

posts it operates. Paragraph 4.9 of the participant agreement is to be modified to clarify that reductions to excess post capital and to the clearing fund deposit cannot be made in amounts that would reduce these sums below their respective minimum requirements. Paragraph 4.9 of the participant agreement also is being modified to clarify that losses on a trial balance are due on the fifteenth day of the month following the month for which the trial balance was issued.

Similarly, with regard to the clearing fund agreement, PCC proposes to clarify that the minimum contribution, as defined in paragraph 5 of the clearing fund agreement, made by a member firm backing a specialist post will be applied towards meeting the post capital requirement. Currently, the clearing fund agreement states that contributions are to be credited towards the net capital requirement.

PCC believes that the proposed rule change is consistent with the requirements of Section 17A of the Act and the rules and regulations thereunder applicable to PCC. The technical corrections to PCC's rules will clarify PCC's rules thereby advancing the prompt and accurate clearance and settlement securities transactions. In addition, the clarifications regarding specialist post capital and net capital will assist PCC in safeguarding the securities and funds which are in PCC's custody or control or for which PCC is responsible.

#### *B. Self-Regulatory Organization's Statement on Burden on Competition*

PCC believes that no burden will be placed on competition as a result of the proposed rule change.

#### *C. Self-Regulatory Organization's Statement on Comments on the Proposed Rule Change Received From Members, Participants, or Others*

Statements were neither solicited nor received.

### **III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action**

Within thirty-five 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 ninety 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. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street, N.W., Washington, D.C. 20549. 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 Section, 450 Fifth Street, N.W., Washington, D.C. 20549. Copies of such filing will also be available for inspection and copying at the principal office of PCC. All submissions should refer to File No. SR-PCC-94-01 and should be submitted by February 28, 1995.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>2</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Release No. 34-35299; File No. SR-PTC-95-07]

### **Self-Regulatory Organizations; Participants Trust Company; Order Approving on an Accelerated Basis a Proposed Rule Change Establishing a Daily Penalty Fee Applicable to Late Funding of Shortfalls in Participants' Mandatory Deposits to the Participants Fund**

January 31, 1995.

On December 14, 1994, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") a proposed rule change (File No. SR-PTC-94-07) pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act").<sup>1</sup> The proposed rule change establishes a daily penalty fee applicable to late funding of shortfalls

in participants' mandatory deposits to the participants fund. On December 16, 1994, PTC filed Amendment No. 1 to the proposed rule change.<sup>2</sup> On January 5, 1995, PTC filed Amendment No. 2 to the proposed rule change.<sup>3</sup> The Commission published notice of the proposed rule change in the **Federal Register** on January 9, 1995.<sup>4</sup> No comments were received. For the reasons discussed below, the Commission is approving the proposed rule change on an accelerated basis.

### **I. Description**

Pursuant to Rule 2 of Article V of PTC's rules, PTC maintains a participants fund to secure obligations of participants and limited purpose participants to PTC and to provide PTC with an additional source of cash collateral to meet its temporary financing needs. Each participant is required to maintain a mandatory deposit in the participants fund which is calculated as a percentage of its average gross debits over the previous month's three major settlement days. The mandatory deposit is subject to a minimum of \$1 million and a maximum of \$10 million. A limited purpose participant is required to maintain a lower mandatory deposit because of the limited nature of its activity in the depository. At least \$150 thousand of the mandatory deposit must be made in cash. The remainder may be made in cash or United States Treasury obligations with a remaining maturity of one year or less.

The adequacy of each participant's mandatory deposit is evaluated monthly based on the prior month's activity. Participants are notified of any shortfall and required to fund the deficiency within five business days. The securities portion of the mandatory deposit is marked-to-market weekly, and participants are required to fund any deficiency in this portion within two business days.

<sup>2</sup> Amendment No. 1 modified the filing by providing that it be considered pursuant to Section 19(b)(2) of the Act rather than pursuant to Section 19(b)(3)(A) of the Act and by eliminating text inadvertently placed in the proposed rule change as originally filed. Letter from Carol A. Jameson, Assistant Vice President and Assistant Counsel, PTC, to Jonathan G. Katz, Secretary, Commission (December 15, 1994).

<sup>3</sup> Amendment No. 2 modified the filing by requesting accelerated approval of the proposed rule change and by clarifying the right of a participant to appeal the imposition of the penalty fee pursuant to PTC's rules. Letter from Carol A. Jameson, Assistant Vice President and Assistant Counsel, PTC, to Jonathan G. Katz, Secretary, Commission (January 3, 1995).

<sup>4</sup> Securities Exchange Act Release No. 35182 (December 30, 1994), 60 FR 2416.

<sup>2</sup> 17 CFR 200.30-3(a)(12) (1994).

<sup>1</sup> 15 U.S.C. 78s(b)(1) (1988).

Pursuant to Rule 3 of Article VI of PTC's rules, the proposed rule change establishes a daily penalty fee for a participant's failure to fund a shortfall in its mandatory deposit to the participants fund by the required date. The daily penalty fee is the greater of (i) \$200 or (ii) an amount calculated at an annual rate equal to the daily average Fed Funds rate plus 250 basis points (2.5%) on the outstanding balance of the shortfall in the mandatory deposit to the participants fund.

## II. Discussion

The Commission believes that the proposed rule change is consistent with Section 17A of the Act<sup>5</sup> and in particular with Section 17A(b)(3)(G) of the Act.<sup>6</sup> Section 17A(b)(3)(G) requires, among other things, that the rules of a clearing agency provide that its participants be appropriately disciplined for violation of any provision of the clearing agency's rules by fine or any other fitting sanction. The Commission believes that PTC's proposal to establish a daily penalty fee applicable to a participant's failure to fund on a timely basis a shortfall in its mandatory deposit to the participants fund is consistent with this obligation.

Because PTC maintains the participants fund to secret the obligations of participants and limited purpose participants to PTC, and other participants, late funding of a deficiency in a participant's mandatory deposit to the participants fund increases the risk of loss of PTC and its participants. In addition, late funding of a deficiency in a participant's mandatory deposit to the participants fund reduces an additional source of cash collateral which is available to PTC to meet temporary financing needs such as the payment of principal and interest. For these reasons, the Commission believes it is important that participants make timely funding of shortfalls and that the proposed penalty fee will encourage such funding.

In the event that a participant is assessed a penalty, PTC's rules, consistent with Section 17A(b)(3)(H),<sup>7</sup> provide participants with an opportunity to appeal the assessment of the penalty and to explain any mitigating circumstances. The penalty will not become effective until the period for filing an appeal has lapsed and will be automatically stayed during the pendency of any appeal. The Board

of Directors also may reduce or remit a fine imposed by the President or a Vice President regardless of whether an appeal is made.<sup>8</sup> The Commission believes that PTC's appeal process will provide participants with a fair opportunity to be heard.

PTC has requested that the Commission find good cause for approving the proposed rule change prior to the thirtieth day after the date of publication of notice of filing. In order to assure that PTC can implement the penalty fee beginning February 1, 1995, it is necessary that PTC receive the appropriate approval in advance of that date. The Commission, therefore, finds sufficient cause to accelerate approval of this proposal.

## III. Conclusion

On the basis of the foregoing, the Commission finds that the proposed rule change is consistent with the Act, in particular with Section 17A of the Act, and with the rules and regulations thereunder.

*It is therefore ordered*, pursuant to Section 19(b)(2) of the Act,<sup>9</sup> that the proposed rule change (File No. SR-PTC-94-07) be and hereby is approved on an accelerated basis.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.<sup>10</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Release No. 34-35308; File No. SR-PHLX-94-69]

### Self-Regulatory Organizations; Notice of Filing of Proposed Rule Change by the Philadelphia Stock Exchange, Inc. Relating to a One Year Pilot Program for the Trading, Comparison, Clearing, Settling, Listing, and Delisting of Municipal Securities

January 31, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), 15 U.S.C. 78s(b)(1), notice is hereby given that on December 20, 1994, the Philadelphia Stock Exchange, Inc. ("PHLX" or Exchange") 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 the self-regulatory organization. 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

The PHLX proposes to amend its rules to establish a one year pilot program allowing the Exchange to list and trade municipal securities. Specifically, the PHLX proposes to (1) amend PHLX Rules 132, "Dealings Outside the Exchange in Securities Dealt in on the Exchange," 501, "Specialist Appointment," 803, "Criteria for Listing—Tier I," and 810, "Suspension and Delisting Policies Based on Exchange Findings;" and (2) add PHLX Rule 309, "Municipal Securities," to provide requirements for trading, comparison, settlement, clearing and listing and delisting of municipal securities.

#### II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the Exchange 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. The self-regulatory organization 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

The purpose of the proposed rule change is to amend PHLX Rules 132, 501, 803 and 810 and to add PHLX Rule 309 to initiate a one year pilot program for trading, comparison, clearance, settlement and listing and delisting of municipal securities. Under proposed PHLX Rule 803(c)(5), a municipal issuer may list municipal securities having an aggregate market value and principal amount of at least twenty million dollars (\$20,000,000) provided there are at least one hundred (100) public beneficial holders and the issue is rated as investment grade by at least one nationally recognized rating service.

Proposed PHLX Rule 810(d) requires the delisting of the debt securities of a non-listed issuer when the issue no longer has at least a market value or principal amount outstanding of at least half a million dollars (\$500,000), fails to be held by at least fifty (50) public

<sup>5</sup> 15 U.S.C. 79q-1 (1988).

<sup>6</sup> 15 U.S.C. 78q-1(b)(3)(G) (1988).

<sup>7</sup> Section 17A(b)(3)(H) of the Act requires, among other things, that the rules of a clearing agency provide a fair procedure with respect to the disciplining of participants.

<sup>8</sup> See PTC Rules, Article VI, Rules 3 and 7.

<sup>9</sup> 15 U.S.C. 78s(b)(2) (1988).

<sup>10</sup> 17 CFR 200.30-3(a)(12).