

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; (ii) after 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 lawful business purposes.

Investments in Intermediate Subsidiaries may take the form of any combination of the following (i) purchases of capital shares, partnership

interests, member interests in limited liability companies, trust certificates or other forms of equity interests; (ii) capital contributions; (iii) open account advances with or without interest; (iv) loans; and (v) guarantees issued, provided or arranged in respect of the securities or other obligations of any Intermediate Subsidiaries. Funds for any direct or indirect investment in any Intermediate Subsidiary will be derived from (i) financings authorized in this proceeding; (ii) any appropriate future debt or equity securities issuance authorization obtained by AGL Resources from the Commission; and (iii) other available cash resources, including proceeds of securities sales by Nonutility Subsidiaries under rule 52. To the extent that AGL Resources provides funds or Guarantees directly or indirectly to an Intermediate Subsidiary that are used for the purpose of making an investment in any EWG, FUCO, or Rule 58 Company, the amount of the funds or Guarantees will be included in AGL Resources' "aggregate investment" in these entities, as calculated in accordance with rule 53 or rule 58, as applicable.

AGL Resources requests authorization to consolidate or otherwise reorganize all or any part of its direct and indirect ownership interests in Nonutility Subsidiaries, and the activities and functions related to these investments. To effect any consolidation or other reorganization, AGL Resources may wish to merge or contribute the equity securities of one Nonutility Subsidiary to another Nonutility Subsidiary (including a newly formed Intermediate Subsidiary) or sell (or cause a Nonutility Subsidiary to sell) the equity securities or all or part of the assets of one Nonutility Subsidiary to another one. To the extent that these transactions are not otherwise exempt under the Act or rules thereunder, AGL Resources requests authorization to consolidate or otherwise reorganize under one or more direct or indirect Intermediate Subsidiaries, AGL Resources' ownership interests in existing and future Nonutility Subsidiaries. These transactions may take the form of a Nonutility Subsidiary selling, contributing, or transferring the equity securities of a subsidiary or all or part of a subsidiary's assets as a dividend to an Intermediate Subsidiary or to another Nonutility Subsidiary, and the acquisition, directly or indirectly, of the equity securities or assets of the subsidiary, either by purchase or by receipt of a dividend. The purchasing Nonutility Subsidiary in any transaction structured as an intrasystem sale of

equity securities or assets may execute and deliver its promissory note evidencing all or a portion of the consideration given. Each transaction would be carried out in compliance with all applicable laws and accounting requirements.

AGL Resources requests authorization to make expenditures on Development Activities, as defined above, in an aggregate amount of up to \$600 million. AGL Resources proposes a "revolving fund" concept for permitted expenditures on Development Activities. Thus, to the extent a Nonutility Subsidiary in respect of which expenditures for Development Activities were made subsequently becomes an EWG, FUCO, or Rule 58 Company, the amount so expended will cease to be considered an expenditure for Development Activities, but will instead be considered as part of the "aggregate investment" in the entity under rule 53 or 58, as applicable.

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

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49380; File No. SR-NASD-2003-110]

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

March 9, 2004.

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

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

component. On September 2, 2003, the NASD amended the proposed rule change.³ On November 18, 2003, the NASD again amended the proposed rule change.⁴ The proposed rule change, as amended, was published for comment in the **Federal Register** on December 16, 2003.⁵ The Commission received no comment letters with respect to the proposal.

On February 4, 2004, the NASD amended the proposed rule change.⁶ This order approves the proposed rule change, as amended by Amendment Nos. 1 and 2; solicits comments on the proposed rule change from interested persons; and grants accelerated approval to Amendment No. 3 to the proposed rule change.

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 in the **Federal Register**, 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

³ See letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, to Katherine England, Assistant Director, Division of Market Regulation ("Division"). Commission dated August 29, 2003 ("Amendment No. 1"). Amendment No. 1 replaced and superseded the proposed rule change in its entirety.

⁴ See letter from Barbara Z. Sweeney, Senior Vice President and Corporate Secretary, NASD, to Katherine England, Assistant Director, Division, Commission dated November 17, 2003 ("Amendment No. 2"). Amendment No. 2 replaced and superseded the proposed rule change in its entirety.

⁵ See Securities Exchange Act Release No. 48887 (December 5, 2003), 68 FR 70066.

⁶ See letter from James S. Wrona, Associate General Counsel, NASD, to Katherine England, Assistant Director, Division, Commission dated February 3, 2004 ("Amendment No. 3"). In Amendment No. 3, the NASD addressed staff comments relating to the service of notice on parties and the ability of hearing officers to promote sanctions. See Section II *infra*.

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.⁷

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.

⁷ Parties involved in a given case will be promptly notified of the appropriate timeline chosen by the Chief Hearing Officer. Telephone conversation between James S. Wrona, Associate General Counsel, NASD, Katherine England, Assistant Director, Division, Commission, Joseph Morra, Special Counsel, Division, Commission, and Ian Patel, Attorney, Division, Commission on January 14, 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.⁸ In particular, the Commission believes that the proposed rule change is consistent with section 15A(b)(6) of the Act,⁹ 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 principles of trade, and, in general, 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.¹⁰ 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.¹¹

It is therefore ordered, pursuant to section 19(b)(2) of the Act,¹² that the proposed rule change (SR-NASD-2003-110) is approved, as amended, and that Amendment No. 3 is approved on an accelerated basis.

⁸ In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

⁹ 15 U.S.C. 78o-3(b)(6).

¹⁰ 15 U.S.C. 78s(b)(2).

¹¹ 15 U.S.C. 78o-3(b)(6).

¹² 15 U.S.C. 78s(b)(2).

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹³

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49383; File No. SR-NASD-2004-014]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change and Amendment No. 1 by National Association of Securities Dealers, Inc. to Adopt Interpretative Material 3150 to Establish Exemptions From the Reporting Requirements of NASD Rule 3150

March 9, 2004.

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 January 27, 2004, the National Association of Securities Dealers, Inc. (“NASD”) 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. On February 20, 2004, NASD amended the proposed rule change.³ NASD filed the proposal pursuant to Section 19(b)(3)(A) of the Act,⁴ and Rule 19b-4(f)(1)⁵ thereunder, in that the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule, which renders the proposal effective upon filing with the Commission. 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 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-customer 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

¹³ 17 CFR 200.30-3(a)(12).

¹⁴ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ See letter from Shirley H. Weiss, Associate General Counsel, Office of General Counsel, Regulatory Policy and Oversight, NASD, to Katherine A. England, Assistant Director, Division of Market Regulation, Commission, dated February 20, 2004 (“Amendment No. 1”). In Amendment No. 1, NASD made technical corrections and minor language revisions to the filing. For purposes of calculating the 60-day abrogation period, the Commission considers the period to have commenced on February 20, 2004, the date NASD filed Amendment No. 1. See 15 U.S.C. 78s(b)(3)(C).

⁴ 15 U.S.C. 78s(b)(3)(A).

⁵ 17 CFR 240.19b-4(f)(1).