adopted, to the extent such rules are applicable.

10. The Trust will comply with all provisions of the 1940 Act requiring voting by shareholders (which, for these purposes, shall be the persons having a voting interest in the shares of the Trust), and in particular the Trust either will provide for annual 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) (although Applicants assert that the Trust is not one of the trusts described in this section) as well as with Sections 16(a) and, if and when applicable, Section 16(b). Further, the Trust will act in accordance with the Commission's interpretation of the requirements of Section 16(a) with respect to periodic elections of directors (or trustees) and with whatever rules the Commission may promulgate with respect thereto.

11. The Participating Insurance Companies and Citibank, at least annually shall submit to the Board such reports, materials or data as the Board may reasonably request so that it may fully carry out the obligations imposed upon it by these stated conditions, and said reports, materials, and data shall be submitted more frequently if deemed appropriate by the Board. The obligations of the Participating Insurance Companies to provide these reports, materials, and data to the Board when it so reasonably requests, shall be a contractual obligation of all Participating Insurance Companies under their agreements governing participation in each Portfolio or Other Portfolio.

Conclusion

For the reasons stated above, Applicants believe that the requested exemptions, in accordance with the standards of Section 6(c), 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.

Jonathan G. Katz,

Secretary.

[FR Doc. 95–20048 Filed 8–14–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36076; File No. SR–NASD–95–12]

Self-Regulatory Organizations; National Association of Securities Dealers, Inc.; Order Approving Proposed Rule Change Relating to Advertising and Sales Literature Filing and Review Requirements Under the Rules of Fair Practice and the Government Securities Rules

August 9, 1995.

I. Introduction

On May 10, 1995, the National Association of Securities Dealers, Inc. (''NASD'' or ''Association'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a proposed rule change[1] pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[2] and Rule 19b–4 thereunder.[3] The rule change amends Article III, Section 35 of the Rules of Fair Practice and Section 8 of the Government Securities Rules.

Notice of the proposed rule change, together with its terms of substance was provided by issuance of a Commission release[4] and by publication in the **Federal Register**.[5] Two comments were received in response to the Commission release, both raising concerns about the proposal. This order approves the proposed rule change.

II. Description

Under the rules as amended, the definitions of ''advertisement'' and ''sales literature'' will include electronic messages. The inclusion of the term ''electronic'' with regard to advertisements is intended to apply to communications available to all network subscribers including items displayed over network bulletin boards. As it applies to sales literature, the term ''electronic'' is intended to apply to messages sent directly to individuals or targeted groups. The term ''sales literature'' also will include telemarketing scripts. Generally, these scripts are intended to be read to prospective and existing customers or delivered electronically through a telemarketing service. They differ from other forms of telephone prospecting and customer contact in that these scripts are followed without variation by the caller.

Further, the rules will require that advertising and sales literature be approved internally by a registered principal prior to filing such materials with the NASD. Currently, the rules only require internal approval prior to the use of advertising and sales literature. Also, a registered principal will no longer be able to delegate his or her responsibility regarding internal approval procedures.

When material must be filed within a specified time frame, the rules will require members to provide the actual or anticipated date of first use or publication. For example, a firm that has never filed material with the Advertising Regulation Department is required to file its first advertisement at least ten days prior to first use and, therefore, under the rules as amended, will be required to provide the actual or anticipated date of first use.

The proposed rule change also will amend the scope of the rules relating to the use of recommendations by members. The amendment will make clear that the price of the security at the time the recommendation is made must be provided only when the recommendation is for corporate equities.

III. Comments

As noted above the Commission received two comment letters in response to the NASD's proposed rule change. The Investment Company Institute (''ICI'') expressed general support for the NASD's initiative, but indicated a number of concerns about the proposal.[6] First the ICI believes the requirements that only registered principals may approve advertising and sales literature would impose unnecessary burdens on members. The ICI believes legal or compliance officers are, in most cases, more qualified to handle the review and approval of advertising and sales literature than are registered principals. The ICI argues that since most legal or compliance officers are not registered principals, members will be forced to register such officers as principals, transfer review procedures to less qualified principals, or allow principals to rely on the opinions of the officers. The ICI sees no benefit in achieving such results. The ICI recommends that, instead of disrupting an industry practice that appears to be working well, the NASD should deal directly with the problem firms.

The ICI also recommends that the proposal to require materials to be

[1] The proposed rule change was initially submitted on April 10, 1995, and was amended on May 10, 1995, prior to the publication in the **Federal Register**.

[2] 15 U.S.C. § 78s(b)(1).

[3] 17 CFR 240.19b–4.

[4] Securities Exchange Act Release No. 35801 (June 2, 1995).

[5] 60 FR 30618 (June 9, 1995).

[6] Letter from Craig S. Tyle, Vice President & Senior Counsel, Securities and Financial Regulation, Investment Company Institute, to Jonathan G. Katz, Secretary, SEC (June 30, 1995).

approved internally prior to filing with the NASD should be revised to state that the material is submitted on a voluntary basis. The ICI is concerned that the use of the term ''accountable'' in the Commission's release could be construed as an attempt to impose liability on members based on filing materials with the NASD.

Lastly, the ICI is concerned that the application of the rules to electronic communications would be inconsistent with the application of the rules with respect to other forms of communications. For example, the ICI claims that if a member sponsors an electronic bulletin board, the NASD proposal would not distinguish between member advertising and other material posted by the public. The ICI recommends that the definition of ''advertisement'' be revised to clarify that messages posted by the public on member sponsored bulletin boards are not included in the definition. Further, the ICI believes that the definition of ''sales literature'' is overbroad. The ICI is concerned that the definition would include a personalized message to a particular individual and, instead, recommends limiting the definition to form letters sent to individuals or targeted groups.

The second commenter strongly endorsed the comments made by the ICI.[7] In particular, this commenter was concerned about the proposed requirement relating to registered principal approval of advertising and sales literature and the proposed inclusion of the word ''electronic'' in the definitions of ''advertisement'' and ''sales literature.'' [8]

The NASD responded to these comments in a letter dated July 24, 1995.[9] In response to the requirement that only registered principals will be able to approve advertising and sales literature, the NASD notes that while some unregistered legal or compliance officers perform the review function very well, the expertise and skill among the reviewers are inconsistent on an industry-wide basis and can result in inferior submissions to the NASD. The NASD believes that any burden imposed by the rule will be minimal. The NASD states that a significant number of firms have legal and compliance personnel that are already registered principals. Additionally, the NASD states that under the rule as proposed, such personnel do not need to be registered to continue to review materials, as long as a registered principal approved the material prior to submission. Moreover, the NASD argues that the steps necessary to register such personnel, which includes a one-time examination, are not overly burdensome. The NASD believes the requirement that a registered principal assume final approval responsibility will help ensure a satisfactory level of review is conducted by all reviewers. The NASD concludes that the improvement of the efficiency and quality of the review process, and the resulting benefits to the investing public, far outweigh the burdens discussed by the commenters.

The NASD also responded to the commenters' concern that the requirement regarding internal approval by members prior to filing submissions with the NASD could be interpreted as an attempt to establish a standard of culpability. In its letter, the NASD states that the rule is not intended to attach liability to, or establish a standard of culpability for, prefiled material. Instead, the rule will ensure that member firms' communications are in reasonable compliance with relevant SEC and NASD rules prior to submission to the NASD for review. The NASD states that this requirement is consistent with SEC recommendations made pursuant to the Commission's inspection of the NASD's program for reviewing member communications with the public. Under the rule, deficient filings will be returned and, if a pattern of deficiency is discovered, an internal review of member procedures may be appropriate.

Finally, the NASD responded to the commenters concerns regarding the inclusion of the term ''electronic'' in the definitions of ''advertisement'' and ''sales literature.'' The NASD states that the definition of advertisement in the proposed rule is not intended to apply to communications posted by members of the public on electronic bulletin boards sponsored by NASD members. The NASD claims that the definition of advertisement has never applied to communications by members of the general public. The NASD argues, therefore, that there is no need to amend the definition to clarify that it does not apply communications by the general public.

The NASD also claims that the definition of sales literature in the proposed rule is not intended to apply to a personalized message sent to a particular individual via electronic mail. The NASD states that such messages are not treated as sales literature but generally are treated as correspondence under Article III, Section 27(d) of the Rules of Fair Practice. The NASD stresses, however, that the definition of sales literature does apply to messages sent directly to targeted individuals or groups.

IV. Discussion

The Commission has determined to approve the NASD's proposal. The Commission finds that the rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to the NASD, including the requirements of Section 15A(b)(6) of the Act.[10] Section 15A(b)(6) requires, in part, that the rules of a national securities association be designed to prevent fraudulent and manipulative acts and practices; to promote just and equitable principles of trade; and to protect the public and the public interest.

The proposed rule change applies to member communication with the public. It will act to clarify issues regarding advertising and sales literature, as well as to codify existing rule interpretations regarding the scope of rules applicable to member recommendations.

The changes to the definitions of ''advertisement'' and ''sales literature'' will update those terms in an effort to alert members of their responsibilities when contacting the public via electronic means or by way of telemarketing scripts. The result should be reduced confusion among members and a more consistent application of NASD rules.

The proposed changes to the internal approval procedures will ensure an adequate degree of expertise and uniformity in the execution of such procedures. Further, the requirement that material be approved internally prior to filing with the NASD will ensure that members satisfy their existing compliance duties. The proposed amendment also will require members to include the actual or anticipated date that a particular communication will be published which will enable the NASD to enforce the existing rules regarding time tables for filing certain communications more effectively.

Lastly, the proposal will reduce member confusion by clarifying an existing interpretation with respect to recommendations made by members. The rules will be consistent with the existing practice of requiring the price at the time a recommendation is made to

[7] Letter from Laura Chasney, T. Rowe Price Associates, Inc., to Jonathan G. Katz, Secretary, SEC (July 5, 1995).

[8] *Id.* These concerns already have been summarized in the context of the ICI letter above.

[9] Letter from Suzanne E. Rothwell, Associate General Counsel, NASD, to Mark P. Barracca, Branch Chief, SEC (July 24, 1995).

[10] 15 U.S.C. § 78*o*–3(b)(6).

apply only to recommendations for corporate equity securities.

All of the changes noted above will promote fairness and protect investors and the public. The changes will provide members with a greater understanding of their responsibilities when communicating with the public. This, in turn, should result in an improved level of compliance by members. Additionally, the NASD will be in a better position to monitor such compliance.

It is therefore ordered, pursuant to Section 19(b)(2) of the Act, the proposed rule change SR–NASD–95–12 be, and hereby is, approved.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 95–20152 Filed 8–14–95; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 34–36075; File No. SR–PTC–95–05]

Self-Regulatory Organizations; Participants Trust Company; Notice of Filing and Order Granting Accelerated Approval of Proposed Rule Change Establishing a New Category for Participant Eligibility

August 9, 1995.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 (''Act''),[1] notice is hereby given that on August 1, 1995, the Participants Trust Company (''PTC'') filed with the Securities and Exchange Commission (''Commission'') the proposed rule change (File No. SR–PTC–95–05) 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.

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

The proposed rule change establishes a new category for participant eligibility for federally chartered corporations engaged in the purchase and/or securitization of mortgage-related assets.

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.[2]

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

Background

PTC was established as a depository to facilitate the prompt and accurate clearance and settlement of transactions in mortgage-backed securities. Participation criteria was established in accordance with the requirements of the Act and to allow appropriate eligible institutions to become participants. Article IV, Rule 1, Section 1 of PTC's rules lists the entities that are eligible to become participants and includes ''firms in such other categories as the Corporation [PTC] from time to time may determine.'' These entities must satisfy the financial criteria set forth in Article IV, Rule 1, Section 3 which states that entities in categories established by PTC ''shall maintain equity capital or regulatory capital in at least equivalent amounts * * *'' as other established categories of participants.

Proposed Category of Eligibility

The Federal National Mortgage Association (''FNMA'') is currently a limited purpose participant and holds a face amount of $100 billion of securities in its limited purpose account at PTC. A limited purpose participant, however, cannot receive deliveries against payment through PTC. FNMA therefore has sought to become a full purpose participant in PTC.

To facilitate the addition of FNMA and similar entities, such as the Federal Home Loan Mortgage Corporation (''FHLMC'') and the Federal Agricultural Mortgage Corporation (''Farmer Mac''), as full purpose participants, PTC is seeking to establish a new category of participants.[3] The new category designation would be ''federally chartered corporations engaged in the purchase and/or securitization of mortgage-related assets.''

PTC proposes that applicants in the new category be required to have equity capital of at least $100 million. This amount is equivalent to the most stringent equity and regulatory capital standards required by PTC in other established participant categories.[4]

PTC believes that the proposed rule change is consistent with Section 17A(b)(3)(F) of the Act[5] and the rules and regulations thereunder in that 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

Section 17A(b)(3)(F) of the Act[6] requires that the rules of a clearing agency be designed to promote the prompt and accurate clearance and settlement of securities transactions and 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 the addition of FNMA and similar entities as full purpose participants is consistent with these obligations. As full purpose participants these entities will be able to receive deliveries against payment through PTC, which as limited purpose participants they cannot do. This should allow entities such as FNMA and other federally chartered corporations whose transactions represent a substantial portion of the mortgage-backed securities market to conduct their purchase and

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[11] 17 CFR 200.30–3(a)(12).

[1] 15 U.S.C. § 78s(b)(1) (1988).

[2] The Commission has modified the text of the summaries prepared by PTC.

[3] FHLMC and Farmer Mac are not currently seeking to become full purpose participants in PTC.

[4] Article IV, Rule 1, Section 3 of PTC's rules requires that bank applicants for full purpose participation shall maintain equity capital, determined in accordance with generally acceptable accounting principles, of at least $100 million.

[5] 15 U.S.C. § 78q–1(b)(3)(F) (1988).

[6] 15 U.S.C. § 78q–1(b)(3)(F) (1988).