

(on behalf of itself and NRG's subsidiaries) will agree to indemnify each other for any actions taken by the indemnifying party through the effective date of the Plan where the statutory liability imposed on the indemnified party is solely by reason of Xcel's direct or indirect ownership of NRG and NRG's subsidiaries. Further, according to Applicants, NRG and its direct and indirect subsidiaries will not be reconsolidated with Xcel or any of its other affiliates for federal income tax purposes at any time after their March 2001 disaffiliation or otherwise entitled to the benefits of any tax sharing agreement with Xcel. Xcel alone will be entitled to the tax benefits associated with the worthless stock deduction Xcel expects to claim with respect to its investment in NRG. Xcel and NRG will enter into a tax matters agreement ("Tax Matters Agreement") that addresses liability for any unpaid taxes of NRG and Xcel for periods during which NRG and Xcel were part of the same consolidated, combined or unitary tax group, entitlement to any tax refunds for such periods, the control of contests for such periods, cooperation with respect to audits and such other matters as would be customary in a tax matters agreement between similarly-situated corporations.

Applicants state that Xcel has agreed, to the extent requested by NRG, to provide services to NRG under a transitional services agreement ("Transitional Services Agreement") for a specified period after the Effective Date. Xcel will receive compensation at cost for any services provided. Applicants state that at this time it is not expected that NRG will request any services under the Transitional Services Agreement.

Xcel and NRG will enter into an employee matters agreement under which various obligations with respect to employees and benefit plans will be allocated between Xcel and NRG as of the effective date of the Plan. Also, a tax allocation agreement ("Tax Allocation Agreement"), dated as of December 29, 2000, provided for all eligible affiliated corporations to join with Xcel in the filing of consolidated federal income tax returns, and also set forth procedures for allocating tax benefits among the parties. NRG and its direct and indirect subsidiaries will not be reconsolidated with Xcel or any of its other affiliates for federal income tax purposes at any time after their March 2001 disaffiliation or otherwise entitled to the benefits of the Tax Allocation Agreement. Applicants further state that Xcel's obligations under the Settlement Agreement and the Plan, including its obligations to make

the payments discussed above, will, according to Applicants, be contingent upon, among other things, the following:

- (i) Effective date of the Plan occurring on or prior to December 15, 2003;
- (ii) The receipt of releases in favor of Xcel from holders of at least 85 percent of the general unsecured claims held by NRG's creditors;
- (iii) Approval of the final Plan by the Bankruptcy Court and related documents containing terms satisfactory to Xcel, NRG and various groups of NRG's creditors; and
- (iv) The receipt by Xcel of all necessary regulatory approvals.

Applicants assert that the Plan and related transactions are reasonable and in the best interests of the investors in the NRG Applicants and of the investors in Xcel.

IV. Post Reorganization Ownership Structure

Under the Plan, the pre-petition shares of common stock issued by NRG and held indirectly by Xcel, through Xcel Wholesale, shall not receive any distributions under the Plan, and the Post shares shall be canceled and extinguished on the effective date of the Plan. As a consequence, Xcel's pre-petition shares in NRG will no longer have any claim to voting rights, dividends or any other rights with respect to NRG. The entire equity interest in Reorganized NRG will then be held by the existing creditors of NRG. NRG will continue to own 100% of the equity ownership of NRG PMI.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48281]

Broker-Dealer Financial Statement Requirements Under Section 17 of the Exchange Act

August 4, 2003.

Section 17(e)(1)(A) of the Securities Exchange Act of 1934 ("Exchange Act") requires that every registered broker-dealer annually file with the Commission a certified balance sheet and income statement, and section 17(e)(1)(B) requires that the broker-dealer annually send to its customers its

"certified balance sheet."¹ The Sarbanes-Oxley Act of 2002 ("Act")² established the Public Company Accounting Oversight Board ("Board")³ and amended section 17(e) to replace the words "an independent public accountant" with "a registered public accounting firm."⁴

The Act establishes a deadline for registration with the Board of auditors of financial statements of "issuers," as that term is defined in the Act.⁵ The Act does not provide a deadline for registration of auditors of broker-dealers that are not issuers ("non-public broker-dealers"). Application of registration requirements and procedures to auditors of non-public broker-dealers is still being considered.

Accordingly, we believe that it is consistent with the public interest and the protection of investors that non-public broker-dealers file with the Commission and send to their customers the documents and information required by section 17(e) certified by an independent public accountant instead of a registered public accounting firm until January 1, 2005, unless rules are in place regarding Board registration of auditors of non-public broker-dealers that set an earlier date.⁶

It is therefore ordered, pursuant to section 17(e) of the Exchange Act, that non-public broker-dealers may file with the Commission a balance sheet and income statement and may send to their customers a balance sheet certified by an independent public accountant instead of certified by a registered public accounting firm until January 1, 2005, unless rules are in place regarding Board registration of auditors of non-public broker-dealers that set an earlier date.

¹ Exchange Act Rule 17a-5 requires registered broker-dealers to provide to the Commission and to customers of the broker-dealer other specified financial information.

² Public Law 107-204.

³ Section 101 of the Act.

⁴ Section 205(c)(2) of the Act.

⁵ Section 2 of the Act defines "issuer." Section 102 of the Act establishes a specific deadline by which auditors of issuers must register with the Board. Based on the statutory deadline of 180 days after the Commission determined the Board was ready to carry out the requirements of the Act, that date is October 22, 2003. See Exchange Act Release No. 48180 (July 16, 2003).

⁶ We note the continued applicability of Exchange Act Rule 17a-5. We wish to highlight Exchange Act Rule 17a-5(g), which requires, among other things, that audits of broker-dealers be made in accordance with generally accepted auditing standards (GAAS). GAAS requires, for example, that audits be conducted with due professional care by independent persons with adequate technical training and proficiency as an auditor.