

proposed rule change as one that: (i) Does not significantly affect the protection of investors or the public interest; (ii) does not impose any significant burden on competition; and (iii) does not become operative for 30 days from the date on which it was filed, or such shorter time as the Commission may designate. Therefore, the foregoing rule change has become effective pursuant to section 19(b)(3)(A) of the Act<sup>7</sup> and Rule 19b-4(f)(6) thereunder.<sup>8</sup> At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate the rule change if it appears to the Commission that the action is necessary or appropriate in the public interest, for the protection of investors, or would otherwise further the purposes of the Act.

Pursuant to Rule 19b-4(f)(6)(iii) under the Act,<sup>9</sup> the proposal does not become operative for 30 days after the date of its filing, or such shorter time as the Commission may designate if consistent with the protection of investors and the public interest. The ISE has requested that the Commission waive the 30-day operative date so that the proposed rule change will become immediately effective upon filing.

The Commission believes that waiving the 30-day operative date is consistent with the protection of investors and the public interest.<sup>10</sup> Accelerating the operative date will allow the ISE to implement immediately listing standards similar to ones already in place at the CBOE, and allow customers greater choices in their order routing decisions.<sup>11</sup> For these reasons, the Commission designates that the proposed rule change as effective and operative immediately.

#### 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 in the Commission's Public Reference Room. Copies of such filing will also be available for inspection and copying at the principal office of the ISE. All submissions should refer to File No. SR-ISE-2003-19 and should be submitted by August 22, 2003.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>12</sup>

**Jill M. Peterson,**

*Assistant Secretary.*

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## SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48225; File No. SR-NASD-2003-101]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Time Limits for Submission of Claims in Arbitration

July 25, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4 thereunder,<sup>2</sup> notice is hereby given that 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") the proposed rule change as described in Items I, II and III below, which Items have been prepared by NASD. 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

NASD is proposing to amend the Rule 10304 of the NASD Code of Arbitration Procedure governing time limits for submission of claims in arbitration. Below is the text of the proposed rule change. Proposed new language is in

*italics*; proposed deletions are in brackets.

\* \* \* \* \*

10000. Code of Arbitration Procedure

\* \* \* \* \*

#### 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 or dispute, claim or controversy. *The panel will resolve any questions regarding the eligibility of a claim under this Rule.* [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.]

(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.*

\* \* \* \* \*

#### 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 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 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

###### 1. Purpose

Rule 10304 of the NASD Code of Arbitration Procedure ("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. The rule does not provide expressly whether the eligibility of a claim is determined by arbitrators or by the courts. Under current NASD practice, arbitrators resolve questions concerning whether a particular claim

<sup>7</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>8</sup> 17 CFR 240.19b-4(f)(6).

<sup>9</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>10</sup> For purposes only of accelerating the operative date of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

<sup>11</sup> See n. 5, *supra*.

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

<sup>1</sup> 15 U.S.C. 78s(b)(1).

<sup>2</sup> 17 CFR 240.19b-4.

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:

- A. By order approve the 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 20549-0609. 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).