

to the Secretary of the Securities and Exchange Commission, 450 Fifth Street, NW., Washington, DC 20549, facts bearing upon whether the application has been made in accordance with the rules of the Amex and what terms, if any, should be imposed by the Commission for the protection of investors. The Commission, based on the information submitted to it, will issue an order granting the application after the date mentioned above, unless the Commission determines to order a hearing on the matter.

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

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Release No. 34-35205; File No. SR-PTC-04-08]

**Self-Regulatory Organizations; Participants Trust Company; Notice of Filing and Immediate Effectiveness of Proposed Rule Change Declaring a Dividend**

January 9, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> notice is hereby given that on December 28, 1994, the Participants Trust Company ("PTC") filed with the Securities and Exchange Commission ("Commission") the proposed rule change (File No. SR-PTC-94-08) as described in Items I, II, and III below, which Items have been prepared primarily 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 proposed rule change declares a dividend payable on January 20, 1995, to PTC's stockholders of record as of December 31, 1994.

**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. PTC 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*

As a condition to approving PTC's application for stock in the Federal Reserve Bank of New York, the Board of Governors of the Federal Reserve System ("Board of Governors") prohibited PTC from paying dividends to its stockholders.<sup>2</sup> The Board of Governors subsequently relieved PTC of the restriction on payment of dividends on the understanding that dividends, if declared, would be declared periodically by PTC's Board of Directors and paid at a rate not to exceed the 90-day United States Treasury bill rate in effect at the time the dividend is declared.<sup>3</sup>

The Commission approved PTC's practice of paying dividends out of net profits subject to the limitations imposed by the Board of Governors and subject to the further requirements that (i) prior to using excess income from invested principal and interest ("P&I") to pay a dividend, PTC's Board of Directors be advised of any amount related to the investment of P&I which has not been rebated and is part of the net profits used to declare the dividend and affirmatively approve the application of such excess P&I income for the dividend and (ii) PTC file a proposed rule change pursuant to Section 19(b)(3)(A) of the Act each time it declares a dividend.<sup>4</sup>

PTC has paid dividends on January 18, 1993 in the amount of \$.52 per share to stockholders of record as of the close of business on December 31, 1992<sup>5</sup> and on January 20, 1994 in the amount of \$.525 per share to stockholders of record as of the close of business on December

<sup>2</sup> Letter from William W. Wiles, Secretary of the Board, Board of Governors, to Thomas A. Williams, Milbank, Tweed, Hadley & McCloy (March 27, 1989) (approving PTC's application for stock in the Federal Reserve Bank of New York).

<sup>3</sup> Letter from Jennifer J. Johnson, Associate Secretary to the Board, Board of Governors, to Leopold S. Rassnick, Vice President and General Counsel, PTC (June 9, 1992). The State of New York Banking Department subsequently removed its restriction on the payment of dividends. Letter from Carmine M. Tenga, Deputy Superintendent of Banks, State of New York Banking Department, to Leopold S. Rassnick, Vice President and General Counsel, PTC (December 21, 1992).

<sup>4</sup> Securities Exchange Act Release No. 31746 (January 15, 1993), 58 FR 6319 [File No. SR-PTC-92-15] (notice of filing and order granting accelerated approval of proposed rule change).

<sup>5</sup> *Id.*

31, 1993.<sup>6</sup> At its meeting of December 21, 1994, PTC's Board of Director declared a dividend in the amount of \$1.00 per share, payable on January 20, 1995, to stockholders of record as of the close of business on December 31, 1994. This dividend rate does not exceed the 90-day United States Treasury bill rate in effect on December 21, 1994.<sup>7</sup> The dividend does not include any excess income attributable to investments of P&I as all such P&I related income with respect to fiscal year ended December 31, 1994, will be rebated to participants on a *pro rata* basis based on the amount of P&I disbursements to each participant.

PTC believes that the proposed rule change is consistent with Section 17A(b)(3)(D) of the Act<sup>8</sup> and the rules and regulations thereunder in that it provides for the equitable allocation of reasonable fees and other charges among participants.

*(B) Self-Regulatory Organization's Statements on Burden on Competition*

PTC does not believe that the proposed rule change will impose any burden on competition not necessary or appropriate in furtherance of the purposes of the Act.

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

PTC has not solicited comments with respect to the proposed rule change, and none have been received.

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

The foregoing rule change has become effective pursuant to Section 19(b)(3)(A)(i) of the Act<sup>9</sup> and subparagraph (e)(1) of Rule 19b-4<sup>10</sup> thereunder because the proposed rule change constitutes a stated policy, practice, or interpretation with respect to the meaning, administration, or enforcement of an existing rule of the self-regulatory organization. At any time within sixty days of the filing of such rule change, the Commission may summarily abrogate such rule change if it appears to the Commission that such action is necessary or appropriate in the

<sup>6</sup> Securities Exchange Act Release No. 33487 (January 18, 1994), 59 FR 3900 [File No. SR-PTC-93-07] (notice of filing and immediate effectiveness of proposed rule change).

<sup>7</sup> The 90-day United States Treasury bill rate, as published in *The Wall Street Journal* on December 21, 1994, was 5.61%.

<sup>8</sup> 15 U.S.C. § 78q-1(b)(3)(D) (1988).

<sup>9</sup> 15 U.S.C. § 78s(b)(3)(A)(i) (1988).

<sup>10</sup> 17 CFR 240.19b-4(e)(1) (1994).

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

public interest, for the protection of investors, or otherwise in furtherance of the purposes of the Act.

#### 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 PTC. All submissions should refer to File No. SR-PTC-94-08 and should be submitted by February 7, 1995.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.<sup>11</sup>

**Margaret H. McFarland,**

*Deputy Secretary.*

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[Release No. 34-35207; File No. SR-NASD-95-2]

#### **Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by National Association of Securities Dealers, Inc., Relating to the Effective Date of an Amendment to the Prompt Receipt and Delivery of Securities Interpretation Concerning Affirmative Determinations Made in Connection With Short Sales**

January 10, 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 January 9, 1995, the National Association of Securities Dealers, Inc. ("NASD" or "Association") filed with the Securities and Exchange Commission ("Commission" or "SEC") the proposed rule change as described in Item I, II, and III below, which Items

have been prepared by the NASD. The Commission is publishing this notice of 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 NASD is proposing to change the effective date of a rule change previously approved by the Commission regarding an amendment to the Interpretation of the Board of Governors—Prompt Receipt and Delivery of Securities ("Interpretation") issued by the NASD Board of Governors under Article III, Section 1 of the NASD Rules of Fair Practice that deals with affirmative determinations made by members in connection with short sales. Specifically, the NASD proposes to change the effective date of the amendment to the Interpretation to January 9, 1995, with the exception that one provision of the rule change will not go into effect until August 1, 1995. In particular, the provision of the rule change that states that annotations of affirmative determinations "must be made for each and every transaction since a 'blanket' or standing assurance that securities are available for borrowing is not acceptable to satisfy the affirmative determination requirement" will not go into effect until August 1, 1995.

#### **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 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. The 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*

On September 12, 1994, the SEC approved and NASD rule change (SR-NASD-94-32) that amended the Interpretation.<sup>1</sup> Specifically, the amended Interpretation requires members to annotate, on the trade ticket or on some other record maintained for

that purpose by the member firm, the following information:

1. if a customer assuers delivery, the member or associated person must annotate that conversation noting the present location of the securities; whether the securities are in good deliverable form; and whether they will be delivered to the firm within time for settlement; or

2. if the member or associated person locates the stock, an annotation must be made that identifies the individual and firm contacted who offered assurance that the shares would be delivered or were available for borrowing by settlement date; and the number of shares needed to cover the short sale.

The amendment also provided that the manner by which a member or person associated with a member annotates compliance with this "affirmative determination" requirement (e.g., marking the order ticket, recording inquiries in a log, etc.) is left for each individual firm to decide. In addition, the amendment also clarified that an affirmative determination and annotation of that affirmative determination must be made for each and every transaction since a "blanket" or standing assurance that securities are available for borrowing is not acceptable to satisfy the affirmative determination requirement. Thus, by requiring firms to annotate each and every affirmative determination, the amendment made clear the NASD's policy that firms can not rely on daily fax sheets of "borrowable stocks" to satisfy their affirmative determination requirements under the Interpretation.

In NASD Notice to Members 94-80, the NASD announced that the effective date of the amendments to the Interpretation would be November 30, 1994. Based upon feedback from a broad spectrum of NASD members that compliance with the amended Interpretation would not be possible by November 30, 1994, due to a variety of operational adjustments that needed to be made, the NASD has decided to postpone the effective date of the rule change until January 9, 1995, to give member firms sufficient time to prepare for the rule change.

In addition, in light of the NASD's concern that the prohibition against the use of daily fax sheets and other "blanket" or standing assurances may have created an unnecessarily burdensome regulatory requirement on NASD members, the NASD has decided to postpone the effective date of this provision of the amended Interpretation until August 1, 1995. The NASD's concerns arise because of its understanding of the manner in which

<sup>1</sup> Securities Exchange Act Release No. 34653 (September 12, 1994), 59 FR 47965 (September 19, 1994).

<sup>11</sup> 17 CFR 200.30-3(a)(12) (1994).