

meetings (except insofar as the Commission may interpret section 16 of the 1940 Act not to require such meetings) or comply with section 16(c) of the 1940 Act (although ATSF is not one of the trusts described in section 16(c) of the 1940 Act) as well as with section 16(a) of the 1940 Act and, if and when applicable, section 16(b) of the 1940 Act. Further, each Insurance Investment Company will act in accordance with the Commission's interpretation of the requirements of section 16(a) of the 1940 Act with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

11. As long as the Commission continues to interpret the 1940 Act as requiring pass-through voting privileges for variable contract owners, the Managers will vote their shares in the same proportion as all contract owners having voting rights with respect to the relevant Insurance Investment Company; provided, however, that the Manager or any General Account shall vote their shares in such other manner as may be required by the Commission or its staff.

12. The Participants shall at least annually submit to the Board of an Insurance Investment Company such reports, materials or data as the Board may reasonably request so that it may fully carry out the obligations imposed upon it by the conditions contained in this Application and said reports, materials and data shall be submitted more frequently, if deemed appropriate, by the Board. The obligations of Participating Insurance Companies and Participating Qualified Plans to provide these reports, materials and data to the Board of the Insurance Investment Company when it so reasonably requests, shall be a contractual obligation of the Participating Insurance Companies and Participating Qualified Plans under their agreements governing participation in each Insurance Investment Company.

13. If a Qualified Plan should become an owner of 10 percent or more of the assets of an Insurance Investment Company, the Insurance Investment Company shall require such Plan to execute a participation agreement with such Insurance Investment Company which includes the conditions set forth herein to the extent applicable. A Qualified Plan will execute an application containing an acknowledgment of this condition upon such Plan's initial purchase of the shares of any Insurance Investment Company.

Conclusion

For the reasons and upon the facts summarized above, Applicants assert that the requested exemptions are appropriate in the public interest and consistent with the protection of investors and the purposes fairly intended by the policy and provisions of the 1940 Act.

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. 34-48918; File No. SR-NYSE-2003-40]

Self-Regulatory Organizations; Notice of Filing of a Proposed Rule Change by the New York Stock Exchange, Inc. Relating to the Listing of Certain 7¾% PEPSSM Units Under Section 703.19

December 12, 2003.

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 November 26, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the NYSE.

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 the Substance of the Proposed Rule Change

The NYSE proposes to list and trade 7¾% Premium Equity Participating Security Units (PEPSSM Units), Series B ("Units"), each of which consists of a purchase contract issued by PPL Corporation ("PPL"), and a 2.5% undivided beneficial ownership interest in a \$1,000 principal amount note due 2006 issued by PPL Capital Funding, Inc. ("PPL Capital") and guaranteed by PPL.

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.

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 NYSE 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. NYSE 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

Under Section 703.19 of the Listed Company Manual ("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.³ The Exchange proposes to list and trade, under Section 703.19 of the Manual, the Units, each of which consists of (1) a purchase contract ("Purchase Contract") issued by 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 and guaranteed by PPL.⁴

The Units are being offered pursuant to an exchange offer, the full terms of which are set out in the Registration Statement.⁵ Specifically, PPL offers to exchange the Units and a cash payment of \$0.375 for each validly tendered and accepted 7¾% Premium Equity Participating Security Unit (collectively referred to as the "Old Units"), subject to, among other things, the minimum condition that there are validly tendered at the expiration of the exchange offer at least 35% of the Old Units, and 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

³ See Securities Exchange Release No. 28217 (July 18, 1990), 55 FR 30056-01 (July 24, 1990).

⁴ PPL and PPL Capital filed Amendment No. 1 to Form S-4 relating to the Units (the "Registration Statement") on October 20, 2003. See Registration No. 333-108450. The information provided in this Rule 19b-4 filing relating to the Units is based entirely on information included in the Registration Statement.

⁵ In particular, 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.

“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.⁶ The Exchange will impose the issuer listing requirements of Section 703.19 of the Manual on PPL. Under Section 703.19(1) of the Manual, among other things, if the issuer is an affiliate of an NYSE-listed company, the NYSE-listed company must be a company in good standing.⁷ 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.⁸ However, the Exchange 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 have sufficient liquidity and depth of market, even if listed for a period shorter than one year. The Exchange also notes that the underlying PPL common stock from which the value of the Unit is in part derived will remain outstanding and listed on the Exchange following maturity of the Units.

The Exchange’s existing equity trading rules apply to trading of the Units. The Exchange will also have in

⁶ 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.

⁷ 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.

⁸ 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.

place certain other requirements to provide additional investor protection. First, pursuant to Exchange Rule 405, the Exchange will impose a duty of due diligence on its members and member firms to learn the essential facts relating to every customer prior to trading the Units.⁹ Second, the Units will be subject to the equity margin rules of the Exchange.¹⁰ Third, the Exchange will, prior to trading the Units, distribute a circular to the membership providing guidance with regard to member firm compliance responsibilities (including suitability recommendations) when handling transactions in the Units and highlighting the special risks and characteristics of the Units. With respect to suitability recommendations and risks, the Exchange will require members, member organizations and employees thereof recommending a transaction in the Units: (1) To determine that such transaction is suitable for the customer, and (2) to have a reasonable basis for believing that the customer can evaluate the special characteristics of, and is able to bear the financial risks of, such transaction.

The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Units. Specifically, the Exchange will rely on its existing surveillance procedures governing equity, which have been deemed adequate under the Act.

2. Statutory Basis

The Exchange believes that the proposed rule change is consistent with section 6(b) of the Act,¹¹ in general, and furthers the objectives of section 6(b)(5) of the Act,¹² in particular, in that it is designed to prevent fraudulent and manipulative acts and practices, to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating, clearing, settling, processing information with respect to, and facilitating transaction in securities, and, in general to protect investors and the public interest.

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

The Exchange does not believe that the proposed rule change will impose any burden on competition.

⁹ NYSE Rule 405 requires that every member, member firm or member corporation use due diligence to learn the essential facts relative to every customer and to every order or account accepted.

¹⁰ See NYSE Rule 431.

¹¹ 15 U.S.C. 78f(b).

¹² 15 U.S.C. 78f(b)(5).

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

The Exchange has neither solicited nor received written comments on the proposed rule change.

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

NYSE requested that the Commission find good cause for approving the proposal to accommodate the listing of the Units by December 18, 2003, the expiration date of the exchange offer pursuant to which the Units are being offered. The Commission, however, does not find good cause to accelerate approval of this proposal.

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 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, including whether the proposal 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-NYSE-2003-40. The 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, 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 Exchange. All submissions should refer to the File No. SR-NYSE-2003-40 and should be submitted by January 9, 2004.

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. 34-48919; File No. SR-NYSE-2003-38]

Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the New York Stock Exchange, Inc. To Extend for an Additional Six Months Its Pilot Program Permitting a Floor Broker To Use an Exchange Authorized and Provided Portable Telephone on the Exchange Floor

December 12, 2003.

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 November 24, 2003, the New York Stock Exchange, Inc. ("NYSE" or "Exchange") 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 the Exchange. 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 Exchange proposes to extend its pilot program that amends NYSE Rule 36 (Communication Between Exchange and Members' Offices) to allow a Floor broker's use of an Exchange authorized and provided portable telephone on the Exchange Floor upon approval by the Exchange ("Pilot") for an additional six months to expire on June 16, 2004. The Pilot is currently in effect on a six-month pilot basis and set to expire on

December 16, 2003.³ The text of the proposed rule change is available at the Office of the Secretary, the Exchange, and at the Commission.

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 Exchange 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

In the Original Order,⁴ the Commission approved the Pilot to be implemented as a six-month pilot beginning on or about May 1, 2003. On June 5, 2003, the Exchange extended the implementation date for the Pilot to begin no later than June 23, 2003, instead of on or about May 1, 2003, as originally adopted in the Original Order.⁵ In a memorandum to all non-specialist members and member organizations, the Exchange stated that the Pilot was implemented on June 16, 2003, and thus would expire on December 16, 2003. The Exchange represents that no regulatory actions, or administrative or technical problems, other than routine telephone maintenance issues, have resulted from the Pilot over the past few months. Therefore, the Exchange seeks to extend the Pilot for an additional six months.

NYSE Rule 36 (Communications Between Exchange and Members' Offices) governs the establishment of telephone or electronic communications between the Exchange's Trading Floor and any other location. Prior to the Pilot, NYSE Rule 36.20 prohibited the use of portable telephone communications between the Trading Floor and any off-Floor location, and the only way that voice communication could be conducted by Floor brokers

³ See Securities Exchange Act Release No. 47671 (April 11, 2003), 68 FR 19048 (April 17, 2003) (SR-NYSE-2002-11) ("Original Order").

⁴ See Original Order, *supra* note 3.

⁵ See Securities Exchange Act Release No. 47992 (June 5, 2003), 68 FR 35047 (June 11, 2003) (SR-NYSE-2003-19).

¹³ 17 CFR.200.30-3(a)(12).

¹ 15 U.S.C. 78s(b)(1).

² 17 CFR 240.19b-4.