rulings that claims are ineligible under Rule 10304 have also generated significant collateral litigation. Some courts, relying on the election of remedies doctrine, have held that claims ineligible in arbitration may not be litigated in court. To make express that, under NASD rules, the ineligibility of a claim under Rule 10304 is not intended to prevent a party from filing the claim in court, NASD proposes to further amend Rule 10304 to make clear that dismissal of a claim on eligibility grounds is without prejudice to the parties' judicial rights and remedies.

In addition, the current eligibility rule provides that the rule does not apply to claims ordered to arbitration by a court. This provision is now inconsistent with the Supreme Court's decision in *Howsam* that eligibility is an issue for the arbitrators, and not the courts, to resolve, as the effect of the provision would be that the eligibility rule could not be applied either by the court or the arbitrators to any claims compelled to arbitration by a court. Therefore, NASD proposes to delete this provision from Rule 10304.

Finally, because this provision was intended to protect parties from having to litigate related claims in two forums at the same time, NASD also proposes to amend Rule 10304 to provide that by requesting dismissal of a claim on eligibility grounds in the NASD forum, the requesting party is agreeing that the claimant may withdraw all related claims without prejudice and may pursue all of the claims in court. This provision will provide significant protection against involuntary bifurcation of claims, but will continue

to allow arbitrators to decide questions of eligibility under the Rule.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(6) of the Act,<sup>4</sup> which requires, among other things, that the Association's rules must be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, and, in general, to protect investors and the public interest. NASD believes that, by clarifying the scope and application of Rule 10304, the proposed rule change will reduce the cost and delay caused by collateral litigation, and streamline the administration of arbitrations in NASD's forum.

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

NASD 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

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:

- By order approve the proposed rule change, or
- 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 20549-0609. 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 will also be available for inspection and copying at the principal office of the NASD.

All submissions should refer to File No. SR-NASD-2003-101 and should be submitted by August 26, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>5</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SMALL BUSINESS ADMINISTRATION

### [Declaration of Disaster #3532]

#### State of Minnesota

Renville County and the contiguous Counties of Brown, Chippewa, Kandiyohi, McLeod, Meeker, Nicollet, Redwood, Sibley, and Yellow Medicine in the State of Minnesota constitute a disaster area due to damages caused by multiple tornadoes in the City of Buffalo Lake that occurred on June 22 through 24, 2003. Applications for loans for physical damage may be filed until the close of business on September 23, 2003, and for economic injury until the close of business on April 26, 2004, at the address listed below or other locally announced locations: U.S. Small Business Administration, Disaster Area 2 Office, One Baltimore Place, Suite 300, Atlanta, GA 30308.

The interest rates are:

	Percent
For Physical Damage:	
Homeowners With Credit Available Elsewhere .....	5.625
Homeowners Without Credit Available Elsewhere .....	2.812
Businesses With Credit Available Elsewhere .....	5.906
Businesses and Non-profit Organizations Without Credit Available Elsewhere .....	2.953
Others (Including Non-profit Organizations) With Credit Available Elsewhere .....	5.500

<sup>3</sup> 537 U.S. 79 (Dec. 10, 2002).

<sup>4</sup> 15 U.S.C. 78o-3(b)(6).

<sup>5</sup> 17 CFR 200.30-3(a)(12).