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Deputy Secretary.

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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.

The Exchange's existing equity trading rules apply to trading of the Units. The Exchange will also have in 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.¹⁰ Second, the Units will be subject to the equity margin rules of the Exchange.¹¹ 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.

III. Discussion

After careful consideration, 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) of the Act.¹² Accordingly, the Commission finds that the listing and trading of the Units is consistent with the Act and will promote just and equitable principles of trade, foster cooperation and coordination with persons engaged in

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.

¹⁰ 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.

¹¹ See NYSE Rule 431.

¹² *Id.*

regulating, clearing, settling, processing information with respect to, and facilitating transactions in securities, and, in general, protect investors and the public interest consistent with Section 6(b)(5) of the Act.¹³

As described more fully above, the Exchange proposes to list and trade the Units, which 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 at a specified price, both to be determined at the time of termination. 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 are being offered pursuant to an exchange offer which will reduce the interest paid on the Notes by Unit holders as compared to the Old Units.¹⁴ The Exchange represents that the value of the Units is in part derived from the underlying PPL common stock. Unit holders are guaranteed at least the principal amount the payment of principal and interest on the Notes of PPL Capital. 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.

The Commission notes that the Exchange's rules and procedures address the special concerns attendant to the trading of certain types of hybrid securities. In particular, by imposing the listing standards for certain types of hybrid securities, suitability, disclosure, and compliance requirements noted above, the Commission believes the Exchange has addressed adequately the potential problems that could arise from the hybrid nature of the Units. The Commission notes that the Exchange will distribute a circular to its members regarding member firm compliance responsibilities when handling transactions in the Units and highlighting the special risks and characteristics of the Units. Moreover, the Commission notes that the Exchange will distribute a prospectus to the holders of the Old Units calling attention to the specific risks associated with the purchase of the Units.

¹³ 15 U.S.C. 78f(b)(5). In approving this rule, the Commission notes that it has considered the proposed rule's impact on efficiency, competition, and capital formation. ¹⁵ U.S.C. 78c(f).

¹⁴ See supra note 5.

The Exchange's "Other Securities" listing standards in Section 703.19 of the Manual provide that issuers satisfying earnings and net tangible assets requirements may issue securities such as the Units provided that the issue is suited for auction market trading. The Commission notes that the Exchange has represented the following in accordance with the listing standards of Section 703.19 of the Manual: (1) That PPL is an NYSE-listed company in good standing; (2) there will be at least 1 million securities outstanding; (3) at least 400 holders; and (4) at least \$4 million 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 Commission notes that the Units will meet all of the relevant listing standards found in Section 703.19 of the Manual except that the Units will not have the minimum life of one year.¹⁵ Because the Units are being offered in connection with an exchange offer, the Commission believes that the Units will have sufficient liquidity and depth of market, even if listed for a period of shorter than one year. The Exchange will also provide each of the holders of the Old Units with a registration statement outlining the specific risks associated with the purchase of the Units. Consequently, the Commission does not believe that the Units will raise any significant regulatory issues.

Because the issuer of the Unit is PPL (the Purchase Contract issued by PPL and the Note issued by PPL Capital and guaranteed by PPL), the Commission does not object to the Exchange's reliance on PPL to meet the issuer listing requirements of Section 703.19 of the Manual. The Units will conform to the listing guidelines under 703.19 of the Manual, except for the life of one year requirement, and the continued listing guidelines under Sections 801 and 802 of the Manual. The Commission also believes that the listing and trading of the Units should not unduly impact the market for the Units or raise manipulative concerns because the Exchange's existing equity trading rules and equity margin rules will apply to trading of the Units. As discussed more fully above, the Exchange will also have in place certain other requirements to provide additional investor protection. The Exchange represents that its surveillance procedures are adequate to properly monitor the trading of the Units. The Commission notes that the Exchange will rely on its existing surveillance procedures governing equity, which the Exchange represents

¹⁵ See supra notes 8 and 9.

have been deemed adequate under the Act.

IV. Conclusion

It is therefore ordered, pursuant to Section 19(b)(2) of the Act,¹⁶ that the proposed rule change (SR-NYSE-2003-40), be, and hereby is, approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹⁷

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-49103; File No. SR-ODD-2004-01]

Self-Regulatory Organizations; the Options Clearing Corporation; Order Granting Approval of Proposed Supplement To Amend the Options Disclosure Document Description Regarding Options Exercise Assignments and How To Exercise Options

January 20, 2004.

On January 7, 2004, the Options Clearing Corporation (“OCC”) submitted to the Securities and Exchange Commission (“Commission”), pursuant to Rule 9b-1 under the Securities Exchange Act of 1934 (“Exchange Act”),¹ five definitive copies of a supplement to its options disclosure document (“ODD”) that amends the ODD’s description of assignment methods for assigning options exercises and the description of how to exercise options (“Supplement”).² The proposed Supplement supercedes and replaces the November 1995 Supplement to the ODD, and amends the “Assignment” and “How to Exercise” sections in Chapter VIII of the ODD.

The ODD currently contains general disclosures on the characteristics and risks of trading standardized options. Recently, OCC amended its rules to change the methodology for assigning exercises to a clearing member’s customers’ account for S&P 100 (OEX) index options from random to pro rata.³

The proposed Supplement accommodates this change by amending the ODD’s description of assigning options exercises.⁴

Specifically, the proposed Supplement provides a more general description of options assignment methodologies that refers investors to OCC for more specific assignment information.⁵ In addition, the Supplement is being modified to provide a more general discussion of assignment exercise procedures of member firms to their customers by providing certain non-exclusive examples.⁶ The new revisions will state that, in cases where less than all the open interest is exercised, both OCC assignment procedures and broker assignment procedures may affect the likelihood that a customer’s position will be assigned and the potential size of such assignment.

Finally, the proposed Supplement also amends the description of how to exercise options. Specifically, the proposed Supplement amends the ODD by stating that investors should be aware of their brokerage firm’s policies regarding such firm’s cut-off time for accepting exercise instructions.

The Commission has reviewed the proposed Supplement and finds that it complies with Rule 9b-1 under the Exchange Act.⁷ The proposed Supplement is intended to be read in conjunction with the more general ODD, which, as described above, discusses the characteristics and risks of options generally.

Rule 9b-1(b)(2)(i) under the Exchange Act⁸ provides that an options market must file five copies of an amendment or supplement to the ODD with the Commission at least 30 days prior to the date definitive copies are furnished to customers, unless the Commission determines otherwise, having due regard to the adequacy of information disclosed and the public interest and

OCC, to date the only other options classes where pro rata exercise is permitted under OCC rules is for foreign currency flex options.

¹ See OCC Letter, *supra* note 2.

² The Commission notes that changes to OCC’s rules to accommodate new options assignment methods would still have to be submitted to the Commission under Section 19(b) of the Exchange Act. 15 U.S.C. 78s(b). Further, OCC must continue to ensure that the ODD is in compliance with the requirements of Exchange Act Rule 9b-1(b)(2)(i), 17 CFR 240.9b-1(b)(2)(i), including when future changes to options exercise procedures are made.

³ The Commission notes that any changes to the rules of the options exchanges concerning member firm assignment procedures would need to be submitted to the Commission under Section 19(b) of the Exchange Act. 15 U.S.C. 78s(b). See also note 5, *supra*.

⁴ 17 CFR 240.9b-1.

⁵ 17 CFR 240.9b-1(b)(2)(i).

protection of investors.⁹ In addition, five definitive copies shall be filed with the Commission not later than the date the amendment or supplement, or the amended options disclosure document, is furnished to customers. The Commission has reviewed the proposed Supplement, and finds it consistent with the protection of investors and in the public interest to allow the distribution of this document as of the date of this order.

It is therefore ordered, pursuant to Rule 9b-1 under the Exchange Act,¹⁰ that the proposed Supplement (SR-ODD-2004-01), which amends the ODD’s description of assignment methods, the risks of such assignments, and the description of how to exercise options, is approved. The Commission has also determined that definitive copies can be furnished to customers as of the date of this order.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.¹¹

Margaret H. McFarland,

Deputy Secretary.

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SMALL BUSINESS ADMINISTRATION

[Declaration of Disaster #3563]

Territory of American Samoa

As a result of the President’s major disaster declaration for Public Assistance on January 13, 2004, and subsequent amendment effective January 20, 2004 adding Individual Assistance, I find that The Island of Tutuila and The Manu’a Islands located within the Territory of American Samoa constitute a disaster area due to damages caused by high winds, high surf and heavy rainfall associated with Tropical Cyclone Heta that occurred on January 2, 2004, through January 6, 2004. Applications for loans for physical damage as a result of this disaster may be filed until the close of business on March 22, 2004, and for economic injury until the close of business on October 20, 2004, at the address listed below or other locally announced locations:

U.S. Small Business Administration,
Disaster Area 4 Office, P.O. Box
419004, Sacramento, CA 95841-9004.
The interest rates are:

⁹ This provision is intended to permit the Commission either to accelerate or extend the time period in which definitive copies of a disclosure document may be distributed to the public.

¹⁰ 17 CFR 240.9b-1.

¹¹ 17 CFR 200.30-3(a)(39).

¹⁶ 15 U.S.C. 78s(b)(2).

¹⁷ 17 CFR 200.30-3(a)(12).

¹ 17 CFR 240.9b-1.

² See letter from Jean M. Cawley, First Vice President and Deputy General Counsel, OCC, to Sharon Lawson, Senior Special Counsel, Division of Market Regulation, Commission, dated January 6, 2004 (“OCC letter”). See note 4, *infra*.

³ See Securities Exchange Act Release No. 48909 (December 11, 2003), 68 FR 74689 (December 24, 2003) (File No. SR-OCC-2003-05). According to