Administrative Activities include ongoing personnel, accounting, engineering, legal, financial, and other support activities necessary to manage AGL Resources’ investments in Nonutility Subsidiaries. Development Activities will be limited to due diligence and design review; market studies; preliminary engineering; site inspection; preparation of bid proposals, including, in connection therewith, posting of bid bonds; application for required permits and/or regulatory approvals; acquisition of site options and options on other necessary rights; negotiation and execution of contractual commitments with owners of existing facilities, equipment vendors, construction firms, and other project contractors; negotiation of financing commitments with lenders and other third-party investors; and other preliminary activities that may be required in connection with the purchase, acquisition, financing or construction of facilities, or the acquisition of securities of or interests in new businesses.

Administrative Activities will include ongoing personnel, accounting, engineering, legal, financial, and other support activities necessary to manage AGL Resources’ investments in Nonutility Subsidiaries.

An Intermediate Subsidiary may be organized, among other things, (i) to facilitate the making of bids or proposals to develop or acquire an interest in any EWG, FUCO, Rule 58 Company, ETC or other Nonutility Subsidiary or the award of such a bid proposal, to facilitate closing on the purchase or financing of an acquired company; (iii) at any time subsequent to the consummation of an acquisition of an interest in any such company to, among other things, effect an adjustment in the respective ownership interests in such business held by AGL Resources and non-affiliated investors; (iv) to facilitate the sale of ownership interests in one or more acquired non-utility companies; (v) to comply with applicable laws of foreign jurisdictions limiting or otherwise relating to the ownership of domestic companies by foreign nationals; (vi) as a part of tax planning in order to limit AGL Resources’ exposure to taxes; (vii) to further insulate AGL Resources and the Utility Subsidiaries from operational or other business risks that may be associated with investments in non-utility companies; or (viii) for other business risks that may be applicable laws of foreign jurisdictions.

Utilities Subsidiaries from operational or otherwise reorganize under one or more rules that have an expedited proceeding.

For the Commission, by the Division of Investment Management, pursuant to delegated authority. 
Margaret H. McFarland, Deputy Secretary.

SECURITIES AND EXCHANGE COMMISSION


Self-Regulatory Organizations; Order Approving Proposed Rule Change and Amendment Nos. 1 and 2, and Notice of Filing and Order Granting Accelerated Approval to Amendment No. 3 to the Proposed Rule Change by the National Association of Securities Dealers, Inc. Relating to Uniform Hearing Procedures for and Consolidation of Rules Applicable to Expedited Proceedings


I. Introduction

On July 15, 2003, the National Association of Securities Dealers, Inc. (“NASD”) 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 create a new rule series, the proposed NASD Rule 9550 Series, to consolidate, clarify and streamline those existing procedural rules that have an expedited proceeding.

component. On September 2, 2003, the NASD amended the proposed rule change. On November 18, 2003, the NASD again amended the proposed rule change. The proposed rule change, as amended, was published for comment in the Federal Register on December 16, 2003. The Commission received no comment letters with respect to the proposal.

On February 4, 2004, the NASD amended the proposed rule change. This order approves the proposed rule change, as amended, was published for comment in the Federal Register, the NASD submitted Amendment No. 3 to the proposed rule change, including whether Amendment No. 3 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. Comments should be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR–NASD–2003–110. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. 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 NASD. All submissions should refer to File No. SR–NASD–2003–110 and should be submitted by April 6, 2004.

II. Description of the Proposal and Amendment Nos. 1, 2 and 3 Thereto

The NASD submitted the proposed rule change and Amendment Nos. 1 and 2 thereto to create a new rule series, the proposed Rule 9550 Series, to consolidate, clarify and streamline those existing procedural rules that have an expedited proceeding component. After the proposed rule change, as amended, was published for comment, the NASD submitted Amendment No. 3 to the proposed rule change, in order to address comments from Division staff. Specifically, Amendment No. 3 provides that: (1) Notices will indicate that hearing officers can impose any appropriate sanctions; (2) certain timelines do not provide any substantive rights to parties; (3) if service of a notice is by fax and the NASD knows that the fax number on file with the NASD is incorrect, NASD staff shall serve the notice via overnight or personal delivery; (4) service is complete upon sending the notice by fax, mailing the notice by overnight courier, or delivering it in person, except that, where duplicate service is required, service is complete upon sending the duplicate service; (5) an immediately effective summary suspension or other limitation under the proposed summary proceedings rule will remain in effect unless the respondent shows good cause for a stay; and (6) where two consolidated matters contain different timelines under NASD Rule 9559, the Chief Hearing Officer assigned to the matter has discretion to determine which timeline is appropriate under the facts and circumstances of the case.

III. Solicitation of Comments

Interested persons are invited to submit written data, views, and arguments concerning Amendment No. 3 to the proposed rule change, including whether Amendment No. 3 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. Comments should be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR–NASD–2003–110. This file number should be included on the subject line if email is used. To help the Commission process and review your comments more efficiently, comments should be sent in hard copy or by e-mail but not by both methods. 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 NASD. All submissions should refer to File No. SR–NASD–2003–110 and should be submitted by April 6, 2004.

IV. Discussion and Commission Findings

After careful review, 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 association. In particular, the Commission believes that the proposed rule change is consistent with section 15A(b)(6) of the Act, which requires, among other things, that the NASD’s rules be designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable practices, to prevent the occurrence of unfair methods of competition, and to protect investors and the public interest. Specifically, the Commission believes that the consolidation of rules relating to expedited proceedings should make the expedited proceedings process clearer, and enable market participants to better understand the expedited proceedings process.

The Commission finds good cause for approving Amendment No. 3 to the proposed rule change prior to the thirtieth day after the amendment is published for comment in the Federal Register pursuant to section 19(b)(2) of the Act. In Amendment No. 3, the NASD further clarified the expedited proceeding process by addressing procedural concerns raised by Division staff. Granting accelerated approval will enable the NASD to implement these changes more expeditiously.

V. Conclusion

For the foregoing reasons, the Commission finds that the proposed rule change, as amended, is consistent with the Act and the rules and regulations thereunder applicable to a national securities association, and, in particular, section 15A(b)(6) of the Act.
I. Self-Regulatory Organization’s Statement of the Terms of Substance of the Proposed Rule Change

NASD is proposing to adopt Interpretative Material 3150 ("IM–3150") to establish exemptions from the reporting requirements of NASD Rule 3150. The text of the proposed rule change is below. Proposed new language is in italics; proposed deletions are in brackets.

3150. Reporting Requirements For Clearing Firms

(a) Each member that is a clearing firm or self-clearing firm shall be required to report to [the Association] NASD in such format as [the Association] NASD may require, prescribed data pertaining to the member and any member broker-dealer for which it clears. A clearing firm or self-clearing firm may enter into an agreement with a third party pursuant to which the third party agrees to fulfill the obligations of a clearing firm or self-clearing firm under this Rule. Notwithstanding the existence of such an agreement, each clearing firm or self-clearing firm remains responsible for complying with the requirements of this Rule.

(b) Pursuant to the Rule 9600 Series, [the Association] NASD may in exceptional and unusual circumstances, taking into consideration all relevant factors, exempt a member or class of members, unconditionally or on specified terms, from any or all of the provisions of this Rule that it deems appropriate.

IM–3150. Exemptive Relief

(a) Upon written request for exemptive relief pursuant to the Rule 9600 Series, NASD generally will grant an exemption from the reporting requirements of Rule 3150 to a self-clearing firm that:

(1) derives, on an annualized basis, at least 85 percent of its revenue from transactions in fixed income securities;

(2) conducts an institutional business that settles transactions on an RVP/DVP basis, provided that such exemption from reporting shall apply only with respect to such institutional business unless NASD determines that any other remaining business otherwise qualifies for an exemption under this IM–3150 or is de minimis in nature; or

(3) does not execute transactions for customers or otherwise hold customer accounts or act as an introducing broker with respect to customer accounts (e.g., that engages solely in proprietary trading, or that conducts business only with other broker-dealers or any other non-member counter-parties).

(b) Upon written request for exemptive relief pursuant to the Rule 9600 Series, NASD also generally will grant an exemption to a clearing firm with respect to one or more of the introducing firms for which it clears if the introducing firm meets one of the above-stated grounds for exemptive relief.

(c) Any clearing or self-clearing firm that, due to a change in the facts pertaining to the operation and nature of its business, or the operation and nature of the business of a firm for which it clears, as applicable, no longer qualifies for an exemption previously granted by NASD from the reporting requirements of Rule 3150 must promptly report such change in circumstances to NASD, Department of Member Regulation, and commence compliance with the reporting requirements of Rule 3150.

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

NASD Rule 3150(a) requires each clearing firm (both those that are self-clearing and those that clear for other firms) to report to NASD, on a daily basis, and in a format determined by NASD, prescribed data pertaining to the member and any member broker-dealer for which it clears. This data is reported into NASD’s electronic surveillance system, which identifies member “exceptions” based on historical and current comparisons of member data. The exceptions trigger follow-up reviews and possible member examinations. As provided in NASD Rule 3150(b), NASD may, in exceptional and unusual circumstances, taking into consideration all relevant factors, exempt a member or class of members, unconditionally or on specified terms, from any or all of the provisions of