

For the Commission by the Division of Market Regulation, pursuant to delegated authority.⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49114; File No. SR-NASD-2003-201]

Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the National Association of Securities Dealers, Inc. To Amend the Trading Activity Fee Rate and Add TRACE-Eligible and Municipal Securities as Covered Securities

January 22, 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 December 30, 2003, 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, 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 Schedule A of the NASD By-Laws to adjust the Trading Activity Fee ("TAF") rate for covered equity securities; to reduce the maximum per trade charge on covered equity securities; and to assess the TAF on corporate debt securities that, under the Trade Reporting and Compliance Engine ("TRACE") rules, are defined as "TRACE-eligible securities" and municipal securities subject to the Municipal Securities Rulemaking Board ("MSRB") reporting requirements. The text of the proposed rule change is below. Proposed new language is in *italics*; proposed deletions are in brackets.³

Schedule A to NASD By-Laws

* * * * *

Section 1— Member Regulatory Fees

(a) No Change.

(b) Each member shall be assessed a Trading Activity Fee for the sale of covered securities.

(1) Covered Securities. For purposes of the rule, covered securities shall mean:

(A) All exchange registered securities wherever executed (other than bonds, debentures, and other evidence of indebtedness) *except debt securities that are not TRACE-eligible securities*;

(B) All other equity securities traded otherwise than on an exchange; [and]

(C) All security futures wherever executed[.];

(D) *All TRACE-eligible securities wherever executed; and*

(E) *All municipal securities subject to MSRB reporting requirements.*

(2) Transactions exempt from the fee. The following shall be exempt from the Trading Activity Fee:

(A) through (I) No Change.

(J) Transactions in security futures held in futures accounts; [and]

(K) Transactions in exchange listed options effected by a member when NASD is not the designated options examining authority for that member[.]; *and*

Paragraph (b)(2)(K) becomes effective on January 1, 2004 in accordance with amendment 4 to SR-NASD-2002-148.

(L) *Proprietary transactions in TRACE-eligible securities by a firm that is a member of both NASD and a national securities exchange and that are effected in the firm's capacity as an exchange specialist or exchange market maker.*

NASD may exempt other securities and transactions as it deems appropriate.

(3) Fee Rates*

statement "Paragraph (b)(2)(K) becomes effective on January 1, 2004 in accordance with amendment 4 to SR-NASD-2002-148" or neglected to change its placement in the proposed rule so as not to separate item (K) from item (L). See pages 3 of 18, and 12 of 18. The Commission expects NASD will file an amendment at a later date to correct this deficiency, and will carefully review future filings to avoid such errors.

* Trading Activity Fee rates are as follows: Each member shall pay to NASD [\$0.0001]\$0.000075 per share for each sale of a covered equity security, with a maximum charge of [\$10]\$3.75 per trade; \$0.002 per contract for each sale of an option; [and] \$0.04 per contract for each round turn transaction of a security future; *and \$0.00075 per bond for each sale of a covered TRACE-eligible and/or municipal security, with a maximum charge of \$0.75 per trade.* In addition, if the execution price for a covered security is less than the Trading Activity Fee rate ([\$0.0001]\$0.000075 for covered equity securities, \$0.002 for covered option contracts, or \$0.04 for a security future) on a per share, per contract, or

(A) through (C) No Change.

(D) *Each member shall pay to NASD a fee per bond for each sale of a covered TRACE-eligible security and/or municipal security.*

(4) Reporting of Transactions. Members shall report to NASD the aggregate share, bond, contract, and/or round turn volume of sales of covered securities in a manner as prescribed by NASD from time to time.

(c) through (d) No Change.

* * * * *

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

Background

On July 24, 2002, NASD filed with the SEC proposed changes to the Gross Income Assessment ("GIA"), Personnel Assessment ("PA"),⁴ and Regulatory Fee.⁵ Those fees are used to fund NASD's member regulatory activities, including the regulation of members through examinations, processing of membership applications, financial monitoring, policymaking, rulemaking, and enforcement activities. The changes: (1) Eliminated the Regulatory Fee; (2) instituted a new transaction-based TAF applied across all markets, similar to the SEC's Section 31 Fee; (3) increased the rates assessed to member firms under the PA; and (4) implemented a simplified three-tiered

round turn transaction basis, then no fee will be assessed.

⁴ Securities Exchange Act Release No. 46416 (Aug. 23, 2002), 67 FR 55901 (Aug. 30, 2002) (SR-NASD-2002-98) (immediately effective TAF pilot program). NASD subsequently filed SR-NASD-2002-148 to give the proposal in SR-NASD-2002-98 a full notice and comment period and to adopt a permanent TAF program. See Securities Exchange Act Release No. 46817 (Nov. 12, 2002), 67 FR 69785 (Nov. 19, 2002).

⁵ Securities Exchange Act Release No. 46417 (Aug. 23, 2002), 67 FR 55893 (Aug. 30, 2002) (SR-NASD-2002-99).

⁷ 17 CFR 200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

³ The Commission notes that NASD filed the proposed rule change with an inconsistency in the numbering of the proposed rule language. See page 3 of 18, as compared with page 11 of 18. The Commission adjusted the text in this notice to correct this technical error. Also, the Commission notes that NASD either failed to remove the

flat rate for the GIA whereby deductions and exclusions would be eliminated.

The new member regulatory structure, as approved by the SEC,⁶ is revenue neutral to NASD and designed to better align NASD's regulatory fees with its functions, efforts, and costs. To ensure a member regulatory structure that is revenue neutral to NASD, NASD committed to analyze rates, volumes, and regulatory responsibilities periodically to sustain adequate funding levels for its member regulatory programs.⁷ Further, as part of a three-year phase-in plan included in the originally proposed pricing structure, NASD stated its intent to reduce the revenue from the collection of the TAF by approximately 50% over the three-year period, offset by an increase in the Personnel Assessment. Finally, in response to comments from a number of members and other self-regulatory organizations about the scope of the TAF, NASD committed to analyzing whether debt transactions should be included.

Proposed Changes

Consistent with its commitment to analyze revenues and expenses and to reduce the share of the member regulatory program funded by TAF in 2004, NASD is proposing a reduction of the TAF rate on covered equity securities from the current rate of \$0.10 per 1,000 shares to \$0.075 per 1,000 shares.⁸ In addition, in response to concerns expressed by a number of market participants,⁹ NASD is proposing that the maximum charge per trade under the TAF be reduced from the current cap of \$10.00 per trade (based on 100,000 shares) to \$3.75 per trade (based on 50,000 shares).

Further, to fulfill its commitment to the SEC, made in connection with the original TAF rule filing, NASD is proposing to assess the TAF on TRACE-eligible securities and municipal securities. NASD has reviewed reported volumes for TRACE-eligible securities and municipal securities in conjunction with NASD's current regulatory costs associated with the oversight of these

securities. Based upon this review, NASD has determined that it is appropriate to assess TRACE-eligible securities and municipal securities at a rate of \$0.00075 per bond, with a maximum assessment of \$0.75 per trade (based on 1,000 bonds). NASD believes that this rate is reasonable and allows for the equitable allocation of the TAF on member firms, reflecting NASD's regulatory efforts in the fixed income market.

2. Statutory Basis

NASD believes that the proposed rule change is consistent with the provisions of Section 15A(b)(5) of the Act,¹⁰ which requires, among other things, that NASD's rules provide for the equitable allocation of reasonable dues, fees, and other charges among members and issuers and other persons using any facility or system that NASD operates or controls. In this rule filing, NASD is reducing the TAF rate and the maximum TAF assessment per transaction on covered equity securities. In addition, NASD is assessing the TAF on TRACE-eligible securities and municipal securities subject to MSRB reporting requirements. These changes are consistent with NASD's statutory obligation under Section 15A(b)(5) of the Act¹¹ to ensure that its fees are reasonable and equitably allocated.

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, as amended.

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 NASD consents, the Commission will:

A. By order approve such proposed rule change, or

B. Institute proceedings to determine whether the proposed rule change should be disapproved.

If the Commission approves the filing, NASD proposes that the TAF rate reduction be implemented on the first day of the month following 30 days after approval of the proposed rule change. The assessment of fees on TRACE-eligible securities and municipal securities will be implemented on the first day of the month following six months after Commission approval. NASD is proposing an implementation date that is six months after SEC approval to allow member firms time to make programming changes to reflect the addition of a new category of covered securities.

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. Comments may also be submitted electronically at the following e-mail address: rule-comments@sec.gov. All comment letters should refer to File No. SR-NASD-2003-201. This file number should be included on the subject line if e-mail is used. To help the Commission process and review comments more efficiently, comments should be sent in hardcopy 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 number SR-NASD-2003-201 and should be submitted by February 18, 2004.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹²

⁶ Securities Exchange Act Release Nos. 47946 (May 30, 2003), 68 FR 34021 (June 6, 2003) (SR-NASD-2002-148) (approval order) and 47106 (Dec. 30, 2002), 68 FR 819 (Jan. 7, 2003) (SR-NASD+2002-99) (approval order).

⁷ Specifically, NASD stated in the text of the TAF rule that it will "periodically review these revenues in conjunction with these costs to determine the applicable rate" NASD By-Laws, Schedule A, Section 1(a).

⁸ NASD By-Laws, Schedule A, Section 1(a).

⁹ See, e.g., Letter to Robert R. Glauber and Mary L. Schapiro, NASD, from John P. Hughes and John C. Giesea, Security Traders Association, dated Oct. 21, 2003.

¹⁰ 15 U.S.C. 78o-(b)(5).

¹¹ *Id.*

¹² 17 CFR 200.30-3(a)(12).

Margaret H. McFarland,

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49112; File No. SR-NYSE-2003-40]

Self-Regulatory Organizations; Order Approving Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Listing and Trading of Certain 7³/₄% PEPSSM Units Under Section 703.19

January 21, 2004.

I. Introduction

On November 26, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ and Rule 19b-4 thereunder,² the proposed rule change to list and trade 7³/₄% Premium Equity Participating Security Units (PEPSSM Units), Series B ("Units"). The proposed rule change was published for comment in the *Federal Register* on December 19, 2003.³

II. Description of the Proposed Rule Change

The NYSE proposes to list and trade the Units pursuant to Section 703.19 of the Listed Company Manual ("Manual").⁴ Each of the Units consists of (1) a purchase contract ("Purchase Contract") issued by PPL Corporation ("PPL") and (2) a 2.5% undivided beneficial ownership interest in a \$1,000 principal amount note ("Note") due May 2006 issued by PPL Capital Funding, Inc. ("PPL Capital") and guaranteed by PPL.⁵

The Units are being offered pursuant to an exchange offer, the full terms of which are set out in the Registration

Statement.⁶ Specifically, PPL offers to exchange the Units and a cash payment of \$0.375 for each validly tendered and accepted 7³/₄% Premium Equity Participating Security Unit (collectively referred to as the "Old Units"), subject to, among other things, the condition that the Old Units remain listed on the Exchange.

Each Purchase Contract obligates the holder of a Unit to purchase from PPL, no later than May 18, 2004 (the "Contract Settlement Date"), for a price of \$25, the following number of shares of PPL common stock, \$0.01 par value: (a) if the average of the closing prices of PPL's common stock over the 20-trading day period ending on the third trading day prior to the Contract Settlement Date multiplied by 1.017 is equal to or greater than \$65.03, 0.3910 shares; (b) if the average of the closing prices of PPL's common stock over the same period multiplied by 1.017 is less than \$65.03 but greater than \$53.30, a number of shares, between 0.3910 and 0.4770 shares, having a value, based on the 20-trading day average of the closing prices, equal to \$25; and (c) if the average of the closing prices of PPL's common stock over the same period multiplied by 1.017 is less than or equal to \$53.30, 0.4770 shares. PPL will also pay Unit holders a quarterly fixed amount in cash, called a contract adjustment payment, at a rate of 0.46% per year of the stated amount of \$25 per Unit, or \$0.1150 per year.

From the date of issuance until the Contract Settlement Date, the Notes will constitute subordinated obligations of PPL Capital and will be guaranteed on a subordinated basis by PPL. On or after Contract Settlement Date, the Notes will constitute senior obligations of PPL Capital and will be guaranteed on a senior basis by PPL. Prior to the Contract Settlement Date, the ownership interest in the Notes will be pledged to secure the Unit holders' obligation to purchase PPL's common stock under the purchase contract. PPL has appointed a remarketing agent to remarket, or sell on behalf of Unit holders, the Notes to third party investors on a date (the "Remarketing Date") just prior to the Contract Settlement Date. Unit holders may choose to opt out of the remarketing of the Notes to third party investors to satisfy their payment obligations on the Contract Settlement Date. A Unit holder who opts out of the remarketing of the Notes would be

required to settle each Purchase Contract for \$25.00 in cash.

PPL Capital will also pay Unit holders interest at a rate of 7.29% per year on the principal amount of the Note. If there is a successful remarketing of the Notes, the interest rate will be reset and may be greater or less than 7.29% per year. PPL unconditionally guarantees the payment of principal and interest on the Notes of PPL Capital.

The Units represent both an equity and fixed income investment in PPL. The equity investment is in the form of the Purchase Contract, which, unless earlier terminated, requires a Unit holder to purchase a variable number of shares of PPL common stock. The fixed income investment is in the form of a trust preferred security that represents an undivided beneficial interest in the subordinated Notes of PPL Capital which are guaranteed on a subordinated basis by PPL.

The Units will conform to the issuer listing criteria under Section 703.19 of the Manual and be subject to the relevant continuing listing criteria under Section 801 and 802 of the Manual.⁷ The Exchange will impose the issuer listing requirements of Section 703.19(1) of the Manual on PPL.⁸ The Exchange represents that PPL is an NYSE-listed company in good standing. The Units will also meet the listing standards found in Section 703.19(2) of the Manual, except that the Units will not have the minimum life of one year required for listings.⁹

⁷ Section 801.00 of the Manual provides, in relevant part, that when an issuer that has fallen below any of the continued listing criteria has more than one class of securities listed, the Exchange will give consideration to delisting all such classes. Section 802.01D of the Manual states, in relevant part, that delisting of specialized securities will be considered when the number of publicly-held shares is less than 100,000; the number of holders is less than 100; and aggregate market value of shares outstanding is less than \$1 million. The Exchange also notes that it may, at any time, suspend a security if it believes that continued dealings in the security on the Exchange are not advisable.

⁸ The issuer listing standards require: (1) If the issuer is a NYSE-listed company, the issuer must be a company in good standing; (2) if the issuer is an affiliate of an NYSE-listed company, the NYSE-listed company must be a company in good standing; and (3) if not listed, the issuer must meet NYSE original listing standards as set forth in Sections 102.01-102.03 and 103.01-05 of the Manual.

⁹ The equity listing standards require: (1) At least 1 million securities outstanding; (2) at least 400 holders; (3) minimum life of one year; and (4) at least \$4 million market value. The Units will not have a minimum life of one year because the Contract Settlement Date is May 18, 2004. The Exchange notes that it does not believe that the Units will raise any significant new regulatory issues. Because the Units will meet or exceed the other requirements under Section 703.19 of the Manual, the Exchange believes that the Units will

¹ 15 U.S.C. 78s (b)(1).

² 17 CFR 240.19b-4.

³ See Securities Exchange Act Release No. 48918 (December 12, 2003), 68 FR 70851.

⁴ Under Section 703.19 of the Manual, the Exchange may approve for listing and trading securities not otherwise covered by the criteria of Sections 1 and 7 of the Manual, provided the issue is suited for auction market trading. See Securities Exchange Act Release No. 28217 (July 18, 1990), 55 FR 30056-01 (July 24, 1990).

⁵ See Registration No. 333-108450. The Registration Statement became effective on January 8, 2004.

⁶ The Exchange represents that the Registration Statement provides a detailed discussion and comparison of the Old Units and the Units so that holders can evaluate whether it is in their best interests to participate in the exchange offer.