

investigations to add new subsection (d) and .01 and .02 of the Commentary to require members, member organizations, persons associated with a member or member organization, and other persons or entities over whom the Exchange has jurisdiction pursuant to Rule 10.1(b) to testify before another SRO and to furnish information in connection with a regulatory inquiry, investigation, examination, or disciplinary proceeding resulting from an agreement entered into by the Exchange pursuant to Rule 14.1.⁴ The proposed rule change would further require these persons and entities not to impede such a proceeding. Moreover, the proposal provides that the rule would apply regardless of whether the Exchange initiated an investigation pursuant to Rule 10.2(a) or a disciplinary proceeding pursuant to Rule 10.3.

Under the proposed rule change, the Exchange also makes explicit that persons or entities, required to furnish information or testimony pursuant to a regulatory agreement, will be afforded the same rights and procedural protections that such persons or entities would have if the Exchange had initiated the request for information or testimony.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, with the requirements of section 6(b).⁵ The Commission believes the proposal is consistent with the section 6(b)(5) requirements that the rules of an exchange be designed to promote just and equitable principles of trade, to prevent fraudulent and manipulative acts, and, in general, to protect investors and the public interest.

This proposal, which is similar to a proposal by the Chicago Board Options Exchange, Inc. that was recently approved by the Commission,⁶ grew out of a meeting of the Intermarket Surveillance Group ("ISG") to coordinate more effectively surveillance and investigative information sharing arrangements in the stock and options markets.⁷ The Commission believes that

the proposed rule change achieves a reasonable balance between the need for regulatory cooperation and protection of the procedural rights of Exchange members and others from whom information or testimony is requested. The rule would provide the Exchange with the authority to seek cooperation by certain persons with respect to inquiries and investigations resulting from regulatory agreements between the Exchange and another SRO while explicitly providing any person or entity required to furnish information or testimony pursuant to the rule with the same procedural rights that they would have if the request was pursuant to an Exchange initiated inquiry or investigation. In furtherance of the policy to protect procedural rights, the Exchange provides in Commentary .02 to Rule 10.2 that the Exchange will always act as an intermediary between another SRO and the exchange member, member organization, or other designated person from whom information or testimony is being sought for any inquiry made pursuant to an agreement under Rule 14.1.

The Commission believes that it the proposed rule change will further the interest of the public and provide for the protection of investors by allowing the Exchange to assist other SROs conduct prompt inquiries into possible trading violations and other possible misconduct. As the marketplaces become more global and interlinked, the Commission believes that is important that the SROs coordinate their investigatory activities to prevent fraudulent and manipulative acts and practices in all marketplaces.

It is therefore ordered, pursuant to section 19(b)(2) of the Act,⁸ that the proposed rule change (SR-PSE-95-02) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.⁹

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-10605 Filed 4-28-95; 8:45 am]

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Chicago Board Options Exchange, Inc., the Chicago Stock Exchange, Incorporated, the Cincinnati Stock Exchange, Inc., the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., the Pacific Stock Exchange Incorporated, and the Philadelphia Stock Exchange, Inc.

⁸ 15 U.S.C. 78s(b)(2) (1988).

⁹ 17 CFR 200.30-3(a)(12) (1994).

[Release No. 34-35641; File No. SR-PTC-95-03]

Self-Regulatory Organizations; Participants Trust Co.; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Extending Temporary Approval of Current Margin and Pricing Methodology for Collateralized Mortgage Obligations

April 24, 1995.

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),¹ notice is hereby given that on March 28, 1995, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-PTC-95-03) as described in Items I and II below, which Items have been prepared primarily by PTC. The Commission is publishing this notice and order to solicit comments from interested persons and to grant accelerated approval of the proposed rule change through April 30, 1996.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The proposed rule change extends through April 30, 1996, the temporary approval of the current margin and pricing methodology utilized by PTC for collateralized mortgage obligations ("CMO") that are eligible for deposit or that may become eligible for deposit at PTC.²

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

In its filing with the Commission, PTC 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. Summaries of the most significant aspects of such statements are set forth in sections A, B, and C below.

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

Margin Under PTC's Rules

Under PTC's rules, a certain percentage ("applicable percentage") of

¹ 15 U.S.C. 78s(b)(1) (1988).

² Securities Exchange Act Release No. 34017 (May 5, 1994), 59 FR 24495 (File No. SR-PTC-92-16) (order approving through April 30, 1995, PTC's CMO margin and pricing methodology).

⁴ Rule 14.1 provides that the Exchange may enter into agreements with domestic and foreign self-regulatory organizations providing for the exchange of information and other forms of mutual assistance for market surveillance, investigative, enforcement, and other regulatory purposes.

⁵ 15 U.S.C. 78f(b) (1988 & Supp. v. 1993).

⁶ See Securities Exchange Act Release No. 35403 (Feb. 22, 1995), 60 FR 10884 (Feb. 28, 1995) (approving File No. SR-CBOE-94-39).

⁷ The members of ISG are the American Stock Exchange, Inc., the Boston Stock Exchange, Inc., the

the market value of securities is included in the computation of participants' Net Free Equity.³ Net Free Equity of zero or greater is required to be maintained by participants in each of its agency, pledgee transfer, or proprietary accounts in order for transactions to be processed.⁴ Net Free Equity represents PTC's calculation of the amount of excess equity available in a participant's account which PTC may borrow against or liquidate in the event the participant's debit balance is not satisfied at the end of the day.

By including only a portion of the market value of securities in Net Free Equity, PTC attempts to limit the risk caused by fluctuations in the market value of these securities. For Government National Mortgage Association ("GNMA") single-class securities, other than construction, project, and mobile home securities, margins are set at five percent, which is a rate that exceeds their largest historic consecutive two-day downward price movement. GNMA construction, project, and mobile home securities have a higher margin to reflect their reduced liquidity.⁵

CMO Margins

CMO securities that are currently eligible for deposit at PTC are GNMA REMICs, Department of Veterans Affairs ("VA") REMICs, and certain Federal Home Loan Mortgage Corporation ("FHLMC") REMICs. Unlike GNMA single-class securities, CMO securities are structured as a series of tranches or classes, each of which represents a separate security with unique characteristics, such as differing

³ As set forth in PTC Rules, Article II, Rule 9, Net Free Equity is calculated as the sum of (a) the cash balance in the account; (b) the market value of securities in the account less the applicable percentage; (c) the value of the optional deposits to the Participants Fund which are allocated to that account (optional deposits to the Participants Fund are deposits that exceed the minimum deposit required pursuant to PTC's rules and procedures); and (d) 20% of the mandatory deposits to the Participants Fund for the master account (mandatory deposits to the Participants Fund are minimum deposits required to be deposited into such fund pursuant to PTC's rules and procedures) minus (e) "reserve on gain." Reserve on gain means (1) the contract value credited to the cash balance of a delivering participant or limited purpose participant over the market value of securities credited to the transfer account associated with the account of the receiving participant or (2) the market value of securities credited to the transfer account associated with the account of a receiving participant over the contract value credited to the cash balance of the delivering participant or limited purpose participant.

⁴ PTC Rules, Article II, Rule 13, "Transfers of Securities."

⁵ Securities Exchange Act Release No. 33840 (March 31, 1994), 59 FR 16672 (File No. PTC-93-04) (order approving proposed rule change).

payment schedules and price volatility.⁶ PTC, therefore, uses a model which takes into account the unique characteristics of each tranche to predict its potential price movement. The parameters of the model include prepayment speeds, a yield spread, and the yield on a benchmark Treasury security. PTC subjects each CMO tranche to a stress test to determine its response to yield changes in order to assign each tranche an appropriate margin.

Currently, margins are based on a fifty basis point upward movement in the underlying Treasury securities for CMO tranches that exhibit positive effective duration (*i.e.*, rise in value with falling interest rates) or a fifty basis point downward movement in the underlying Treasury security for CMO tranches that exhibit negative effective duration (*i.e.*, decline in value with falling interest rates). CMO tranches that are not modeled by PTC's pricing vendor are margined at one hundred percent and the minimum margin for any CMO tranche is five percent.

PTC believes that the proposed rule change is consistent with section 17A(b)(3)(F) of the Act⁷ and the rules and regulations thereunder because it facilitates the prompt and accurate clearance and settlement of securities transactions and provides for the safeguarding of securities and funds in PTC's custody or control or for which PTC is responsible.

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

PTC does not believe that the proposed rule change imposes any burden on competition.

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

PTC has neither solicited nor received comments on this proposed rule change.

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

PTC's current margin and pricing methodology for CMO securities was approved by the Commission on a temporary basis through April 30, 1995,⁸ in order to allow PTC further

⁶ A CMO is a multiple-class mortgage cash flow security which redirects the cash flow from an underlying standard mortgage-backed security, such as a GNMA security, and allows the CMO issuer to create classes, or tranches, with many different interest rates, average lives, prepayment sensitivities, final maturities, and payment priorities.

⁷ 15 U.S.C. 78q-1(b)(3)(F) (1988).

⁸ *Supra* note 2.

time in which to evaluate the methodology and to take steps to address any concerns which exist with respect to the methodology. During the temporary approval period, PTC has provided information to the Commission describing the steps taken by PTC to improve the margin and pricing methodology including finalizing arrangements with a second vendor for daily pricing and stress test analysis.⁹

Section 17A(b)(3)(F) of the Act¹⁰ requires that the rules of a clearing agency be designed to assure the safeguarding of securities and funds in the custody or control of the clearing agency or for which it is responsible. The Commission believes that extending temporary approval of the current margin and pricing methodology utilized by PTC for CMO securities should help assure the safeguarding of securities and funds in PTC's custody or control. PTC's current margin and pricing methodology helps ensure that CMO margins will be established that take into account the unique characteristics of each CMO tranche and that PTC's reliance on a daily pricing source will provide it with timely price information. The resulting margins will afford PTC protection should it be necessary for PTC to borrow against or liquidate these assets. In addition, the Commission believes that extending the temporary approval will permit PTC to make technical enhancements to its system that will enable it to use and compare data from two sources and also enable PTC to further evaluate the results of the CMO pricing and margin methodology as so enhanced.

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 the filing. In order to allow PTC to continue employing its current margin and pricing methodology without disruption of service, it is necessary for the Commission to approve the proposed rule change prior to the expiration of the current temporary approval of the methodology on April 30, 1995. The Commission, therefore, finds sufficient cause to accelerate approval of this proposal. In addition, the staff of the Board of Governors of the Federal Reserve System ("Board of Governors")

⁹ Letters from Michael D. Frieband, Senior Vice President and Chief Financial Officer, PTC, to Jerry W. Carpenter, Assistant Director, Division of Market Regulation ("Division"), Commission (August 5, 1994, November 8, 1994, February 27, 1995, and March 23, 1995).

¹⁰ 15 U.S.C. 78q-1(b)(3)(F) (1988).

has concurred with the Commission's granting of accelerated approval.¹¹

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, NW., Washington, DC 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, NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of PTC. All submissions should refer to file number SR-PTC-95-03 and should be submitted by May 22, 1995.

It is therefore ordered, pursuant to section 19(b)(2) of the Act, that the proposed rule change (File No. SR-PTC-95-03) be and hereby is approved on an accelerated basis through April 30, 1996.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95-10606 Filed 4-28-95; 8:45 am]

BILLING CODE 8010-01-M

[Rel. No. IC-21026; No. 812-9296]

New York Life Insurance Annuity Corp. et al.

April 24, 1995.

AGENCY: The Securities and Exchange Commission ("Commission").

ACTION: Notice of Application for an Order under the Investment Company Act of 1940 ("1940 Act").

APPLICANTS: New York Life Insurance and Annuity Corporation ("NYLIAC"); NYLIAC Variable Annuity Separate Account I ("NVA Account I"), NYLIAC Variable Annuity Separate Account II ("NVA Account II"), NYLIAC MFA

Separate Account I ("MFA Account I") and NYLIAC MFA Separate Account II ("MFA Account II") (collectively, "Separate Accounts"); and NYLIFE Distributors, Inc. ("NYLIFE Distributors").

RELEVANT 1940 ACT SECTIONS: Order requested under Section 6(c) granting exemptions from the provisions of Sections 26(a)(2)(C) and 27(c)(2) of the 1940 Act.

SUMMARY OF THE APPLICATION:

Applicants seek an order permitting the deduction of mortality and expense risk charges from the assets of the Separate Accounts in connection with the offering of certain single premium or flexible premium variable annuity contracts ("Policies") and certain other variable annuity contracts that are substantially similar in all material respects to the Policies ("Other Policies"). Applicants also request that the order permit the deduction of a mortality and expense risk charge from the assets of any other separate accounts established in the future by NYLIAC in connection with the offering of the Other Policies.

FILING DATES: The Application was filed on October 21, 1994 and amended on March 29, 1995 and April 6, 1995.

HEARING OR NOTIFICATION OF HEARING: An order granting the Application will be issued unless the Commission orders a hearing. Interested persons may request a hearing by writing to the Commission's Secretary and serving Applicants with a copy of the request, personally or by mail. Hearing requests should be received by the Commission by 5:30 p.m., on May 19, 1995, and should be accompanied by proof of service on Applicants in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the Commission's Secretary.

ADDRESSES: Secretary, The Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549. Applicants, c/o A. Thomas Smith, III, Esq., New York Life Insurance and Annuity Corporation, 51 Madison Avenue, New York, New York 10010.

FOR FURTHER INFORMATION CONTACT:

Yvonne M. Hunold, Assistant Special Counsel, or Wendy Friendlander, Deputy Chief, at (202) 942-0670, Office of Insurance Products (Division of Investment Management).

SUPPLEMENTARY INFORMATION: Following is a summary of the application; the complete application is available for a

fee from the Commission's Public Reference Branch.

Applicants' Representations

1. NYLIAC is a Delaware stock life insurance company that is wholly-owned by New York Life Insurance Company ("New York Life"), a New York mutual life insurance company. NYLIAC is licensed to sell life insurance policies and annuity contracts in all 50 states and the District of Columbia.

2. The Separate Accounts were established by NYLIAC as funding vehicles for the Policies. Each Separate Account has filed a registration statement under the 1940 Act and the Securities Act of 1933 ("1933 Act"). Future Accounts established by NYLIAC will be organized as unit investment trusts and will file registration statements under the 1940 Act and the 1933 Act.

3. The policies include flexible premium variable annuity contracts ("NVA Policies") offered by NVA Accounts I and II and single premium and flexible premium variable annuity contracts ("MFA Policies") offered by MFA Separate Accounts I and II. Policies funded by NVA Account II and MFA Account I are used in connection with plans qualified under sections 401(a), 403(a), 403(b), 408 or 457 of the Internal Revenue Code ("Code"). Policies funded by NVA Account I and MFA Account II are not offered in connection with such qualified plans.

4. The investment divisions of the Separate Accounts invest solely in corresponding portfolios of New York Life MFA Series Fund, Inc. ("Fund"), a diversified open-end management company registered under the 1940 Act. Additional investment divisions may be established in the future within the Separate Accounts and may invest in other portfolios of the Fund or in other investments.

5. NYLIFE Distributors will replace NYLIFE Securities, Inc. ("NYLIFE Securities")¹ as the principal underwriter of the Policies pursuant to an agreement between NYLIAC, the Separate Accounts and NYLIFE Distributors. NYLIFE Distributors also will serve as principal underwriter for the Other Policies. NYLIFE Distributors may enter into selling agreements with other broker-dealers, including NYLIFE

¹ The Commission previously has granted NYLIAC, the Separate Accounts and NYLIFE Securities exemptive relief to permit the deduction of mortality and expense risk charges from the assets of the Separate Accounts in connection with the Policies. Rel. Nos. IC-19197 (Order) (Dec. 30, 1992) and IC-13592 (Notice) (Dec. 2, 1992); and IC-13736 (Order) (Jan. 25, 1984) and IC-13592 (Notice) (Oct. 21, 1983). NYLIFE Distributors was not a party to such applications.

¹¹ Telephone conversation between William R. Stanley, Board of Governors, and Ari Burstein, Division, Commission (April 11, 1995).

¹² 17 CFR 200.30-3(a)(12) (1994).