

SECURITIES AND EXCHANGE COMMISSION  
(Release No. 34-54562; File No. SR-NASD-2006-111)

October 3, 2006

Self Regulatory Organizations; National Association of Securities Dealers, Inc.; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Relating to Amending the Citation to Section 19 of the Securities Exchange Act in NASD Rule 9559

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 September 25, 2006, the National Association of Securities Dealers, Inc. (“NASD”) filed with the Securities and Exchange Commission (“SEC” or “Commission”) the proposed rule change as described in Items I and II below, which Items have been prepared by NASD. NASD has designated the proposed rule change as constituting a “non-controversial” rule change under Section 19(b)(3)(A) of the Act<sup>3</sup> and Rule 19b-4(f)(6) thereunder,<sup>4</sup> which renders the proposal effective upon receipt of this filing by 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 amend NASD Rule 9559(s), to amend the citation to Section 19 of the Act. Below is the text of the proposed rule change. Proposed deletions are in [brackets].

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

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

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

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

9559. Hearing Procedures for Expedited Proceedings Under the Rule 9550 Series

(a) through (r) No Change.

(s) Application to Commission for Review

The right to have any action pursuant to this Rule reviewed by the Securities and Exchange Commission is governed by Section 19[(f)] of the Securities Exchange Act. The filing of an application for review by the Securities and Exchange Commission shall not stay the effectiveness of final NASD action, unless the Securities and Exchange Commission otherwise orders.

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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

The Rule 9550 Series of NASD's procedural rules establishes the procedures for expedited proceedings brought against NASD members or associated persons for certain types of actions. These actions include proceedings initiated for failure to pay NASD

dues, fees, and other charges;<sup>5</sup> failure to comply with an arbitration award or related settlement;<sup>6</sup> and failure to comply with temporary cease and desist orders.<sup>7</sup> The hearing procedures for all expedited proceedings initiated under the NASD Rule 9550 Series are set forth in NASD Rule 9559. Although most of the provisions in NASD Rule 9559 relate to the procedural requirements of the hearing and NASD's written decisions, paragraph (s) notes that respondents have the right to appeal any decision issued after an expedited proceeding to the Commission and cites Section 19(f) of the Act. Other provisions of NASD's procedural rules refer more broadly to the Commission's review of NASD decisions under Section 19 of the Act without specifying a particular paragraph of the section.<sup>8</sup> The proposed rule change would amend the reference to the Commission's review of NASD decisions in expedited proceedings pursuant to Section 19 of the Act by deleting the specific reference to paragraph (f) of Section 19 and replacing it with a broad reference to Section 19.

NASD has filed the proposed rule change for immediate effectiveness. The effective date and the implementation date will be the date of filing, September 25, 2006.

## 2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A of the Act,<sup>9</sup> in general, and with Section 15A(b)(6) of the Act,<sup>10</sup> in particular, which requires, among other things, that NASD rules must be designed to

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<sup>5</sup> See NASD Rule 9553.

<sup>6</sup> See NASD Rule 9554.

<sup>7</sup> See NASD Rule 9556.

<sup>8</sup> See e.g. NASD Rule 9870.

<sup>9</sup> 15 U.S.C. 78o-3.

<sup>10</sup> 15 U.S.C. 78o-3(b)(6).

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 and with Section 15A(b)(8) of the Act,<sup>11</sup> which requires, among other things, that NASD rules must provide a fair procedure for the disciplining of members and persons associated with members. NASD believes that the proposed rule change will clarify the citation to the Act with respect to the appeal of expedited proceedings to the Commission.

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

Because the foregoing proposed rule change does not:

- (i) significantly affect the protection of investors or the public interest;
- (ii) impose any significant burden on competition; and
- (iii) become operative for 30 days from the date on which it was filed, or such

shorter time as the Commission may designate if consistent with the protection of investors and the public interest, it has become effective pursuant to section 19(b)(3)(A) of the Act<sup>12</sup> and Rule 19b-4(f)(6) thereunder.<sup>13</sup> As required under Rule 19b-4(f)(6)(iii),<sup>14</sup>

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<sup>11</sup> 15 U.S.C. 78o-3(b)(8).

<sup>12</sup> 15 U.S.C. 78s(b)(3)(A).

<sup>13</sup> 17 CFR 240.19b-4(f)(6).

<sup>14</sup> 17 CFR 240.19b-4(f)(6)(iii).

NASD provided the Commission with written notice of NASD's intent to file the proposed rule change along with a brief description and text of the proposed rule change, at least five business days prior to the filing date of the proposed rule change.

A proposed rule change filed under Rule 19b-4(f)(6) normally may not become operative for 30 days after the date of its filing.<sup>15</sup> However, Rule 19b-4(f)(6)(iii)<sup>16</sup> permits the Commission to designate a shorter time if such action is consistent with the protection of investors and the public interest. NASD has requested that the Commission waive the 30-day operative delay based upon a representation that the proposed rule change merely clarifies a citation to Section 19 of the Act. In light of the foregoing, the Commission believes such waiver is consistent with the protection of investors and the public interest. Accordingly, the Commission designated the proposal to be effective and operative upon filing with the Commission.<sup>17</sup>

At any time within 60 days of the filing of the proposed rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### 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:

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<sup>15</sup> 17 CFR 240.19b-4(f)(6).

<sup>16</sup> 17 CFR 240.19b-4(f)(6)(iii).

<sup>17</sup> For purposes only of waiving the 30-day operative delay of this proposal, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

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](mailto:rule-comments@sec.gov). Please include File Number SR-NASD-2006-111 on the subject line.

Paper Comments:

- Send paper comments in triplicate to Nancy M. Morris, Secretary, Securities and Exchange Commission, 100 F Street, NE, Washington, DC 20549-1090.

All submissions should refer to File Number SR-NASD-2006-111. 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 Room. Copies of such filing also will be available for inspection and copying at the principal office of NASD.

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 available publicly. All submissions should refer to

File Number SR-NASD-2006-111 and should be submitted on or before [insert date 21 days from publication in the Federal Register].

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>18</sup>

Nancy M. Morris  
Secretary

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<sup>18</sup> 17 CFR 200.30-3(a)(12).