whether to grant an exemption pursuant to section 3(a)(5) requires us to determine whether Enron is the type of holding company to which section 3(a)(5) was intended to apply.

Finally, if a more fully developed record shows that Enron satisfies the more specific statutory criteria for any one of the three exemptions discussed above, we must nevertheless decline to grant the exemption if we find that the exemption would be ''detrimental to the public interest or the interest of investors or consumers.''[12] In this particular matter, in light of the acknowledged disruptions to Enron's business and financial affairs,[13] we believe that the question of whether an exemption would be detrimental to the public interest or the interest of investors and consumers is itself a question that should be the subject of a hearing before any exemption is granted.

We also recognize, however, that the question of whether an exemption would be detrimental to the public interest or the interest of investors and consumers is a question that we need reach only if it first appears that Enron satisfies any of the specific statutory criteria for an exemption. We therefore conclude that the most efficient way to proceed with a hearing on Enron's applications is in two phases. Phase I will be for the limited purpose of determining whether Enron satisfies any of the particular statutory criteria for an exemption under section 3(a)(1), section 3(a)(3), or section 3(a)(5) of the Act, and evidence and arguments presented shall be limited to those specific questions. Phase II, if the hearing officer determines it to be necessary, will be for the purpose of determining whether granting an exemption to Enron would be detrimental to the public interest or the interest of investors or consumers.

For the foregoing reasons,

It Is Ordered that a hearing shall be commenced, pursuant to section 19 of the Act and in accordance with the Commission's Rules of Practice,[14] at a time and place to be fixed by further order, for the purpose of determining whether Enron satisfies the statutory criteria for an exemption under section 3(a)(1), section 3(a)(3), or section 3(a)(5) of the Act and, if so, whether granting such an exemption would be detrimental to the public interest or the interest of investors or consumers;

It Is Further Ordered that Commissioner Roel C. Campos shall preside as hearing officer at the hearing, shall exercise the authority described in Commission Rule of Practice 111,[15] and shall, pursuant to Commission Rule of Practice 360,[16] prepare an initial decision;

It Is Further Ordered that Enron and the Division of Investment Management shall be parties to the proceeding and that Enron, as the proponent of the exemptive orders it seeks, shall, pursuant to 5 U.S.C. § 556(d), bear the burden of proving that it is entitled to such exemptive orders;

It Is Further Ordered that any person who seeks to intervene as a party pursuant to Rule of Practice 210(b)[17] shall file a motion to intervene with the Secretary of the Commission no later than October 21, 2002, and any person who seeks to participate on a limited basis pursuant to Rule of Practice 210(c)[18] shall file a motion for leave to participate with the Secretary of the Commission no later than 20 days prior to the date fixed for the Phase I hearing. A movant shall serve a copy of any such motion upon Enron at the address noted above in accordance with Rule 150(c) of the Commission's Rules of Practice, and proof of such service shall be filed with the Secretary of the Commission contemporaneously with the motion. Any such motion shall state whether the movant seeks to intervene or participate for purposes of Phase I only, Phase II only, or both Phases, and shall describe the nature and extent of the movant's interest with respect to each such Phase. Such motions as have already been received concerning Enron's applications shall be considered as timely filed in this matter,[19] although movants may supplement those motions in light of this Order if such supplements are received no later than October 21, 2002;

It Is Further Ordered that, without prejudice to the ability of the hearing officer to decide that additional factual or legal issues should be considered as part of the hearing in this matter, particular attention should be given at the hearing to the questions described above; and

It Is Further Ordered that the Secretary of the Commission shall give notice of the hearing by sending copies of this Order by certified mail to Enron at the address noted above; that the Secretary of the Commission shall mail a copy of this Order to each of the persons that have sought to intervene concerning Enron's applications; and that notice to all other persons shall be given by publication of this Order in the **Federal Register**.

By the Commission.

Margaret H. McFarland

Deputy Secretary.

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[12] 15 U.S.C. § 79c(a).

[13] See note 9, *supra.*

[14] 17 CFR Part 201.

[15] 17 CFR § 201.111.

[16] 17 CFR § 201.360.

[17] 17 CFR § 201.210(b).

[18] 17 CFR § 201.210(c).

[19] Motions to intervene have been received from Southern California Edison Company (received March 27, 2002), Sithe/Independence Power Partners, L.P. (received April 16, 2002), and the Electric Power Supply Association (received April 16, 2002).

SECURITIES AND EXCHANGE COMMISSION

[Release No. 35–27573]

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

October 4, 2002.

Notice is hereby given that the following filing(s) has/have been made with the Commission pursuant to 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 October 29, 2002, 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 October 29, 2002, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Energy East Corporation, et al. (70–9609)

Energy East Corporation (''Energy East''), P.O. Box 12904, Albany, New York 12212–2904, a registered holding company under the Act, along with its direct and indirect subsidiaries listed below, has filed a post-effective

amendment to its previously filed Application/Declaration (''Application'') under sections 6(a), 7, 9(a), 10, 12(b), 12(c) and 13(b) of the Act and Rules 45, 46, 54 and 80–92 under the Act. The other applicants are (i) Energy East Enterprises, Inc. (''Energy East Enterprises''), a Maine corporation that is a wholly-owned subsidiary of Energy East and a public utility holding company exempt from registration by order under section 3(a)(1); (ii) Maine Natural Gas Corporation (''Maine Natural Gas''), a Maine corporation and a wholly-owned subsidiary of Energy East; (iii) Energy East Capital Trust 1, a wholly-owned subsidiary of Energy East, all of P.O. Box 12904, Albany, New York 12212–2904; (iv) RGS Energy Group, Inc. (''RGS''), a New York corporation that is a wholly-owned subsidiary of Energy East and a public utility holding company exempt from registration by order under section 3(a)(1); (v) RGS's wholly-owned subsidiary, New York State Electric & Gas Corporation (''NYSEG''), a New York corporation; (vi) RGS's wholly-owned subsidiary, Rochester Gas and Electric Corporation (''RG&E''), a New York corporation, all of 89 East Avenue, Rochester New York 14649–0001; (vii) CMP Group, Inc. (''CMP''), a Maine corporation that is a wholly-owned subsidiary of Energy East and is a public utility holding company exempt from registration by order under section 3(a)(1); (viii) CMP's wholly-owned subsidiary, Central Maine Power Company (''Central Maine Power''), a Maine corporation and a public utility holding company exempt by order under section 3(a)(2); (ix) Maine Electric Power Company, Inc., (''MEPCo''), a Maine corporation in which CMP has a 78.3% voting interest;[1] (x) Central Maine Power's wholly-owned subsidiary, NORVARCO,[2] a Maine corporation, all of 83 Edison Drive, Augusta, Maine 04336; (xi) Energy East's wholly-owned subsidiary, Connecticut Energy Corporation (''Connecticut Energy''), 855 Main Street, Bridgeport, Connecticut 06604, a Connecticut corporation and a public utility holding company exempt from registration by order under section 3(a)(1) of the Act; (xii) The Southern Connecticut Gas Company (''SCG''), a Connecticut corporation and wholly-owned subsidiary of Connecticut Energy at the same address as Connecticut Energy; (xiii) Energy East's wholly-owned subsidiary, CTG Resources, Inc. (''CTG''), 10 State House Square, Hartford, Connecticut 06144–1500, a public utility holding company exempt from registration by order under section 3(a)(1); (xiv) CTG's wholly-owned subsidiary, Connecticut Natural Gas Corporation (''CNG''), a Connecticut corporation at the same address as CTG; (xv) Energy East's wholly-owned subsidiary, Berkshire Energy Resources (''Berkshire Energy''), 115 Cheshire Road, Pittsfield, Massachusetts 01201, a Massachusetts corporation and a public utility holding company exempt from registration by order under section 3(a)(1); and (xvi) Berkshire Energy's wholly-owned subsidiary, The Berkshire Gas Company (''Berkshire Gas''), a Massachusetts corporation, at the same address as Berkshire Energy. Connecticut Energy, RGS, CMP, CTG Resources, and Berkshire Energy are referred to as the ''Intermediate Holding Companies.'' NYSEG, Southern Connecticut Gas, Maine Natural Gas, Central Maine Power, MEPCo, NOVARCO, Connecticut Natural Gas, Berkshire Gas and RG&E are referred to as the ''Utility Subsidiaries.'' Energy East also owns other subsidiary companies that are not public-utility companies under the Act (collectively, ''Nonutility Subsidiaries'').

On August 31, 2000, the Commission issued an order (Holding Company Act Release No. 27224) (''First Merger Order'') authorizing Energy East's acquisition of CMP, CTG, and Berkshire Energy (''First Merger'').

On September 12, 2000, the Commission issued an order (Holding Company Act Release No. 27228) (''Financing Order'') authorizing (i) ongoing financing activities of Energy East and its subsidiaries; (ii) intrasystem extensions of credit; (iii) the creation, acquisition or sale of Nonutility Subsidiaries; (iv) the payment of dividends out of capital and unearned surplus; and (v) other related matters pertaining to Energy East and its subsidiaries.

On June 27, 2002, the Commission issued an order authorizing the acquisition of RGS by Energy East (Holding Company Act Release No. 27546) (''RGS Merger Order''), by which RGS became a direct subsidiary of Energy East (''RGS Merger'').

The amended application seeks several modifications of the authorizations granted in the Financing Order with respect to the ongoing financing activities of Energy East and its subsidiaries and other related matters. The proposed modifications are required in order to reflect the acquisition of RGS and the inclusion of RGS and its subsidiaries as new direct and indirect subsidiaries of Energy East.

In the Financing Order, the following authorizations, among others, were granted for the authorization period beginning September 12, 2000, and ending March 21, 2003:

1. Energy East was granted authorization to issue and sell common stock, preferred stock, and unsecured debentures having maturities of up to 50 years (''Debentures'') in an aggregate amount not to exceed $2.5 billion, and unsecured short-term indebtedness having maturities of one year or less (''Short-Term Debt'') in an aggregate principal amount at any time outstanding not to exceed $750 million, provided that the aggregate principal amount of all indebtedness of Energy East at any time outstanding (including Short-Term Debt, Debentures, and debt incurred to finance the First Merger and the RGS Merger) would not exceed $1.5 billion (''Energy East Debt Limitation'').

2. The Nonutility Subsidiaries were authorized to enter into guaranties, obtain letters of credit, enter into expense agreements and otherwise provide credit support to or on behalf of other Nonutility Subsidiaries in an aggregate principal amount not to exceed $700 million outstanding at any one time, exclusive of any guaranties and other forms of credit support that are exempt under rule 45(b) and rule 52, provided that the amount of any Nonutility Subsidiary guaranties with respect to obligations of any rule 58 subsidiary shall also be subject to the limitations of rule 58(a)(1). The Nonutility Subsidiaries providing this credit support were also authorized to charge each subsidiary a fee for each guaranty provided on its behalf that is not greater than the cost, if any, of obtaining the liquidity necessary to perform the guaranty.

3. The Nonutility Subsidiaries were authorized to acquire or construct Nonutility energy assets in the United States (''Energy-Related Assets'') that would be incidental to their energy marketing, brokering and trading operations in an amount up to $500 million.

Financings authorized in the Financing Order were subject to the following limitations: (1) The effective cost of money on Energy East short-term debt will not exceed the competitive market rates available at the time of issuance to companies with comparable credit ratings with respect to debt having similar maturities; the effective

[1] The remaining interests are owned by two other Marine utilities. MEPCo owns and operates a 345kV transmission interconneciton between the Maine-New Brunswick, Canada, international border at Orient, Maine.

[2] NORVASRCO holds a 50% general partnership interest in Chester SVC Partnership, a general partnership that owns a static var compensator located in Chester, Maine, adjacent to MEPCo's transmission interconnection.

cost of money on all short-term financing with respect to Utility Subsidiaries will not at the time of issuance exceed 300 basis points over the comparable term London Interbank Offered Rate (''LIBOR''); (2) maturity of long-term indebtedness will not exceed 50 years; (3) the underwriting fees, commissions, or similar remuneration paid in connection with the issue, sale, or distribution of a security are estimated not to exceed 5% of the principal amount of the financing; and (4) Energy East's common equity, as reflected on its most recent From 10–K or Form 10–Q and as adjusted to reflect subsequent events that affect capitalization, will be at least 30% of its pro forma consolidated capitalization throughout the authorization period. Similarly, the common stock equity of each Intermediate Holding Company and each Utility Subsidiary will be at least 30% of total capitalization throughout the authorization period. The Financing Order stated that proceeds from the financings would be used for general corporate purposes, including: (1) Financing, in part, investments by and capital expenditures of Energy East and its subsidiaries, including the funding of future investments in exempt wholesale generators, as defined in section 32 of the Act, foreign utility companies, as defined in section 33 of the Act, companies engaged or formed to engage in activities permitted by rule 58 (''Rule 58 Subsidiaries''), and exempt telecommunications companies; (2) the repayment, redemption, refunding or purchase by Energy East or any subsidiary of any of its own securities under rule 42 under the Act; and (3) financing working capital requirements of Energy East and its subsidiaries.

Energy East and its subsidiaries request approval of the following modifications to the authorizations granted by the Commission in the Financing Order:

1. Energy East requests authority to extend the authorization period (currently ending March 31, 2003) so that the new authorization period will end on September 30, 2005 (''Authorization Period'').

2. Energy East requests authority to increase, from $2.5 billion to $3.9 billion, Energy East's authority to issue and sell from time to time during the Authorization Period common stock, preferred stock, and unsecured debentures having maturities of up to 50 years (''Debentures''), subject to the sublimit on outstanding indebtedness in paragraph 3 below.[3]

3. Energy East requests authority to increase the Energy East Debt Limitation from $1.5 billion to $2.3 billion, and to increase to $2.3 billion the aggregate principal amount of Debentures it is authorized to issue and sell.

4. Energy East requests authority for RG&E to issue, sell and have outstanding at any one time during the Authorization Period debt securities, to the extent not otherwise exempt in accordance with Rule 52(a), with maturities of one year or less in the aggregate principal amount of $200 million. This short-term financing could include, without limitation, commercial paper sold in established commercial paper markets, bank lines and debt securities issued under RG&E's respective indentures and note programs.

5. Energy East requests authority for RGS to issue, sell and have outstanding at any one time during the Authorization Period debt securities with maturities of one year or less in the aggregate principal amount of $100 million. This short-term financing could include, without limitation, commercial paper sold in established commercial paper markets, bank lines and debt securities issued under RGS's respective indentures and note programs. In addition, RGS will not issue any indebtedness in contravention of any pre-existing orders of any state utility commission.

6. Energy East requests authority for RGS during the Authorization Period to provide guaranties and other forms of credit support with respect to the securities or other obligations of subsidiaries of RGS (''RGS Guaranties'') in an aggregate principal amount not to exceed $100 million, provided that the amount of any RGS Guaranties in respect of any Rule 58 Subsidiary shall also be subject to the limitations of Rule 58(a)(1). RGS may charge its subsidiaries a fee for each guaranty provided on its behalf that is not greater than the cost, if any, of providing the liquidity necessary to perform the guaranty (for example, bank line commitment fees or letter of credit fees, plus other transactional expenses). RGS will not issue any guaranties in contravention of any orders of any state utility commission.

7. Energy East requests authority to increase from $700 million to $750 million Energy East's Nonutility Subsidiaries' authority during the Authorization Period to provide guaranties and other forms of credit support with respect to obligations of other Nonutility Subsidiaries, exclusive of any guaranties that are exempt in accordance with rule 45(b) and rule 52 (''Nonutility Subsidiary Guaranties''). Nonutility Subsidiary Guaranties would be subject to the terms and conditions of the Financing Order.

8. Energy East requests authority to increase from $500 million to $750 million the authority of Energy East's Nonutility Subsidiaries during the Authorization Period to invest in certain types of nonutility energy-related assets (''Energy-Related Assets'') that are incidental to the energy marketing activities of those companies or the capital stock of companies substantially all of whose physical assets consist of Energy-Related Assets, in accordance with the terms and conditions of the Financing Order. Energy East intends to file a post-effective amendment in this proceeding which will describe the general terms and amounts of each non-exempt security and request a supplemental order of the Commission authorizing the issuance of those securities.

In order to be exempt under rule 52(b), any loans by Energy East to a Nonutility Subsidiary or by one Nonutility Subsidiary to another must have interest rates and maturities that are designed to parallel the lending company's effective cost of capital. Applicants request that in the limited circumstances where the Nonutility Subsidiary making the borrowing is not wholly-owned by Energy East, directly or indirectly,[4] that Energy East or a Nonutility Subsidiary, as the case may be, be authorized to make loans to these subsidiaries at interest rates and maturities designed to provide a return to the lending company of not less than its effective cost of capital. Applicants state that if these loans are made to a Nonutility Subsidiary, that company will not sell any services to any associate Nonutility Subsidiary unless that company falls within one of the categories of companies to which goods and services may be sold on a basis other than ''at cost.'' [5] Furthermore, in

[3] Energy East proposes to leave the amount of Short-Term Debt authorized in the Financing Order unchanged at $750 million.

[4] Energy East's current, less-than-wholly-owned Nonutility Subsidiaries are: Downtown Cogeneration Associates, LP, South Jersey Energy Solutions, LLC, PEI Power II, LLC, and South Glens Falls Energy, LLC.

[5] These companies include:

(i) A FUCO or foreign EWG which derives no part of its income, directly or indirectly, from the generation, transmission, or distribution of electric energy for sale within the United States;

(ii) An EWG which sells electricity at market-based rates which have been approved by the

Continued

the event any of these loans are made, Energy East will include in the next certificate filed under rule 24 in this matter substantially the same information as that required on Form U–6B–2 with respect to each transaction.

9. As a result of the accounting treatment of the RGS Merger, the retained earnings of RGS were greatly reduced. For this reason RGS requests authorization to pay dividends out of capital and unearned surplus in an amount up to its retained earnings prior to the Merger. In addition, RGS and its subsidiaries seek authorization to pay dividends out of earnings before any amortization of intangibles recognized as a result of the Merger and any impairment of either goodwill or other intangibles recognized as a result of the Merger.[6]

Applicants state that the transactions authorized under the requested supplemental order would be undertaken in accordance with the terms and conditions set forth in the Financing Order and in the amended Application. To the extent that the following listed general terms and conditions set forth in the amended Application and recited below conflict with any general terms and conditions set forth in the Financing Order, the general terms and conditions set forth in the Financing Order would be deemed to be modified:

The effective cost of money on long-term debt borrowings in accordance with authorizations granted under the Application will not exceed the greater of (a) 500 basis points over the comparable-term U.S. Treasury securities or (b) a gross spread over U.S. Treasuries that is consistent with similar securities of comparable credit quality and maturities issued by other companies. The effective cost of money on short-term debt borrowings in accordance with the authorizations granted in the Application will not exceed the greater of (a) 500 points over the comparable-term LIBOR or (b) a gross spread over LIBOR that is consistent with similar securities of comparable credit quality and maturities issued by other companies. The dividend rate on any series of Preferred Stock will not exceed the greater of (a) 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term equal to the term of that series of Preferred Stock or (b) a rate that is consistent with similar securities of comparable credit quality and maturities issued by other companies. The maturity of indebtedness will not exceed 50 years. Preferred Stock may not have any mandatory redemption provisions. The underwriting fees, commissions, or other similar remuneration paid in connection with the non-competitive issue, sale, or distribution of a security in a accordance with the Application (not including any original issue discount) will not exceed 5% of the principal or total amount of the security being issued.

All outstanding Debentures issued by Energy East under the Financing Order were at the time of issuance, and will continue to be, rated at least investment grade by a nationally recognized statistical rating organization. In addition, Energy East undertakes that it will not issue any Debentures that are not at the time of original issuance rated at least investment grade by a nationally recognized statistical rating organization. NYSEG, RG&E and Central Maine Power commit to maintain at least investment grade senior secured and senior unsecured debt ratings by at least one nationally recognized rating agency.

Energy East also requests that the Commission release jurisdiction over the Tax Allocation Agreement previously filed as Exhibit B in Pre-effective Amendment No. 1 to the Application. Energy East seeks to retain the benefit (in the form of the reduction in consolidated tax) that is attributable to its interest expense associated with the Debentures issued to help finance the cash portions of the consideration paid in the RGS Merger and the unsecured debt issued to help finance the cash portions of the consideration in the First Merger.

In all other respects, Energy East proposes that the Financing Order remain unchanged as a result of the amended Application and any supplemental order issued by the Commission in response, except that the new Authorization Period shall also apply to all other authorizations in the Financing Order that are not modified in any supplemental order.

National Fuel Gas Company, et al. (70–10074)

National Fuel Gas Company (NFG), a registered holding company; National Fuel Gas Distribution Corporation (''Distribution''); National Fuel Gas Supply Corporation; Horizon Energy Development Inc. and its subsidiaries; Highland Forest Resources Inc.; Leidy Hub Inc.; Data-Track Account Services Inc.; Seneca Independence Pipeline Company, all of 10 Lafayette Square, Buffalo, New York 14203; Seneca Resources Corporation and its subsidiaries; Upstate Energy Inc.; Niagara Independence Marketing Company, all of 1201 Louisiana Street, Suite 400, Houston, Texas 77002; National Fuel Resources Inc. and Horizon Power Inc. (''Horizon Power''), both of 165 Lawrence Bell Drive, Suite 120, Williamsville, New York 14221, (collectively, ''Applicants''), have filed an application-declaration (''Application'') under sections 6(a), 7, 9(a), 10, 12(b), 12(c), 12(e) and 12(f) of the Act and rules 43, 45, 46, 62, and 65 under the Act.

The Applicants include one utility subsidiary, which is Distribution. The remaining Applicants, excluding NFG, are nonutility subsidiaries (''Nonutility Subsidiaries''). Distribution and the

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Federal Energy Regulatory Commission (''FERC''), provided that the purchaser is not one of the Utility Subsidiaries;

(iii) A ''qualifying facility'' (''QF'') within the meaning of the Public Utility Regulatory Policies Act of 1978, as amended (''PURPA''), that sells electricity exclusively (a) at rates negotiated at arms'-length to one or more industrial or commercial customers purchasing such electricity for their own use and not for resale, and/or (ii) to an electric utility company (other than a Utility Subsidiary) at the purchaser's ''avoided cost'' as determined in accordance with the regulations under PURPA;

(iv) A domestic EWG or QF that sells electricity at rates based upon its cost of service, as approved by FERC or any state public utility commission having jurisdiction, provided that the purchaser thereof is not one of the Utility Subsidiaries; or

(v) A Rule 58 Subsidiary or any other Nonutility Subsidiary that (a) is partially-owned by Energy East, provided that the ultimate purchaser of such goods or services is not a Utility Subsidiary or EE Management (or any other entity that Energy East may form whose activities and operations are primarily related to the provision of goods and services to the Utility Subsidiaries or EE Management), (b) is engaged solely in the business of developing, owning, operating and/or providing services or goods to Nonutility Subsidiaries described in clauses (i) through (iv) immediately above, or (c) does not derive, directly or indirectly, any material part of its income from sources within the United States and is not a public-utility company operating within the United States.

[6] As a result of the Merger, RGS recognized approximately $634 million of goodwill and $12 million of intangible assets. Statement of Financial Accounting Standards No. 142 requires that goodwill no longer be amortized, but instead be tested at least annually for impairment. Statement 142 also requires an intangible asset with an indefinite life that is not amortized to be tested for impairment annually, or more frequently if circumstances indicate it might be impaired. Approximately $4 million of the intangible assets recognized as a result of the Merger are being amortized. The annual amortization expense is $1.4 million.

In the Financing Order, the Commission authorized the companies Energy East previously acquired to pay dividends out of earnings before amortization of goodwill. Because goodwill and certain intangible assets recognized as a result of the RGS' Merger with Energy East are not amortized, any decrease in the value of those assets is recognized as an impairment instead of amortization expense. Therefore, RGS is requesting authorization to pay dividends out of earnings before any impairment of goodwill and any impairment or amortization of intangible assets recognized as a result of the Merger.

Nonutility Subsidiaries are collectively referred to as ''Subsidiaries.''

In summary, the Applicants request approval to: (a) Carry out a program of external financing, credit support arrangements, and intrasystem financing; (b) acquire financing subsidiaries (''Financing Subsidiaries'') and special purpose subsidiaries (''Special Purpose Subsidiaries''); (c) continue the NFG money pool; (d) enter into hedging transactions; (f) make changes in the capital structure of majority-owned Subsidiaries; and (g) reorganize Nonutility Subsidiaries. Authority for the various requests is sought for the period through December 31, 2005 (''Authorization Period''). The financing authority sought in this proceeding will replace the current financing order for NFG (''Current Financing Order'') (HCAR No. 26847, March 20, 1998, as modified by HCAR No. 27170, April 21, 2000).

External Financing by NFG

NFG requests authority to increase its equity and long-term debt capitalization during the Authorization Period in an aggregate amount of up to an additional $1.5 billion through the issuance and sale from time to time, directly or indirectly through one or more Financing Subsidiaries or Special Purpose Subsidiaries, of any combination of common stock, preferred securities, unsecured long-term debt, stock purchase contracts and/or stock purchase units, excluding any shares of common stock that may be issued under NFG's shareholder rights plan.

Except in accordance with a further order of the Commission, NFG will not publicly issue any long-term debt or preferred securities (or to the extent they are rated, stock purchase contracts and/or stock purchase units) unless these securities are rated at the time of issuance at the investment grade level as established by at least one ''nationally recognized statistical rating organization,'' as that term is used in paragraphs (c)(2)(vi)(E), (F) and (H) of rule 15c3–1 under the Securities Exchange Act of 1934. Applicants request that the Commission reserve jurisdiction over the issuance by NFG of any securities that are rated below investment grade.

NFG proposes to use the proceeds of the financings authorized by the this Application, together with other available funds, to (i) make investments in Subsidiaries so they can finance capital expenditures, (ii) fund short-term loans to certain Subsidiaries either directly or through the NFG money pool as described below, (iii) finance future investments in ''exempt wholesale generators'' (''EWGs'') and ''foreign utility companies'' (''FUCOs''), subject to the limitations of rule 53 or other order of the Commission, and ''energy-related'' and ''gas-related'' companies, subject to the limitations of rule 58, (iv) acquire, retire or redeem securities issued by NFG or any Financing Subsidiary or Special Purpose Subsidiary as described below, and (v) provide working capital and other general corporate needs of NFG and its Subsidiaries. Distribution proposes to utilize the proceeds of authorized money pool borrowings temporarily to fund capital projects, to finance inventories, and for other general corporate purposes.

The terms of inter-company loans by NFG to its Subsidiaries will be designed to parallel the effective cost of NFG's long-term debt or short-term debt, as applicable, and the terms will reflect an equitable allocation of placement fees, commitment fees, underwriting or selling fees and commissions and discounts, if any, as well as any associated rating agency fees paid or incurred by NFG in connection with the issuance of long-term debt or short-term debt.

The Applicants represent that no financing proceeds will be used to acquire the equity securities of any new company unless this acquisition has been approved by the Commission or is in accordance with an available exemption under the Act. NFG further represents that it will not undertake any transaction otherwise authorized by the Commission during the Authorization Period that would cause the common equity of NFG, as a percentage of its consolidated capitalization (inclusive of short-term debt), to fall below 30%, and will not undertake any transaction otherwise authorized by the Commission during the Authorization Period that would cause the common equity of Distribution, as a percentage of capitalization of Distribution, to fall below 30%. NFG's forecasted cash flow analysis and capitalization forecast for the calendar years 2002 through 2005, which assumes that NFG will issue $351 million of common stock out of the $1.5 billion overall long-term financing authority requested, indicate that NFG's common equity will remain above 30% of its consolidated capitalization for the period.

Common Stock: NFG seeks authority to issue and sell additional shares of its authorized common stock, par value $1.00 per share (''Common Stock''), or options or warrants exercisable for Common Stock, according to underwriting or purchase agreements of a type generally standard in the industry. Public distributions may be according to private negotiation with underwriters, purchasers, dealers or agents, as discussed below, or effected through competitive bidding. In addition, sales may be made through private placements or other non-public offerings to one or more persons. All Common Stock sales will be at prices and under conditions negotiated or based upon, or otherwise determined by, competitive capital markets.

Specifically, NFG may issue and sell Common Stock through underwriters or dealers, through agents, or directly to a limited number of purchasers or a single purchaser. If underwriters are used in the sale of Common Stock, the securities will be acquired by the underwriters for their own account and may be resold from time to time in one or more transactions, including negotiated transactions, at a fixed public offering price or at varying prices determined at the time of sale. Common Stock may be offered to the public either through underwriting syndicates (which may be represented by a managing underwriter or underwriters designated by NFG) or directly by one or more underwriters acting alone. Common Stock may be sold directly by NFG or through agents. If dealers are utilized in the sale of Common Stock, NFG will sell the Common Stock to the dealers as principals. Any dealer may then resell the Common Stock to the public at varying prices to be determined by the dealer at the time of resale.

NFG may also issue Common Stock and/or purchase shares of its Common Stock in the open market for purposes of reissuing the shares, and/or options, warrants or other stock purchase rights exercisable for 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 equity securities or assets has been authorized in a separate proceeding or is exempt under the Act or the rules under the Act. The value of Common Stock issued in exchange for equity securities or assets of another company will be counted against the overall limitation on financing. The value will be as determined in accordance with any agreement with the seller or, if no value is specified in any agreement, then the value will be the closing price of NFG's Common Stock on the New York Stock Exchange on the trading day next preceding the date of the acquisition.

NFG also proposes to issue Common Stock under plans (''Stock Plans'') that allow shareholders, customers, officers, employees, non-employee directors and new investors to acquire shares of

Common Stock. Currently, NFG maintains the National Fuel Direct Stock Purchase and Dividend Reinvestment Plan, which provides for purchasing shares of Common Stock directly from NFG and permits participants to reinvest cash dividends in shares of Common Stock without the payment of any brokerage commissions or service charges. NFG also maintains (i) 401(k) and Employee Stock Ownership Plans that allow employees to invest in Common Stock and reinvest cash dividends paid on the Common Stock, in addition to a variety of other investment alternatives, (ii) various award and option plans that provide for the issuance of one or more of the following to key employees: Incentive stock options, nonqualified stock options, stock appreciation rights, restricted stock, and performance units or performance shares, and (iii) a Director Stock Plan, under which it issues shares of Common Stock to its non-employee directors as partial consideration for their services as directors.

NFG proposes to issue shares of its Common Stock, as well as stock options, restricted stock awards, performance units, performance shares, and other Common Stock-based awards in order to satisfy its obligations under the Stock Plans. Shares of Common Stock issued or purchased for delivery under the Stock Plans may either be newly issued shares, treasury shares or shares purchased by NFG in the open market with its own funds (either currently or under forward contracts) for purposes of reissuance under any Stock Plan. NFG will make open-market purchases of Common Stock in accordance with the terms of or in connection with the operation of the Stock Plans as provided for in rule 42 under the Act. NFG also proposes, within the limitations set forth in the Application, to issue and/or purchase shares of Common Stock, according to these existing Stock Plans as they may be amended or extended, and similar plans or plan funding arrangements adopted without any additional Commission order. Stock transactions of this variety would, therefore, be treated the same as other stock transactions for which authority is sought in this Application. Finally, in connection with the adoption of any new Stock Plan or any extension of or amendment to an existing Stock Plan, NFG requests authorization to solicit any required shareholder approvals without further order of the Commission.

Preferred Securities: NFG, directly or through a Financing Subsidiary or Special Purpose Subsidiary, also proposes to issue and sell shares of its authorized preferred stock, par value $1.00 per share and/or other types of unsecured preferred securities (collectively, ''Preferred Securities'') in one or more series with rights, preferences, and priorities as may be designated in the instrument creating each series, as determined by NFG's board of directors or a committee of the board. Preferred Securities may be redeemable or may be perpetual in duration. The dividend or distribution rate on any series of Preferred Securities will not exceed at the time of issuance 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term equal or closest to the term of the Preferred Securities. Dividends or distributions on any series of Preferred Securities will be made periodically and to the extent funds are legally available for that purpose, but may be made subject to terms which allow the issuer to defer dividend payments or distributions for specified periods. Preferred Securities may be convertible or exchangeable into shares of Common Stock.

Long-term Debt: NFG, directly or through a financing subsidiary, also proposes to issue and sell from time to time additional long-term indebtedness (''Long-term Debt''). Long-term Debt of a particular series (a) will be unsecured, (b) may be convertible into any other authorized securities of NFG, (c) will have a maturity ranging from one year to 50 years, (d) will bear interest at a rate not to exceed at the time of issuance 500 basis points over the yield to maturity of a U.S. Treasury security having a remaining term equal or closest to the term of the Long-term Debt, (e) may be subject to optional and/or mandatory redemption, in whole or in part, at par or at various premiums above the principal amount, (f) may be entitled to mandatory or optional sinking fund provisions, (g) may provide for reset of the coupon according to a remarketing arrangement, and (h) may be called from existing investors by a third party. The maturity dates, interest rates, redemption and sinking fund provisions and conversion features, if any, with respect to the Long-term Debt of a particular series, as well as any associated placement, underwriting or selling agent fees, commissions and discounts, if any, will be established by negotiation or competitive bidding.

Stock Purchase Contracts and Stock Purchase Units: NFG, directly or through a financing subsidiary, may also issue and sell from time to time stock purchase contracts (''Stock Purchase Contracts''), including contracts obligating holders to purchase from NFG and/or NFG to sell to the holders, a specified number of shares or aggregate offering price of Common Stock at a future date. The consideration per share of Common Stock may be fixed at the time the Stock Purchase Contracts are issued or may be determined by reference to a specific formula set forth in the Stock Purchase Contracts. The Stock Purchase Contracts may be issued separately or as part of units (''Stock Purchase Units'') consisting of a Stock Purchase Contract and Long-term Debt and/or Preferred Securities and/or debt securities of third parties, including U.S. Treasury securities, securing holders' obligations to purchase Common Stock under the Stock Purchase Contracts. The Stock Purchase Contracts may require holders to secure their obligations in a specified manner.

Short-term Debt: To provide financing for general corporate purposes, including making advances to participating subsidiaries through the NFG money pool, making advances directly to nonutility subsidiaries, and temporarily funding investments in new or existing subsidiaries, NFG requests authorization to issue and reissue from time to time during the Authorization Period, up to $750 million at any time outstanding of unsecured short-term debt securities in the form of promissory notes evidencing borrowings under its credit facilities, commercial paper notes, and other forms of short-term financing generally available to borrowers with investment grade credit ratings. The maturity of all Short-term Debt will be less than one year and will bear interest at a rate not to exceed at the time of issuance 300 basis points over the London Interbank Offered Rate (LIBOR) for maturities of up to one year.

Commercial Paper: Commercial paper may be sold by NFG, from time to time, in established domestic or foreign commercial paper markets directly or through dealers and placement agents at prevailing discount rates, or at prevailing coupon rates, at the date of issuance for commercial paper of comparable quality and maturities sold to commercial paper dealers generally. It is expected that the dealers and placement agents acquiring commercial paper from NFG will re-offer the paper at a discount to corporate, institutional and, with respect to foreign commercial paper, also to individual investors. Corporate and institutional investors may include, among others, commercial banks, insurance companies, pension funds, investment trusts, mutual funds, foundations, colleges and universities, finance companies and nonfinancial

corporations. Back-up bank lines of credit for 100% of the outstanding amount of commercial paper may be required in order to obtain an investment grade rating by the credit rating agencies. NFG currently has a committed credit facility which acts as back-up to its commercial paper program.

Other Credit Facilities: National also proposes to establish credit facilities with various banks and/or other financial institutions and to issue and sell, from time to time, short-term notes. These notes would bear interest at rates comparable to, or lower than, those available through other forms of short-term borrowing with similar terms as contemplated in this Application. The total amount of notes outstanding at any time, when added to the aggregate amounts of short-term borrowing outstanding under other forms of short-term borrowing contemplated in this Application, would not exceed the total amount of Short-term Debt for which authorization is requested. Borrowing arrangements with banks and financial institutions may require compensating balances and/or commitment fees or similar fees. NFG, at all times, will attempt to negotiate the most favorable effective borrowing rate taking into account any compensating balances and/or other fees.

Other Securities: NFG may also engage in other types of short-term financing as it may deem appropriate in light of its needs and market conditions at the time of issuance. This short-term financing may include, without limitation, bank borrowings under uncommitted lines and issuance of bid notes to individual banks.

Financing Subsidiaries and Special Purpose Subsidiaries

NFG requests authority to acquire, directly or indirectly, the equity securities of one or more Financing Subsidiaries or Special Purpose Subsidiaries, which would be organized specifically for the purpose of facilitating the issuance of certain types of long-term securities described above. Certain of the Nonutility Subsidiaries also propose to organize and acquire the equity securities of Financing Subsidiaries or Special Purpose Subsidiaries in order to facilitate financing of their operations. NFG represents that it has in place sufficient internal controls to enable it to monitor the creation and use of any of these entities. No Financing Subsidiary or Special Purpose Subsidiary shall acquire or dispose of, directly or indirectly, any interest in any ''utility asset,'' as that term is defined under the Act. Of the overall $1.5 billion authorization for long-term securities requested in this Application, NFG requests authority to issue up to $500 million outstanding at any one time through Financing Subsidiaries and/or Special Purpose Subsidiaries.

Financing Subsidiaries: NFG proposes to acquire all of the outstanding shares of common stock or other equity interests of one or more Financing Subsidiaries. A separate Financing Subsidiary may be used by NFG with respect to financings of different types of non-core businesses. In connection with these financing transactions, NFG may enter into one or more guarantees or other credit support agreements in favor of the Financing Subsidiary. The amount of any guarantees or credit support would not count against the limit on guarantees that is proposed in this Application.

NFG has not created to date any direct Financing Subsidiary under the authority contained in the current financing order. However, NFG's natural gas and oil exploration and production subsidiary, Seneca Resources Corporation, is currently in the process of organizing certain Financing Subsidiaries, which are expected to increase the tax efficiencies of its operations in Canada. Any Financing Subsidiary or Special Purpose Subsidiary organized by NFG under the authority granted by the Commission in this proceeding shall be organized only if, in management's opinion, the creation and utilization of a Financing Subsidiary or Special Purpose Subsidiary, will likely result in tax savings, increased access to capital markets and/or lower cost of capital for NFG.

Special Purpose Subsidiaries: In connection with the issuance of certain types of Preferred Securities, NFG and/or a Financing Subsidiary proposes to organize one or more separate Special Purpose Subsidiaries as any one or any combination of (a) a limited liability company, (b) a limited partnership, (c) a business trust, or (d) any other entity or structure, foreign or domestic, that is considered advantageous by NFG. In the event that any Special Purpose Subsidiary is organized as a limited liability company, NFG or the Financing Subsidiary may also organize a second special purpose wholly-owned subsidiary (''Partner Sub'') for the purpose of acquiring and holding Special Purpose Subsidiary membership interests in order to comply with any requirement under the applicable law that a limited liability company have at least two members. In the event that any Special Purpose Subsidiary is organized as a limited partnership, NFG or the Financing Subsidiary also may organize a Partner Sub for the purpose of acting as the general partner of a Special Purpose Subsidiary and may acquire, either directly or indirectly through the Partner Sub, a limited partnership interest in a Special Purpose Subsidiary to ensure that the Special Purpose Subsidiary will have a limited partner to the extent required by applicable law.

NFG, the Financing Subsidiary and/or a Partner Sub will acquire all of the common stock or all of the general partnership or other common equity interests, as the case may be, of any Special Purpose Subsidiary for an amount not less than the minimum required by any applicable law (*i.e.*, the aggregate of the equity accounts of the Special Purpose Subsidiary). The aggregate of the investment by NFG, the Financing Subsidiary and/or a Partner Sub is referred to in this Application as the equity contribution (''Equity Contribution''). NFG and/or the Financing Subsidiary may issue and sell to any Special Purpose Subsidiary, at any time or from time to time in one or more series, unsecured subordinated debentures, unsecured promissory notes or other unsecured debt instruments (individually, a ''Note'' and collectively, the ''Notes'') governed by an indenture or other document, and the Special Purpose Subsidiary will apply both the Equity Contribution made to it and the proceeds from the sale of Preferred Securities by it from time to time to purchase Notes. Alternatively, NFG and/or the Financing Subsidiary may enter into a loan agreement or agreements with any Special Purpose Subsidiary under which the Special Purpose Subsidiary will loan to NFG and/or the Financing Subsidiary (individually, a ''Loan'' and collectively, the ''Loans'') both the Equity Contribution to the Special Purpose Subsidiary and the proceeds from the sale of Preferred Securities by the Special Purpose Subsidiary from time to time, and NFG and/or the Financing Subsidiary will issue to the Special Purpose Subsidiary Notes evidencing these borrowings. The terms (*e.g.*, interest rate, maturity, amortization, prepayment terms, and default provisions) of any Notes would be designed to parallel the terms of the Preferred Securities to which the Notes relate.

NFG or any Financing Subsidiary also proposes to guarantee solely in connection with the issuance of Preferred Securities by a Special Purpose Subsidiary (i) payment of dividends or distributions on the securities by the Special Purpose

Subsidiary if and to the extent the Special Purpose Subsidiary has funds legally available for this use, (ii) payments to the holders of the securities due upon liquidation of the Special Purpose Subsidiary or redemption of the Preferred Securities of the Special Purpose Subsidiary, and (iii) certain additional amounts that may be payable in respect of the Preferred Securities. Alternatively, NFG may provide credit support for any guarantee that is provided by a Financing Subsidiary. The amount of any guarantees or credit support provided by NFG for this purpose would not be counted against the limitation on guarantees as set forth in this Application.

In the event of any voluntary or involuntary liquidation, dissolution or winding up of any Special Purpose Subsidiary, the holders of Preferred Securities issued by the Special Purpose Subsidiary will be entitled to receive, out of the assets of the Special Purpose Subsidiary available for distribution to its shareholders, partners or other owners (as the case may be), an amount equal to the par or stated value or liquidation preference of the Preferred Securities, plus any accrued and unpaid dividends or distributions.

The constituent instruments of each Special Purpose Subsidiary will provide, among other things, that the Special Purpose Subsidiary's activities will be limited to the issuance and sale of Preferred Securities from time to time and the lending to the Financing Subsidiary or Partner Sub of (i) the proceeds any issuance or sale and (ii) the Equity Contribution to a Special Purpose Subsidiary, and certain other related activities.

Financing by Subsidiaries

Distribution seeks authority to issue short-term debt securities as set forth in the Application. The Nonutility Subsidiaries seek authority to engage in financing transactions to develop and expand energy-related or functionally related nonutility businesses. Most often these financing transactions by the Nonutility Subsidiaries will be exempt under rule 52(b) of the Act; however, in the limited circumstances where the Nonutility Subsidiary making the borrowing is not wholly-owned by NFG, directly or indirectly, authority is requested for NFG or any other Nonutility Subsidiary to make loans to nonutility subsidiaries at interest rates and maturities designed to provide a return to the lending entity of not less than its effective cost of capital. However, no loans will be made to a Nonutility Subsidiary that is less than wholly-owned if the Nonutility Subsidiary sells any services or goods to Distribution or to any other Nonutility Subsidiary which, in turn, sells goods or services to Distribution.

Certain of the Nonutility Subsidiaries may be able to achieve tax and other benefits by issuing securities through Financing Subsidiaries or Special Purpose Subsidiaries, and, accordingly, request authorization to organize and acquire the equity securities of these entities in the same manner as described above in connection with proposed financings by NFG.

Continuation of Money Pool Arrangements

Under the current financing order, Distribution, National Fuel Gas Supply Corporation, Seneca Resources Corporation, Highland Forest Resources Inc., Leidy Hub Inc., Horizon Energy Development Inc., Data-Track Account Services Inc., National Fuel Resources Inc., Upstate Energy Inc., Niagara Independence Marketing Company, and Seneca Independence Pipeline Company are authorized to participate in a money pool as both borrowers and lenders. Horizon Power is authorized to invest surplus funds in the money pool and to withdraw those funds when needed, but may not borrow through the money pool. NFG is authorized to lend funds through the money pool but may not borrow funds through the money pool. The Applicants propose to continue participation in, and, with the exception of NFG and Horizon Power, to incur short-term borrowings through the money pool on the same terms as approved under the current financing order. Authority is sought for the money pool participants, other than NFG and Horizon Power, (''Eligible Borrowers'') to borrow short-term funds through the money pool. The maximum amount of money pool borrowings outstanding for each Eligible Borrower will be determined by NFG and each Eligible Borrower in accordance with business needs.

NFG will administer the money pool and coordinate short-term borrowings by Eligible Borrowers. NFG proposes to make loans available to Eligible Borrowers through the money pool utilizing the proceeds of borrowings under various credit facilities, including but not limited to commercial paper, short-term lines of credit, demand credit facilities, and committed credit facilities (''Credit Facilities''), as determined by NFG, and issued in accordance with the authorization sought in this proceeding. In addition, at certain times during the year, NFG and certain of its Subsidiaries may generate surplus funds, which they may choose to invest in the money pool. Therefore, funds available for borrowings through the money pool will be derived from one or more of the following sources: (1) Surplus funds of NFG or one or more of its Subsidiaries; (2) proceeds from NFG's sale of commercial paper; and (3) borrowings by NFG under other Credit Facilities.

NFG will match, to the extent possible, the short-term cash surpluses and borrowing requirements of itself and its Subsidiaries. In the event that at any time during the Authorization Period there are insufficient funds available from money pool sources to satisfy money pool borrowing requirements of all Eligible Borrowers, Distribution will receive borrowing priority over the Nonutility Subsidiaries. Borrowings through the money pool would be met first from available surplus funds of the Subsidiaries and then from available surplus funds of NFG. Once these sources of funds become insufficient to meet the short-term loan requests, borrowings will be made by NFG through the issuance and sale of commercial paper or borrowings under other Credit Facilities.

Distribution seeks approval to make borrowings through the money pool in an amount not to exceed $500 million at any time outstanding. Distribution proposes to repay money pool borrowings principally by means of funds received as a result of providing services to its customers under its tariffs, and from the possible sale of debt (including long-term notes issued to NFG) or equity securities.

Borrowings through the money pool and repayments will be adequately documented and will be evidenced on the books of each participant that is borrowing funds or lending surplus funds. If only internal funds (surplus funds of NFG and the Subsidiaries) make up the funds available in the money pool, the interest rate applicable and payable to or by Subsidiaries for all loans from internal funds 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* or other national financial publications. Borrowings consisting wholly or in part of funds obtained through the sale of commercial paper or borrowings under other Credit Facilities by NFG will bear interest at a rate equal to NFG's net weighted daily average cost for external borrowings. Interest will be payable by the borrowing Subsidiary until the principal amount borrowed is fully repaid. Fees, commissions and expenses incurred by NFG to establish and maintain Credit Facilities used to fund loans through the

money pool, including rating agency fees, bank commitment fees, and transaction costs (such as legal fees incurred in connection with negotiating and documenting credit facilities), will be allocated to all Eligible Borrowers. Each Eligible Borrower's share of allocated expenses is a fraction of the total expenses. The numerator of the fraction is the respective per book capitalization plus the average daily balance of short-term borrowings outstanding during the twelve months ended as of the date of the most recent quarterly consolidating financial statements for each Eligible Borrower. The denominator of the fraction is the sum of all the numerators used in the calculation.

To the extent that there are excess funds available in the money pool from time to time because (a) there are no borrowings under the Credit Facilities that may be currently repaid, or (b) there is no commercial paper that is maturing, or (c) no Eligible Borrower has a need for excess funds available from other money pool participants, the excess funds will normally be invested in one or more short-term investments. The Applicants propose amendment of Article IV of the Money Pool Agreement to provide that these short-term investments may include any of the following: (i) Interest-bearing accounts with banks; (ii) obligations issued or guaranteed by the U.S. government or its agencies and instrumentalities, or by any state or political subdivision of a state; (iii) tax exempt notes; (iv) tax exempt bonds; (v) tax exempt preferred stock; (vi) commercial paper rated not less than A–1 or P–1 or their equivalent by a nationally recognized statistical rating organization; (vii) money market funds; (viii) bank certificates of deposit and bankers acceptances; (ix) Eurodollar certificates of deposit or time deposits; (x) repurchase agreements with respect to any of the foregoing; and (xii) other investments as are permitted by the Act and the rules under the Act. With the exception of Article IV, no other substantive changes to the Money Pool Agreement as currently in effect are proposed.

Guarantees

NFG requests authority to enter into guarantees, obtain letters of credit, enter into expense agreements or otherwise provide credit support (collectively, ''Guarantees'') with respect to the obligations of any Subsidiary. Authority is sought to enter into Guarantees in an aggregate principal amount not to exceed $2 billion outstanding at any time, provided that any Guarantee outstanding on December 31, 2005, shall terminate or expire in accordance with its terms and provided further that the amount of any Guarantees with respect to the obligations of any Subsidiaries shall be subject to the limitations of rule 53(a)(1) or rule 58(a)(1), as applicable. Guarantees of the obligations of any Financing Subsidiary or Special Purpose Subsidiary, as described above, will not count against this limitation.

NFG requests authority to charge each Subsidiary a fee for providing credit support. The fee will be determined by multiplying the amount of the Guarantee provided by the cost of obtaining the liquidity necessary to perform the Guarantee (for example, bank line commitment fees or letter of credit fees, plus other transactional expenses, if any) for the period of time the Guarantee remains outstanding.

Hedging Transactions

Interest Rate Hedges: NFG and, to the extent not exempt under rule 52, the Subsidiaries, request authorization to enter into Interest Rate Hedges, subject to certain limitations and restrictions, in order to manage interest rate cost. Interest Rate Hedges would only be entered into with counterparties (''Approved Counterparties'') whose senior debt ratings, or the senior debt ratings of the parent companies of the counterparties, as published by Moody's Investors Service, are equal to or greater than ''Baa,'' or an equivalent rating from Standard and Poor's Ratings Group or Fitch Inc.

Interest Rate Hedges will involve the use of financial instruments commonly used in today's capital markets to manage the volatility of interest rates, including but not limited to interest rate swaps, swaptions, caps, collars, floors, forwards, rate locks, structured notes (*i.e.*, a debt instrument in which the principal and/or interest payments are indirectly linked to the value of an underlying asset or index), and short sales of U.S. Treasury securities. The Applicants would use Interest Rate Hedges as a means of prudently managing the risk associated with any outstanding debt by, for example, (i) converting variable rate debt to fixed rate debt, (ii) converting fixed rate debt to variable rate debt, or (iii) limiting the impact of changes in interest rates resulting from variable rate debt. The transactions would be for fixed periods and stated notional amounts, which in no case would exceed the principal amount of the underlying debt instrument. Fees, commissions and other amounts payable to the counterparty or exchange (excluding, however, the swap or option payments) in connection with an Interest Rate Hedge will not exceed those generally obtainable in competitive markets for parties of comparable credit quality.

Anticipatory Hedges: In addition, NFG and the Subsidiaries request authorization to enter into Anticipatory Hedges, subject to certain limitations and restrictions. Anticipatory Hedges would only be entered into with Approved Counterparties, and would be utilized to fix and/or limit the interest rate risk associated with any new issuance through (i) a forward sale of exchange-traded U.S. Treasury futures contracts, U.S. Treasury securities and/or a forward swap (each a ''Forward Sale''), (ii) the purchase of put options on U.S. Treasury securities (a ''Put Options Purchase''), (iii) a Put Options Purchase in combination with the sale of call options on U.S. Treasury securities (a ''Zero Cost Collar''), (iv) transactions involving the purchase or sale, including short sales, of U.S. Treasury securities, or (v) some combination of a Forward Sale, Put Options Purchase, Zero Cost Collar and/or other derivative or cash transactions, including but not limited to structured notes, caps and collars, appropriate for the Anticipatory Hedges.

Anticipatory Hedges may be executed on-exchange (''On-Exchange Trades'') with brokers through the opening of futures and/or options positions traded on the Chicago Board of Trade (''CBOT''), the opening of over-the-counter positions with one or more counterparties (''Off-Exchange Trades''), or a combination of On-Exchange Trades and Off-Exchange Trades. NFG or a Subsidiary will determine the optimal structure of each Anticipatory Hedge transaction at the time of execution.

NFG represents that each Interest Rate Hedge and Anticipatory Hedge will be treated for accounting purposes under generally accepted accounting principles. NFG will comply with Statement of Financial Accounting Standard (''SFAS'') 133 (Accounting for Derivative Instruments and Hedging Activities) and SFAS 138 (Accounting for Certain Derivative Instruments and Certain Hedging Activities) or other standards relating to accounting for derivative transactions as are adopted and implemented by the Financial Accounting Standards Board.

Changes in Capital Structure of Majority-Owned Subsidiaries

The portion of an individual Subsidiary's aggregate financing to be effected through the sale of stock to NFG or other immediate parent company during the Authorization Period according to rule 52 and/or according to

an order issued in this proceeding cannot be ascertained at this time. The proposed sale of capital securities may in some cases exceed the then authorized capital stock of a Subsidiary. In addition, the Subsidiary may choose to use capital stock with no par value. Also, a Subsidiary may wish to engage in a reverse stock split to reduce franchise taxes or for other corporate purposes. As needed to accommodate these types of proposed transactions and to provide for future issuances of securities, the Applicants request authority to change the terms of any majority-owned Subsidiary's authorized capitalization by an amount deemed appropriate by NFG or other parent company, provided that the consent of all other shareholders has been obtained for the change. A Subsidiary would be able to change the par value, or change between par value and no-par value stock, or change the form of equity from common stock to limited partnership or limited liability company interests or similar instruments, or from these types of instruments to common stock, without additional Commission approval. Any action by Distribution would be subject to and would only be taken upon receipt of necessary approvals from state regulators.

Nonutility Subsidiary Reorganizations

NFG requests approval to consolidate or otherwise reorganize all or any part of its direct and indirect ownership interests in Nonutility Subsidiaries and the activities and functions related to these investments. To effect any consolidation or other reorganization, NFG may wish to either contribute the equity securities of one Nonutility Subsidiary to another Nonutility Subsidiary or sell (or cause a Nonutility Subsidiary to sell) the equity securities or all or part of the assets of one Nonutility Subsidiary to another one. These transactions may also take the form of a Nonutility Subsidiary selling or transferring the equity securities of a subsidiary or all or part of a subsidiary's assets as a dividend to NFG or to another Nonutility Subsidiary, and the acquisition, directly or indirectly, of the equity securities or assets of a subsidiary, either by purchase or by receipt of a dividend. The purchasing company in any transaction structured as an intrasystem sale of equity securities or assets may execute and deliver its promissory note evidencing all or a portion of the consideration given. Each transaction would be carried out in compliance with all applicable U.S. or foreign laws and accounting requirements, and any transaction structured as a sale would be carried out for consideration equal to the book value of the equity securities being sold.

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–25944 Filed 10–10–02; 8:45 am]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

Sunshine Act Meeting

FEDERAL REGISTER CITATION OF PREVIOUS ANNOUNCEMENT: 67 FR 62997, October 9, 2002.

STATUS: Closed Meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE AND TIME OF PREVIOUSLY ANNOUNCED MEETING: Thursday, October 10, 2002 at 2:30 p.m.

CHANGE IN THE MEETING: Additional item.

The following item has been added to the Closed Meeting scheduled for Thursday, October 10, 2002 at 2:30 p.m.: formal order of investigation.

Commissioner Goldschmid, as duty officer, determined that Commission business required the above change and that no earlier notice thereof was possible.

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: October 9, 2002.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 02–26150 Filed 10–9–02; 12:58 pm]

BILLING CODE 8010–01–P

SECURITIES AND EXCHANGE COMMISSION

[Release No. 34–46590; File No. S7–966]

Program for Allocation of Regulatory Responsibilities Pursuant to Rule 17d–2; Notice of Filing of the Agreement Among the American Stock Exchange LLC, the Chicago Board Options Exchange, Inc., the International Securities Exchange, Inc., the National Association of Securities Dealers, Inc., the New York Stock Exchange, Inc., the Pacific Exchange, Inc., and the Philadelphia Stock Exchange, Inc., Pursuant to Rule 17d–2 Under the Securities Exchange Act of 1934

October 2, 2002.

Pursuant to section 17(d) of the Securities Exchange Act of 1934 (''Act''),[1] and Rule 17d–2 thereunder,[2] notice is hereby given that on August 21, 2002, the American Stock Exchange LLC (''Amex''), the Chicago Board Options Exchange, Inc. (''CBOE''), the International Securities Exchange, Inc. (''ISE''), the National Association of Securities Dealers, Inc. (''NASD''), the New York Stock Exchange, Inc. (''NYSE''), the Pacific Exchange, Inc. (''PCX''), and the Philadelphia Stock Exchange, Inc. (''Phlx'') (collectively the ''SRO participants'') filed with the Securities and Exchange Commission (''SEC'' or ''Commission'') a plan for the allocation of regulatory responsibilities.

I. Introduction

Section 19(g)(1) of the Act,[3] among other things, requires every national securities exchange and registered securities association (''SRO'') to examine for, and enforce, compliance by its members and persons associated with its members with the Act, the rules and regulations thereunder, and the SRO's own rules, unless the SRO is relieved of this responsibility pursuant to Section 17(d) or 19(g)(2)[4] of the Act. Without this relief, the statutory obligation of each individual SRO could result in a pattern of multiple examinations of broker-dealers that maintain memberships in more than one SRO (''common members''). This regulatory duplication would add unnecessary expenses for common members and their SROs.

Section 17(d)(1) of the Act was intended, in part, to eliminate unnecessary multiple examinations and

[1] 15 U.S.C. 78q(d).

[2] 17 CFR 240.17d–2

[3] 15 U.S.C. 78s(g)(1).

[4] 15 U.S.C. 78s(g)(2).