

SCANA and PSNC now seek authorization for PSNC to pay dividends out of capital or unearned surplus before taking into consideration any impairment of goodwill recognized as a result of the merger between the companies ("Merger"),<sup>1</sup> in addition to previous authorizations in prior financing orders ("Prior Orders"),<sup>2</sup> which permitted PSNC to pay dividends out of additional paid-in-capital to the amount of its aggregate retained earnings immediately prior to the Merger and out of earnings before the amortization of goodwill.

On February 9, 2000, in the Merger Order, the Commission authorized SCANA to acquire PSNC. SCANA registered as a holding company under the Act on February 11, 2000. SCANA now owns directly three public-utility companies, PSNC, SCE&G (which generates, transmits, distributes and sells electricity and purchases and sells natural gas in South Carolina) and GENCO (which owns and operates a 580 MW generating facility in Goose Creek, South Carolina and sells all of the power generated by the facility to SCE&G).

In the Prior Orders,<sup>3</sup> the Commission authorized SCANA, the three utility subsidiaries and the nonutility subsidiaries to engage, subject to certain limitations, in certain financing and related activities. Authorization for these financing related activities under the Prior Orders expired February 11, 2003.<sup>4</sup> PSNC's authorization, however, to pay dividends out of capital or unearned surplus was not subject to this expiration date.

PSNC was authorized to pay dividends out of the additional paid-in-capital account up to the amount of its aggregate retained earnings immediately prior to the Merger and out of earnings before the amortization of the goodwill arising from the Merger.<sup>5</sup> The authorization was granted to take into consideration (1) the application of the purchase method of accounting to the Merger that caused PSNC's retained earnings, from before the Merger, to be

recharacterized as additional paid-in-capital and (2) the substantial level of goodwill resulting from the Merger, which was to be "pushed-down" to PSNC and reflected as additional paid-in-capital after the Merger (effectively leaving PSNC with no retained earnings, the traditional source of dividend payments, but a balance sheet showing a significant equity level).

In connection with the Merger, SCANA obtained Commission approval for PSNC to pay dividends (1) out of the additional paid-in-capital account up to the amount of its aggregate retained earnings immediately prior to the Merger and (2) out of earnings before the amortization of the goodwill arising from the Merger.<sup>6</sup>

In 2001, after the Merger in 2000, Statement of Financial Accounting Standard ("SFAS") 142 (Goodwill and Other Intangible Assets) was issued. SFAS 142 eliminated the previously permitted amortization of goodwill and provides for, at least, an annual assessment to determine whether goodwill amounts are impaired. If the annual analysis determines that goodwill (or other intangibles) is impaired, the company must take an impairment charge in that year. SCANA did such an analysis and, as of January 1, 2002, PSNC was required to take an impairment charge of \$230 million against the value of its goodwill. For the years 2000 and 2001, PSNC amortized goodwill, as previously authorized.

Applicants now request that PSNC be authorized to pay dividends out of earnings before any deductions resulting from any impairment of either goodwill recognized as a result of the Merger. SCANA asserts that, based on anticipated earnings and dividend levels, as well as its estimated debt, PSNC will not have common equity below 30% over the next several years. Moreover, SCANA states that, through control of debt and dividend levels, PSNC's common equity can be maintained at a 30% level, at least (even if PSNC were to incur additional goodwill impairment charges). In no case will dividends be paid if the equity of PSNC, as a percentage of total capital, is below 30% on a consolidated basis.

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. 34-48829; File No. SR-Amex-2003-95]

### Self-Regulatory Organizations; Notice of Filing and Immediate Effectiveness of Proposed Rule Change by the American Stock Exchange LLC Relating to Fees for Amex Specialist and Registered Trader Transactions in ETFs

November 24, 2003.

Pursuant to Section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"),<sup>1</sup> and Rule 19b-4<sup>2</sup> thereunder, notice is hereby given that on November 13, 2003, the American Stock Exchange LLC ("Exchange" or "Amex") 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 Amex. 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

Amex proposes to modify transaction fees for specialist and registered trader transactions in portfolio depository receipts, index fund shares, and trust issued receipts (collectively referred to as "ETFs"). The text of the proposed rule change is available at Amex 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, Amex 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. Amex 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

The Exchange is proposing to reduce transaction fees charged specialists and traders for ETFs. Under the proposed fee changes, specialist per share transaction

<sup>1</sup> By order dated February 9, 2000 (the "Merger Order"), the Commission authorized SCANA, a South Carolina corporation, to acquire all of the issued and outstanding common stock of PSNC. See Holding Co. Act Release No. 27133.

<sup>2</sup> See Holding Co. Act Release Nos. 27135 and 27137 (Feb. 14, 2000). In Holding Co. Act Release Nos. 27341 and 27476 (Jan. 31, and Dec. 19, 2001, respectively) the Commission issued supplemental orders increasing various financing limitations throughout the authorization period.

<sup>3</sup> See *supra* note 2.

<sup>4</sup> New financing authorization was granted in Holding Co. Act Release No. 27649 (Feb. 12, 2003) (the "Current Financing Order").

<sup>5</sup> The only intangible in the Merger was goodwill.

<sup>6</sup> See the Prior Orders, *supra* note 2.

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

<sup>2</sup> 17 CFR 240.19b-4.