scheduled matters at the Closed Meetings.

The subject matter of the Open Meeting scheduled for Wednesday, September 17, 2003 will be:

1. The Commission will consider whether to propose for public comment new rules 12d1–1, 12d1–2, and 12d1–3 under the Investment Company Act of 1940. The recommended rules would broaden the ability of an investment company (''fund'') to acquire shares of another fund consistent with the protection of investors and the purposes of the Act. The Commission also will consider a recommendation to amend forms N–1A, N–2, N–3, N–4, and N–6, which are used by investment companies to register under the Investment Company Act and to offer their shares under the Securities Act of 1933. The recommended amendments would improve the transparency of the expenses of funds that invest in other funds by requiring that the expenses of the acquired funds be aggregated and shown as an additional expense in the fee table of the acquiring funds.

For further information, please contact Penelope Saltzman at (202) 942–0690.

2. The Commission will hear oral argument on an appeal of RichMark Capital Corporation, a registered broker-dealer, and Doyle Mark White, its 50% owner, from the decision of an administrative law judge.

The law judge found that respondents willfully violated the antifraud provisions of section 17(a) of the Securities Act of 1933, section 10(b) of the Securities Exchange Act of 1934, and Exchange Act Rule 10b–5. He suspended for 90 days RichMark's broker-dealer registration and White from association with any broker or dealer, assessed civil money penalties of $275,000 against RichMark and $55,000 against White, held RichMark and White jointly and severally liable for the disgorgement of $25,617.86 plus prejudgment interest, and imposed a cease-and-desist order.

Among the issues likely to be argued are:

a. Whether respondents made adequate disclosure to customers to whom they recommended and sold stock of PCC Group, Inc. (PCCG) that respondents were selling their own shares of PCCG at the same time;

b. Whether respondents made adequate disclosure to PCCG customers of respondents' financial incentive to sell PCCG stock arising from the compensation respondents received under an investment banking agreement between PCCG and RichMark; and

c. Whether sanctions should be imposed in the public interest.

For further information, contact the Office of the Secretary at (202) 942–7070.

3. The Commission will hear oral argument on an appeal by the Division of Enforcement from the decision of an administrative law judge dismissing proceedings against Robert J. Setteducati. The Division alleged that Setteducati, formerly executive vice president of H.J. Meyers & Co., Inc., a former registered broker-dealer, was part of an effort by the firm to manipulate the market for stock of Borealis Technology Corporation during 1996, in violation of antifraud provisions of the securities laws.

The law judge found that:

a. The market for Borealis had not been manipulated, and that

b. Even if the Borealis market had been manipulated, Setteducati's role in the Borealis offering and aftermarket trading was insufficient to hold him liable for any such misconduct.

Among the issues likely to be argued are:

a. Whether the evidence supports the Division's allegations; and

b. Whether and to what extent sanctions should be imposed in the public interest.

For further information, please contact the Office of the Secretary at (202) 942–7070.

The subject matter of the Closed Meeting scheduled for Wednesday, September 17, 2003 will be:

Post-argument discussion.

The subject matter of the Closed Meeting scheduled for Thursday, September 18, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions; and

Formal orders of investigation.

At times, changes in Commission priorities require alterations in the scheduling of meeting items.

For further information and to ascertain what, if any, matters have been added, deleted, or postponed, please contact the Office of the Secretary at (202) 942–7070.

Dated: September 9, 2003.

Jonathan G. Katz,

Secretary.

[FR Doc. 03–23346 Filed 9–9–03; 3:53 pm]

BILLING CODE 8010–01–M

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27720]

Filings Under the Public Utility Holding Company Act of 1935, as Amended (''Act'')

September 5, 2003.

Notice is hereby given that the following filing(s) has/have been made with the Commission under provisions of the Act and rules promulgated under the Act. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendment(s) is/are available for public inspection through the Commission's Branch of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by September 29, 2003, to the Secretary, Securities and Exchange Commission, Washington, DC 20549–0609, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing should identify specifically the issues of facts or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After September 29, 2003 the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Xcel Energy, Inc., et al. (70–9635)

Xcel Energy Inc. (''Xcel''), 800 Nicollet Mall, Minneapolis, Minnesota 55402, a holding company registered under the Act, and certain subsidiaries,[1]

[1] Xcel directly owns six utility subsidiaries (''Utility Subsidiaries'') that serve electric and/or natural gas customers in 12 states. These six utility subsidiaries are Northern States Power Company (''NSP–M''), a Minnesota corporation, Northern States Power Company (''NSP–W''), a Wisconsin corporation, Public Service Company of Colorado (''PSCo''), Southwestern Public Service Co. (''SPC''), Black Mountain Gas Company (''Black Mountain''), and Cheyenne Light, Fuel and Power Company (''Cheyenne''). Xcel's major nonutility subsidiaries (''Nonutility Subsidiaries'') are NRG Energy, Inc. (''NRG''), Seren Innovations, Inc., e prime, inc., and Eloigne Company. For purposes of this Application, the term ''Subsidiaries'' includes each of Xcel's utility subsidiaries and nonutility subsidiaries, except for NRG and its subsidiaries, as well as any future direct or indirect nonutility subsidiaries (other than of NRG or its subsidiaries) of Xcel whose equity securities may be acquired in accordance with an order of the Commission or in

Continued

(collectively, ''Applicants'' [2]) have filed a post-effective amendment to an application-declaration (''Application'') previously filed with the Commission under sections 6(a), 7, 9(a), 10, 12(b), 12(c), 12(f), 32 and 33 of the Act and rules 43, 45, 46, 53 and 54 under the Act.

Applicants request authority to extend the time period in which to engage in a variety of financing transactions and other related proposals, as more fully discussed below, commencing on the effective date of an order issued under this Application and ending June 30, 2005 (''Requested Authorization Period''). Applicants also request certain revisions to the terms and conditions for intrasystem financings and guarantees, including the implementation of a utility money pool, and the terms and conditions relating to the formation and operation of financing subsidiaries.

I. Background

By order dated August 22, 2000 (HCAR No. 27218) (''August 2000 Order''), the Commission authorized Xcel to, among other things, issue and sell common stock and long-term debt securities during a period through September 30, 2003 (''Original Authorization Period''), provided that the aggregate proceeds of these issuances, together with any long-term debt and preferred securities issued by financing entities established by Xcel, did not exceed $2.0 billion.

In the August 2000 Order, the Commission reserved jurisdiction over Xcel's request to use the proceeds of financings to make investments in, exempt wholesale generators (''EWGs''), as defined in section 32 of the Act, and foreign utility companies (''FUCOs''), as defined in section 33 of the Act, in excess of $1.2 billion. By order dated March 7, 2002 (HCAR No. 27494) (''100% Order'', and together with the August 2000 Order, ''Original Financing Orders''), the Commission released that reservation of jurisdiction. By order dated May 29, 2003 (HCAR No. 27681), the Commission authorized Xcel's request to declare and pay dividends out of capital and unearned surplus in an aggregate amount not to exceed $152 million. (''Supplemental Financing Order'' and, together with the Original Financing Orders, the ''Financing Orders'')

Applicants, in the Application, request that the Commission release its reservation of jurisdiction in the Supplemental Financing Order, so as to authorize an increase in the aggregate amount of common stock and long-term debt securities that Xcel can issue during the Requested Authorization Period from $2.0 billion, as authorized in the August 2000 Order, to $2.5 billion. Applicants also request that the financing authority granted by this Application be subject to certain general terms and conditions.

A. Financing Orders

In the Original Financing Orders, the Commission authorized the following transactions (''Financing Authority''):

- Xcel to issue and sell common stock and/or long-term debt securities for the uses described, provided that the aggregate proceeds received during the Original Authorization Period upon issuance of such common stock (exclusive of the issuance of common stock specifically authorized in the Original Financing Orders in respect of employee benefit plans and dividend reinvestment plans,[3] the issuance of common stock specifically authorized in the Commission order dated May 30, 2002 (HCAR No. 27533),[4] and the issuance of common stock in connection with the reorganization of NRG [5]) and the aggregate principal amount of long-term debt issued and outstanding at any one time during the Original Authorization Period, together with any long-term debt or preferred securities issued by Financing Subsidiaries (as defined in the Original Financing Orders) established by Xcel, not to exceed $2.0 billion;
- Xcel to have outstanding at any one time short-term debt with a maturity date not more than one year from the date of the borrowing in an aggregate principal amount of up to $1.5 billion;
- Cheyenne and Black Mountain to each issue short-term debt to non-associate lenders, when combined with borrowings from associate lenders, not to exceed $40 million for each of Cheyenne and Black Mountain;
- Xcel's Subsidiaries to borrow from each other and from Xcel, and for Xcel and any Subsidiary to enter into guarantees, obtain letters of credit, enter into expense agreements or otherwise provide credit support with respect to the debt and other obligations of other Subsidiaries (''Intrasystem Financings''), excluding transactions that are exempt under rules 45(b) and 52, as applicable, in an aggregate outstanding principal amount not to exceed $2.5 billion at any one time, provided that any short-term loans to Cheyenne and Black Mountain will be counted against their respective authorization for $40 million of short-term debt and shall not apply against this limit on Intrasystem Financings; [6]
- Xcel and its Subsidiaries to enter into hedging transactions with respect to existing and anticipated debt offerings, subject to certain limitations and restrictions;
- Xcel and its Subsidiaries to acquire, directly or indirectly, the equity securities of one or more of their Financing Subsidiaries created specifically for the purpose of facilitating the financing of the authorized and exempt activities of Xcel and the Subsidiaries through the issuance of debt or preferred securities, including but not limited to monthly income preferred securities, to third parties, the loaning of the proceeds of such financings to Xcel or such Subsidiaries, the guarantee of all or part of the obligations of any Financing Subsidiary under any securities issued by the Financing Subsidiary, and Xcel or a Subsidiary to enter into expense arrangements in respect of the obligations of any such Financing Subsidiary;[7]
- Xcel and its Nonutility Subsidiaries to acquire the securities of one or more companies (''Intermediate Subsidiaries''), which would be organized exclusively for the purpose of acquiring, holding and/or financing the acquisition of the securities of or other interest in one or more other Nonutility Subsidiaries, provided that Intermediate Securities may also engage in development activities and administrative activities relating to such subsidiaries;
- Xcel to restructure its nonutility interests, including the creation of new,

accordance with an exemption under the Act or the Commission's rules under the Act.

[2] As stated above, for purposes of this Application, NRG and its subsidiaries are not Applicants.

[3] Xcel was also authorized to issue and/or acquire an additional 30 million shares of its common stock (subject to adjustment for stock splits) from time to time through June 30, 2007 under various employee benefit plans and dividend reinstatement plans. This Application does not request any amendment to this authority.

[4] In HCAR No. 27533 (May 30, 2002), the Commission authorized Xcel to issue up to 33,394,564 shares of its common stock in connection with the consummation of the exchange offer for the publicly held shares of NRG common stock and upon subsequent exercise of options issued by NRG or conversion of the corporate units issued by NRG into shares of Xcel.

[5] On May 14, 2003, NRG and certain of NRG's subsidiaries filed voluntary petitions for bankruptcy under Chapter 11 of the U.S. Bankruptcy Code in the U.S. Bankruptcy Court for the Southern District of New York. Authorization for Xcel to issue common stock in accordance with the terms of NRG's Plan of Reorganization is being addressed in a separate application to the Commission under the Act.

[6] Applicants do not request an extension of this authority, but rather seek revised authority for intrasystem financings and guarantees.

[7] Applicants do not request an extension of this authority, but rather seek revised authority.

or the elimination of existing, Intermediate Subsidiaries, the consolidation of Nonutility Subsidiaries engaged in similar businesses, the spin-off of a portion of an existing business of a Nonutility Subsidiary to another Nonutility Subsidiary, the re-incorporation of an existing Nonutility Subsidiary in a different state, the transfer of authority from one Nonutility Subsidiary to another or other similar type arrangements, and to change the terms of any wholly-owned Nonutility Subsidiary's authorized capital stock capitalization as deemed appropriate by Xcel or other immediate parent company;

- Any Nonutility Subsidiary to pay dividends out of capital and unearned surplus; and
- The use by Xcel of financings to invest in EWGs and FUCOs, and to guarantee the obligations of EWGs and FUCOs, provided that Xcel's aggregate investment at the time of such investment shall not exceed 100% of its ''consolidated retained earnings,'' as defined in rule 53(a)(1)(ii).

In the Supplemental Financing Order, the Commission authorized Xcel to declare and pay two quarterly dividends out of capital and unearned surplus on its common stock and its preferred stock, in an aggregate amount of up to $152 million and the Commission reserved jurisdiction over Xcel's request to increase the aggregate amount of common stock and long-term debt securities that it may issue during the Original Authorization Period from the $2.0 billion (authorized by the August 2000 Order) to $2.5 billion. Applicants request that the Commission release that reserved jurisdiction.

II. Modifications to the Financing Parameters

Applicants request certain modifications to the financing conditions contained in the Financing Orders. Applicants request that the financing authority granted by the Application be subject to the following general terms and conditions, where appropriate:

Effective Cost of Money. The effective cost of money on debt and preferred securities issued to non-associate companies pursuant to authorization in the Financing Orders and/or an order in this matter will not exceed competitive market rates for securities of comparable credit quality with similar terms and features.

Maturity of Debt. The maturity of authorized indebtedness will not exceed 50 years.

Investment Grade Ratings. Applicants further represent that apart from securities issued for the purpose of Intrasystem Financings, no guarantees or other securities, other than common stock, may be issued in reliance upon the authorization granted by the Commission pursuant to the Application, unless (i) the security to be issued, if rated, is rated investment grade; (ii) all outstanding securities of the issuer (except in the case of Xcel, Xcel's preferred stock) that are rated are rated investment grade; and (iii) all outstanding securities of Xcel (except for Xcel's preferred stock) that are rated are rated investment grade. For purposes of this provision, a security will be deemed to be rated investment grade if it is rated investment grade by at least one nationally recognized statistical rating organization. Xcel's preferred stock is not rated investment grade. Applicants request that the Commission reserve jurisdiction over the issuance by Xcel of preferred stock and/or any other such securities that are rated below investment grade. Applicants further request that the Commission reserve jurisdiction over the issuance of any guarantee or other securities at any time that the conditions, set forth in clauses (i) through (iii) above, are not satisfied.

Capitalization Ratios. Xcel's common equity, as reflected on its most recent Form 10–K or Form 10–Q and as adjusted to reflect subsequent events that affect capitalization, will be at least 30% of consolidated total capitalization (the ''Xcel 30% Test'');[8] provided that in any event when Xcel does not satisfy the Xcel 30% Test, Xcel may issue common stock pursuant to this authorization. Similarly, the common stock equity of each Utility Subsidiary will be at least 30% of that Utility Subsidiary's total capitalization. Xcel requests that the Commission reserve jurisdiction over Xcel's authority to engage in the financing transactions authorized in the Financing Orders and in this proceeding at a time when Xcel does not satisfy the Xcel 30% Test.

Fees, Commissions and Other Remuneration. The underwriting fees, commissions and other similar remuneration paid in connection with the non-competitive issuance of any security issued by Xcel will not exceed the greater of (A) 5% of the principal or total amount of the securities being issued or (B) issuances expenses that are paid at the time in respect of the issuance of securities having the same or reasonably similar terms and conditions issued by similar companies of reasonably comparable credit quality.

Applicants state that the proceeds from the financings authorized by the Commission pursuant to the Application will be used for the same purposes authorized in the August 2000 Order, which are general corporate purposes, including (i) financing investments by and capital expenditures of Xcel and its Subsidiaries, (ii) the repayment, redemption, refunding or purchase by Xcel or any of its Subsidiaries of securities issued by such companies without the need for prior Commission approval pursuant to rule 42 or a successor rule, (iii) financing working capital requirements of Xcel and its Subsidiaries, and (iv) other lawful general purposes. In addition, any use of proceeds to make investments in any ''energy-related company,'' as defined in rule 58 under the Act, will be subject to the investment limitation of such rule, and any use of proceeds to make investments in any EWG or FUCO will be subject to the investment limitation and other conditions in the 100% Order or any order amending or replacing the 100% Order. Xcel further commits that no financing proceeds will be used to acquire the equity securities of any new subsidiary unless such acquisition has been approved by the Commission in this proceeding or in a separate proceeding or is in accordance with an available exemption under the Act or the rules.

Xcel requests that the Commission release jurisdiction reserved in the Supplemental Financing Order over Xcel's request to increase the aggregate amount of common stock and long-term debt securities that it may issue from $2.0 billion to $2.5 billion. Specifically, Xcel requests authorization, subject to the financing parameters in the Application, to issue and sell common stock and/or long-term debt securities for the uses described herein, provided that the aggregate proceeds received during the Requested Authorization Period upon issuance of such common stock (exclusive of the issuance of common stock specifically authorized in the Financing Orders with respect to employee benefit plans and dividend reinvestment plans, the issuance of common stock specifically authorized in the NRG Order and the issuance of common stock pursuant to NRG's Plan of Reorganization) and the aggregate principal amount of long-term debt issued and outstanding at any one time during the Requested Authorization Period, together with any long-term debt or preferred securities issued by

[8] Total capitalization is the sum of common stock equity, preferred stock, long-term debt (including current maturities) and short-term debt.

Financing Subsidiaries established by Xcel, shall not exceed $2.5 billion.

III. Common Stock and Long-Term Debt

Applicants propose that the issuance of common stock [9] and long-term debt of Xcel would be subject to the following general terms and conditions:

Common Stock. Subject to the limits described above and the other conditions described in the Application, Xcel may issue and sell common stock, options, warrants and stock purchase rights exercisable for common stock, or other equity-linked securities or contracts to purchase common stock. Such financings may be effected pursuant to underwriting agreements of a type generally standard in the industry. Public distributions may be pursuant to private negotiation with underwriters, dealers or agents, as discussed below, or effected through competitive bidding among underwriters. In addition, sales may be made through private placements or other non-public offerings to one or more persons. All such common stock sales will be at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets.

Xcel may also issue common stock in public or privately-negotiated transactions in exchange for the equity securities or assets of other companies, provided that the acquisition of any such equity securities or assets has been authorized in this proceeding or in a separate proceeding or is exempt under the Act.

Long-Term Debt. The long-term debt to be issued by Xcel under the authorization will be unsecured. Subject to the limits described above and the other conditions described in the Application, Xcel's long-term debt (a) may be subordinated in right of payment to other debt and other obligations of Xcel, (b) may be convertible into any other securities of Xcel, (c) will have maturities ranging from one to 50 years, (d) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount thereof, (e) may be entitled to mandatory or optional sinking fund provisions, (f) may provide for reset of the interest rate pursuant to a remarketing arrangement, and (g) may be called from existing investors by a third party. In addition, Xcel may have the right from time to time to defer the payment of interest on all or a portion of its long-term debt (which may be fixed or floating or ''multi-modal'', *i.e.*, where the interest is periodically reset, alternating between fixed and floating interest rates for each reset period).

Xcel states that long-term debt securities would be issued and sold directly to one or more purchasers in privately-negotiated transactions or to one or more investment banking or underwriting firms or other entities who would resell such securities without registration under the Securities Act of 1933, as amended, in reliance upon one or more applicable exemptions from registration, or to the public either (i) through underwriters selected by negotiation or competitive bidding or (ii) through selling agents acting either as agent or as principal for resale to the public either directly or through dealers.

IV. Intrasystem Financings and Guarantees

Applicants request authority for Xcel to enter into guarantees, obtain letters of credit, enter into expense agreements or otherwise provide credit support (''Guarantees'') with respect to the obligations of Utility Subsidiaries as may be appropriate to enable the Utility Subsidiaries to carry on in the ordinary course of their respective businesses, and Xcel and its Nonutility Subsidiaries to enter into Guarantees with respect to the obligations of Nonutility Subsidiaries as may be appropriate to enable such Nonutility Subsidiaries to carry on in the ordinary course of their respective businesses; provided that the aggregate principal amount of intrasystem financings and Guarantees pursuant to this paragraph shall not exceed $1.0 billion outstanding at any one time during the Requested Authorization Period. The $1.0 billion excludes any such Guarantees that are exempt pursuant to rules 45(b) and 52. The authorization requested will permit issuances of guarantees in situations where the exemptions provided by rules 45(b) and 52 are not applicable.

Xcel may charge each Subsidiary a fee for each Guarantee provided on behalf of the Subsidiary that is determined by multiplying the amount of any such guarantee by Xcel by the cost of obtaining the liquidity necessary to perform the guarantee (for example, bank line commitment fees or letter of credit fees) for the period of time the guarantee remains outstanding. Nonutility Subsidiaries may also charge each Nonutility Subsidiary a fee for each guarantee provided on its behalf determined in the same manner as specified above. Applicants also request authorization for Xcel to finance its Nonutility Subsidiaries and its Nonutility Subsidiaries to finance other Nonutility Subsidiaries in an aggregate principal amount outstanding at any one time during the Requested Authorization Period of not to exceed $400 million. This $400 million excludes any financings that are exempt pursuant to rules 45(b) and 52.

In the case of loans by Xcel or a Nonutility Subsidiary to a Nonutility Subsidiary, the company making the loan or extending the credit may charge interest at the same effective rate of interest as the daily weighted average effective rate of commercial paper, revolving credit and/or other short-term borrowings of such lending company, including an allocated share of commitment fees and related expenses. If no such borrowings are outstanding, then the interest rate shall be predicated on the Federal Funds' effective rate of interest as quoted daily by the Federal Reserve Bank of New York. In the limited circumstances where the Nonutility Subsidiary effecting the borrowing is not wholly-owned by Xcel, directly or indirectly, authority is requested under the Act for Xcel or a Nonutility Subsidiary to make the loans to the subsidiaries at interest rates and maturities designed to provide a return to the lending company of not less than its effective cost of capital. If loans are made to a Nonutility Subsidiary which is not wholly-owned, such Nonutility Subsidiary will not provide any services to any associate Subsidiary except a company which meets one of the conditions for rendering of services on a basis other than ''at cost'', as authorized in HCAR No. 27212 (August 16, 2000).

V. Utility Money Pool

In order to provide intrasystem financing to the Utility Subsidiaries, Applicants request authorization to operate a Utility Money Pool. The Utility Money Pool would include some or all of the Utility Subsidiaries as borrowers from and lenders to the pool. Xcel would participate in the Utility Money Pool, but only as a lender to the pool. Xcel Energy Services Inc. (''Xcel Services'') will act as the administrator of the Utility Money Pool. To the extent not exempted by rule 52, the Utility Subsidiaries request authorization to make unsecured short-term borrowings from the Utility Money Pool and to contribute surplus funds to the Utility Money Pool and to lend and extend credit to (and acquire promissory notes from) one another through the Utility Money Pool. Xcel requests authorization to contribute surplus funds and to lend and extend credit to the Utility

[9] Any common stock to be issued by Xcel under the settlement with NRG and NRG's creditors is addressed in a separate application to the Commission under the Act.

Subsidiaries through the Utility Money Pool. No loans through the Utility Money Pool would be made to, and no borrowings through the Utility Money Pool would be made by, Xcel.

Applicants believe that the cost of the proposed borrowings through the Utility Money Pool will generally be more favorable to the borrowing participants than the comparable cost of external short-term borrowings, and the yield to the participants contributing available funds to the Utility Money Pool will generally be higher than the typical yield on short-term investments.

Under the proposed terms of the Utility Money Pool, short-term funds would be available from the following sources for short-term loans to each of the Utility Subsidiaries from time to time: (1) Surplus funds in the treasuries of Utility Money Pool participants, (2) surplus funds in the treasury of Xcel, and (3) proceeds from bank borrowings by Utility Money Pool participants or the sale of commercial paper by the Utility Money Pool participants for loan to the Utility Money Pool (''External Funds''). The determination of whether a Utility Money Pool participant at any time has surplus funds to lend to the Utility Money Pool or shall borrow funds from the Utility Money Pool would be made by the participant's chief financial officer or treasurer, or by a designee thereof, on the basis of cash flow projections and other relevant factors, in that participant's sole discretion.

Utility Money Pool participants that borrow would borrow *pro rata* from each company that lends, in the proportion that the total amount loaned by each lending company bears to the total amount then loaned through the Utility Money Pool. On any day when more than one fund source (*e.g.*, surplus treasury funds of Xcel and other Utility Money Pool participants (''Internal Funds'') and External Funds), with different rates of interest, is used to fund loans through the Utility Money Pool, each borrower would borrow *pro rata* from each such fund source in the Utility Money Pool in the same proportion that the amount of funds provided by that fund source bears to the total amount of short-term funds available to the Utility Money Pool.

Borrowings from the Utility Money Pool would require authorization by the borrower's chief financial officer or treasurer, or by a designee. No party would be required to effect a borrowing through the Utility Money Pool if it is determined that it could (and had authority to) effect a borrowing at lower cost directly from banks or through the sale of its own commercial paper. The cost of compensating balances, if any, and fees paid to banks to maintain credit lines and accounts by Utility Money Pool participants lending External Funds to the Utility Money Pool would initially be paid by the participant maintaining such line. A portion of these costs—or all of such costs in the event a Utility Money Pool participant establishes a line of credit solely for purposes of lending any External Funds obtained thereby into the Utility Money Pool—would be retroactively allocated every month to the companies borrowing these External Funds through the Utility Money Pool in proportion to their respective daily outstanding borrowings of such External Funds.

If only Internal Funds make up the funds available in the Utility Money Pool, the interest rate applicable and payable to or by the Utility Money Pool participants for all loans of such Internal Funds outstanding on any day will be the rates for high-grade unsecured 30-day commercial paper sold through dealers by major corporations as quoted in The Wall Street Journal on the last business day of the prior calendar month. If only External Funds comprise the funds available in the Utility Money Pool, the interest rate applicable to loans of such External Funds would be equal to the lending company's cost for such External Funds (or, if more than one Utility Money Pool participant had made available External Funds on such day, the applicable interest rate would be a composite rate equal to the weighted average of the cost incurred by the respective Utility Money Pool participants for such External Funds).

In cases where both Internal Funds and External Funds are concurrently borrowed through the Utility Money Pool, the rate applicable to all loans comprised of such ''blended'' funds would be a composite rate equal to the weighted average of (a) the cost of all Internal Funds contributed by Utility Money Pool participants (as determined pursuant to the second-preceding paragraph above) and (b) the cost of all such External Funds (as determined pursuant to the immediately preceding paragraph, above).

Funds not required by the Utility Money Pool to make loans (with the exception of funds required to satisfy the Utility Money Pool's liquidity requirements) would ordinarily be invested in one or more short-term investments, including: (i) Interest-bearing accounts with banks; (ii) obligations issued or guaranteed by the U.S. government and/or its agencies and instrumentalities, including obligations under repurchase agreements; (iii) obligations issued or guaranteed by any state or political subdivision, provided that such obligations are rated not less than ''A'' by a nationally recognized rating agency; (iv) commercial paper rated not less than ''A–1'' or ''P-1'' or their equivalent by a nationally recognized rating agency; (v) money market funds; (vi) bank certificates of deposit; (vii) Eurodollar funds; and (viii) such other investments as are permitted by section 9(c) of the Act and rule 40 under the Act.

The interest income and investment income earned on loans and investments of surplus funds would be allocated among the participants in the Utility Money Pool in accordance with the proportion each participant's contribution of funds bears to the total amount of funds in the Utility Money Pool. Each Applicant receiving a loan through the Utility Money Pool would be required to repay the principal amount of such loan, together with all interest accrued, on demand. All loans made through the Utility Money Pool may be prepaid by the borrower without premium or penalty. Operation of the Utility Money Pool, including record keeping and coordination of loans, will be handled by Xcel Services under the authority of the appropriate officers of the participating companies. Xcel Services will administer the Utility Money Pool on an ''at cost'' basis.

Proceeds from the Utility Money Pool may be used by each Utility Subsidiary (i) for the interim financing of its construction and capital expenditure programs, (ii) for its working capital needs, (iii) for the repayment, redemption or refinancing of its debt and preferred stock, (iv) to meet unexpected contingencies, payment and timing differences and cash requirements, and (v) to otherwise finance its own business and for other lawful general corporate purposes. The Utility Subsidiaries request authority to borrow up to an amount at any one time outstanding from the Utility Money Pool as set forth below:

Utility subsidiary	Money pool limit (million)
NSP–M	$250
NSP–W	100
PSCo	250
SPS	100
Cheyenne	40
Black Mountain	40

Loans to Cheyenne and Black Mountain through the money pool will be counted against their respective $40 million limits applicable to short-term debt.

VI. Financing Subsidiaries

For the Requested Authorization Period, Applicants request that the terms and conditions in respect of Financing Subsidiaries be modified. Applicants request authority for Xcel and its Subsidiaries to acquire, directly or indirectly, the equity securities of one or more corporations, trusts, partnerships or other entities (''Financing Subsidiaries'') created specifically for the purpose of facilitating the financing of the authorized and exempt activities (including exempt and authorized acquisitions) of Xcel and the Subsidiaries through the issuance of debt or preferred securities, including but not limited to monthly income preferred securities, to third parties and the loaning of the proceeds of such financings to Xcel or such Subsidiaries. The proceeds of any securities issuance by a Financing Subsidiary would be loaned, dividended or otherwise transferred to Xcel or the Subsidiary that established such Financing Subsidiary. The proceeds of any securities issuances by a Financing Subsidiary would count against any applicable authorization limit of Xcel or a Subsidiary establishing such Financing Subsidiary as though Xcel or the Subsidiary had undertaken the issuance directly. Xcel or the Subsidiary that established such Financing Subsidiary, as applicable, may, if required, guarantee all or part of the obligations of such Financing Subsidiary under any securities issued by the Financing Subsidiary. Xcel or the Subsidiary that established such Financing Subsidiary, as applicable, also may enter into expense arrangements in respect of the obligations of such Financing Subsidiary. However, the amount of any such guarantee by Xcel or a Subsidiary would not be counted against the authorization limit in respect of intra-system financings and guarantees discussed above.

Any such long-term debt or preferred securities would be issued with terms and features negotiated or based upon, or otherwise determined by, competitive capital markets, and in any event consistent with the general terms set forth above for Xcel. Any such preferred securities would have dividend rates or methods of determining the same, redemption provisions, conversion or put terms and other terms and conditions as Xcel may determine at the time of issuance. In addition, all issuances of preferred securities will be at rates or prices, and under conditions negotiated pursuant to, based upon, or otherwise determined by competitive capital markets.

Georgia Power Company (70–10137)

Georgia Power Company (''Georgia Power''), a wholly owned utility subsidiary of the Southern Company (''Southern''), a registered holding company, 241 Ralph McGill Boulevard, NE., Atlanta, Georgia, 30308, has filed a declaration under section 12(b) of the Act and rules 45 and 54 under the Act.

Georgia Power owns 50% of the outstanding common stock of Southern Electric Generating Company (''SEGCO''), an indirect utility subsidiary of Southern. Alabama Power Company (''Alabama Power''), a wholly owned utility subsidiary of Southern, owns the remaining outstanding common stock of SEGCO. SEGCO owns units one through four of the 1,000 megawatt Ernest C. Gaston steam plant near Wilsonville, Alabama. The plant sells all of its energy and capacity to Georgia Power and Alabama Power in proportion to their ownership interest in the plant. Alabama Power acts as SEGCO's agent in the operation of the plant.

On May 22, 2003 SEGCO issued its Series A 4.40% Senior Notes due May 15, 2013 in an aggregate principal amount of $50 million. As part of the financing, Alabama Power guaranteed repayment of the SEGCO debt. Georgia Power proposes to agree by letter to reimburse Alabama Power pro rata (based on Georgia Power's ownership of the outstanding equity securities of SEGCO as of the date the payment is due) for any payments made by Alabama Power under its guarantee. The letter will provide that the commitment of Georgia Power will terminate when Georgia Power ceases to own an interest in SEGCO.

Unitil Corporation (70–10161)

Unitil Corporation (''Unitil''), a registered holding company under the Act, 6 Liberty Lane West, Hampton, New Hampshire 03842, (''Applicant'') has filed an application/declaration (''Application'') with the Commission under sections 6(a) and 7 of the Act.

Unitil requests authority to issue and sell for cash prior to January 31, 2004 up to 717,600 additional shares of its common stock, no par value (the ''Additional Common Stock''). Unitil has an authorized total of 8,000,000 shares of common stock, of which 4,753,630 shares were issued and outstanding as of June 30, 2003.

Unitil contemplates that the Additional Common Stock would be issued and sold to the public through underwriters, who would acquire the Additional Common Stock for their own accounts and may resell the shares of the Additional Common Stock in one or more transactions, including negotiated transactions, either at a fixed public offering price or at varying prices determined at the times of sale. The offering is expected to be effected in accordance with an underwriting agreement of a type generally standard in the industry and Unitil may grant the underwriters a ''green shoe'' option to purchase additional shares at the same price then offered solely for the purpose of covering over-allotments (provided that the total number of shares offered initially, together with the number of shares issued in accordance with any ''green shoe'' option would not exceed the number of shares authorized for issuance by any order granted under the Application). Applicant states that it is also possible that Unitil would sell the Additional Common Stock through dealers or agents or directly to a limited number of purchasers or a single purchaser.

The aggregate price of the Additional Common Stock being sold through any underwriter or dealer would be calculated based on either the specified selling price to the public or the closing price of the common stock on the day the offering is announced. Public distributions may be in accordance with private negotiation with underwriters, dealers or agents as discussed above or effected through competitive bidding among underwriters. In addition, sales may be made through private placements or other non-public offerings to one or more persons. The sale of the shares of Additional Common Stock would be at rates or prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets. The underwriting fees, commissions or other similar remuneration paid in connection with the issue, sale or distribution of the Additional Common Stock in accordance with the Application (not including any original issue discount) would not exceed 7% of the principal or total amount of the Additional Common Stock being issued.

Unitil states that it intends to use the net proceeds of the offering (after deduction of fees, commissions and expenses) (i) to make cash capital contributions to its subsidiaries, including, without limitation, its public utility subsidiaries, Fitchburg Gas and Electric Light Company (''Fitchburg'') and Unitil Energy Systems, Inc. (''Unitil Energy''), in accordance with rule 45(a)(4) of the Act; (ii) to repay its outstanding short-term indebtedness; and (iii) for other general corporate

purposes consistent with the requirements of the Act, including to meet working capital needs. Unitil Energy and Fitchburg are expected, in turn, to use any funds contributed by Unitil to repay outstanding short-term indebtedness incurred for additions, extensions and betterments to their respective property, plant and equipment and to finance future expenditures for additions, extensions and betterments to property, plant and equipment. Unitil represents that no proceeds from any offering authorized in any order of the Commission issued on the Application will be used (i) to acquire any exempt wholesale generators or foreign utility companies, as those terms are defined in sections 32 and 33 of the Act, respectively; or (ii) to acquire or form a new subsidiary unless that financing is consummated in accordance with an order of the Commission or an available exemption under the Act.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03–23152 Filed 9–10–03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–48447; File No. SR–CHX–2003–15]

Self-Regulatory Organizations; The Chicago Stock Exchange, Incorporated; Order Granting Approval to Proposed Rule Change to Amend the CHX Membership Dues and Fees Schedule to Increase the Specialist Tape Credits for Certain Trades in Tape A and Tape B Securities

September 4, 2003.

I. Introduction

On June 2, 2003, The Chicago Stock Exchange, Incorporated (''CHX'' or ''Exchange'') filed with the Securities and Exchange Commission (''Commission''), pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 (''Act'')[1] and Rule 19b–4 thereunder,[2] a proposed rule change to increase the specialist tape credits for certain trades in Tape A and Tape B securities. The proposed rule change was published for comment in the **Federal Register** on June 30, 2003.[3]

The Commission received one comment on the proposal.[4] On August 11, 2003, the CHX responded to the comment letter.[5] This order grants approval to the proposed rule change.

II. Summary of Comments

The NYSE expressed its opposition to ''all market data rebates and other forms of payment for order flow'' as being inconsistent with the Act and the protection of investors.[6] The NYSE stated that the CHX ''currently rebates nothing for trades in Nasdaq securities, rebates as much as 50 percent of market data revenues for trades in Tape B securities, and rebates more than 50 percent of market data revenues for certain trades in Tape A securities.'' The proposed rule change, according to the NYSE, ''would exacerbate this disparity, permitting CHX to provide greater economic incentives to specialist firms to purchase Tape A order flow than to purchase Nasdaq and Tape B order flow.''[7] Because the CHX offers ''no rationale for different rebate levels based on the market on which a security is listed'' the NYSE asks the Commission to institute disapproval proceedings with respect to the proposed rule change.[8]

In its response to the NYSE Letter, the CHX states that its rules with regard to market data revenue sharing programs are consistent with Commission staff guidance.[9] Additionally, the CHX explains that its Tape A credit program ''provides only the possibility of a 70% tape credit'' and that the rates delineated in the CHX's fee schedule ''are marginal rates and thus apply only to those transactions that exceed identified thresholds.''[10] Furthermore, the CHX states its market share in Tape A issues has declined, and that it shared ''less than 20% of its overall Tape A market data revenues with Exchange specialists'' in June 2003.[11]

III. Discussion and Commission Findings

As set forth in its July 2, 2002 Order of Summary Abrogation (''Abrogation Order''),[12] the Commission will continue to examine the issues surrounding market data fees, the distribution of market data rebates, and the impact of market data revenue sharing programs on both the accuracy of market data and on the regulatory functions of self-regulatory organizations. In the interim, the Commission believes it is reasonable to allow the CHX to modify the tape credits available to CHX specialists for trades in Tape A and Tape B securities as described in the instant proposed rule change.

Thus, 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[13] and, in particular, the requirements of section 6 of the Act[14] and the rules and regulations thereunder. The Commission finds specifically that the proposed rule change is consistent with section 6(b)(5) of the Act,[15] in that it is designed to promote just and equitable principles of trade, to foster cooperation and coordination with persons engaged in regulating securities transactions, and to remove impediments to and perfect the mechanism of a free and open market and a national market system.

The decision to allow the CHX to increase the tape credits for trades in Tape A and Tape B securities, however, is narrowly drawn, and should not be construed as resolving the issues raised in the Abrogation Order, and does not suggest what, if any, future actions the Commission may take with regard to market data revenue sharing programs.

IV. Conclusion

It is therefore ordered, pursuant to section 19(b)(2) of the Act[16], that the proposed rule change (SR–CHX–2003–15) be, and it 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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[1] 15 U.S.C. 78s(b)(1).

[2] 17 CFR 240.19b–4.

[3] *See* Securities Exchange Act Release No. 48076 (June 23, 2003), 68 FR 38732.

[4] *See* July 22, 2003 letter from Darla C. Stuckey, Corporate Secretary, New York Stock Exchange, Inc. (''NYSE''), to Jonathan G. Katz, Secretary, Commission (''NYSE Letter'').

[5] *See* August 11, 2003 letter from Ellen J. Neely, Senior Vice President and General Counsel, CHX, to John S. Polise, Senior Special Counsel, and Joseph P. Morra, Special Counsel, Division of Market Regulation, Commission (''CHX Letter'').

[6] NYSE Letter at 2.

[7] *Id.*

[8] *Id.*

[9] CHX Letter at 2.

[10] *Id.*

[11] *Id.*

[12] Securities Exchange Act Release No. 46159 (July 2, 2002), 67 FR 45775 (July 10, 2002) (File Nos. SR–NASD–2002–61, SR–NASD–2002–68, SR–CSE–2002–06, and SR–PCX–2002–37) (Order of Summary Abrogation).

[13] In approving this proposed rule change, the Commission has considered the proposed rule's impact on efficiency, competition, and capital formation. 15 U.S.C. 78c(f).

[14] 15 U.S.C. 78f.

[15] 15 U.S.C. 78f(b)(5)

[16] 15 U.S.C. 78s(b)(2).

[17] 17 CFR 200.30–3(a)(12).