

Closed Meetings will be held on Tuesday, August 12, 2003 at 10 a.m. and Thursday, August 14, 2003 at 9 a.m.

Commissioners, Counsel to the Commissioners, the Secretary to the Commission, and recording secretaries will attend the Closed Meetings. Certain staff members who have an interest in the matters may also be present.

The General Counsel of the Commission, or his designee, has certified that, in his opinion, one or more of the exemptions set forth in 5 U.S.C. 552b(c)(3), (5), (6), (7), (9)(B) and (10) and 17 CFR 200.402(a)(3), (5), (6), (7), (9)(ii) and (10), permit consideration of the scheduled matters at the Closed Meetings.

The subject matter of the Closed Meeting scheduled for Tuesday, August 12, 2003 will be:

Institution and settlement of administrative proceedings of an enforcement nature;

Institution and settlement of injunctive actions;

Formal orders of investigation; and
Opinions.

The subject matter of the Closed Meeting scheduled for Thursday, August 14, 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: August 5, 2003.

Margaret H. McFarland,
Deputy Secretary.

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 35-27707]

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

August 4, 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 August 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 August 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. (70-10152)

Xcel Energy, Inc. ("Xcel"), 800 Nicollet Mall, Minneapolis, Minnesota 55402, a holding company registered under the Act, and its wholly owned subsidiaries, NRG Energy, Inc. ("NRG") and NRG Power Marketing, Inc. ("NRG PMI"), both of 901 Marquette Avenue, Suite 2300, Minneapolis, Minnesota 55402-3265 (collectively, Xcel, NRG and NRG PMI are referred to as "Applicants" and NRG and NRG PMI are referred to as "NRG Applicants") file this application-declaration ("Application") under sections 6(a), 7, 11(f), 11(g), 12(a), 12(b), 12(e), 12(f), and rules 44, 45, 54, 60, 62, 63, and 64 of the Act.

Applicants seek authorization from the Commission for the solicitation regarding the debtor's second amended joint plan of reorganization ("Plan") under chapter 11 of the United States Bankruptcy Code ("Bankruptcy Code").¹ Specifically, Applicants request authorization for the solicitation regarding the Plan² under sections 11(f) and 11(g) of the Act, and authorization

¹ The Application includes the Plan and the third amended disclosure statement for debtors' second amended joint plan of reorganization pursuant to chapter 11 of the Bankruptcy Code ("Disclosure Statement").

² On May 14, 2003 ("Petition Date"), NRG and certain of NRG's subsidiaries filed voluntary petitions for bankruptcy ("Bankruptcy Petition") under Chapter 11 of the Bankruptcy Code in the United States Bankruptcy Court for the Southern District of New York ("Bankruptcy Court"). NRG Applicants and certain of NRG's other subsidiaries which are debtors in such bankruptcy proceedings ("Debtors").

under section 12(e) of the Act to solicit consents and approvals from the holders of the securities of the Debtors, along with other ancillary and related authorizations as are necessary to implement the Plan.

Applicants propose that the Commission issue: (1) An order under section 11(f) of the Act approving the Plan and certain related transactions under the Plan;³ and (2) a report on the Plan under section 11(g) to accompany a solicitation of creditors and any other interest holders for approval of the Plan in the bankruptcy proceedings.⁴

I. Background

Xcel is a registered holding company that holds the securities of six public utility companies that serve electric and/or natural gas customers in twelve states.⁵ These six utility subsidiaries (collectively, the "Utility Subsidiaries") are Northern States Power Company, a Minnesota corporation ("NSP-M"); Northern States Power Company, a Wisconsin corporation; Public Service Company of Colorado; Southwestern Public Service Company; Black Mountain Gas Company; and Cheyenne Light, Fuel and Power Company. As previously announced publicly, Xcel has entered into a contract to sell Black Mountain Gas Company.

Xcel also engages through subsidiaries in various other energy-related and nonutility businesses (collectively, "Nonutility Subsidiaries"). The Nonutility Subsidiaries that are directly or indirectly owned by Xcel include: NRG;⁶ Seren Innovations, Inc., a

³ Section 11(f) of the Act provides, in relevant part, that "a reorganization plan for a registered holding company or any subsidiary company thereof shall not become effective unless such plan shall have been approved by the Commission after opportunity for hearing prior to its submission to the court."

⁴ Section 11(g) of the Act provides, in relevant part, that any solicitation for consents to or authorization of any reorganization plan of a registered holding company or any subsidiary company thereof shall be "accompanied or preceded by a copy of a report on the plan which shall be made by the Commission after an opportunity for a hearing on the plan and other plans submitted to it, or by an abstract of such report made or approved by the Commission."

⁵ The Utility Subsidiaries' service territories include portions of Arizona, Colorado, Kansas, Michigan, Minnesota, New Mexico, North Dakota, Oklahoma, South Dakota, Texas, Wisconsin, and Wyoming.

⁶ In August 2000, Northern States Power Company merged with New Century Energies, Inc. to form Xcel. In March 2001, NRG completed a public offering of 18.4 million shares of its common stock. Following this offering, Xcel owned, indirectly through its subsidiary Xcel Energy Wholesale Group Inc. ("Xcel Wholesale"), a 74% interest in NRG's common stock and class A common stock, representing 96.7% of the total voting power of NRG's common stock and class A common stock. On June 31, 2002, Xcel, through

provider of cable, telephone and high-speed internet access systems and an exempt telecommunications company under section 34 of the Act; e prime, inc., a marketer of electricity and natural gas; and Eloigne Company, an investor in projects that qualify for low-income housing tax credits.

NRG is an energy company primarily engaged in the ownership and operation of power generation facilities and the sale of energy, capacity and related products in the United States and internationally. NRG PMI is the energy marketing subsidiary of NRG. NRG PMI provides a full range of energy management services for NRG's generation facilities in its Eastern and Central regions. The Bankruptcy Petition included the Plan, which incorporates the terms of the tentative settlement announced on March 26, 2003 among NRG, Xcel and members of NRG's major creditor constituencies that provides for payments by Xcel to NRG and its creditors of up to \$752 million. A plan support agreement ("Plan Support Agreement") reflecting the settlement has been signed by Xcel, NRG, holders of approximately 40 percent in principal amount of NRG's long-term notes and bonds, along with two NRG banks who serve as co-chairs of the global steering committee ("Global Steering Committee") for the NRG bank lenders. The Plan Support Agreement will become fully effective upon execution by holders of approximately an additional ten percent in principal amount of NRG's long-term notes and bonds and by a majority of NRG bank lenders representing at least two-thirds in principal amount of NRG's bank debt.

II. The Plan of Reorganization

A. Overview of the Plan

Applicants request authorization for solicitation regarding the Plan under sections 11(f) and 11(g) of the Act, and authorization under section 12(e) to solicit consents and approvals from the holders of the securities of NRG, along with other ancillary and related authorizations to implement the Plan. The Plan submitted to the Bankruptcy Court by the Debtors is structured to: (i) Permit the Debtors to reorganize and emerge from bankruptcy; (ii) maximize the recovery of the Debtors' creditors on their capital investment; (iii) fix the exposure and/or commitment of Xcel to the Debtors and their creditors; and (iv) eliminate the direct and indirect equity

ownership of Xcel in NRG and its subsidiaries. NRG believes that consummation of the Plan will best facilitate its business and financial restructuring and is in its best interests and in the best interests of its creditors and other parties in interest.

Applicants state that the purpose of the Plan is to provide NRG with a capital structure that can be supported by cash flows from operations. To this end, NRG will reduce its debt and reduce its annual interest payments. Applicants state that the Debtors believe that the reorganization contemplated by the Plan affords holders of claims the greatest opportunity for realization on the Debtors' assets and thus is in the best interests of such holders. If the Plan is not confirmed, the Debtors believe that they will be forced to either file an alternate plan of reorganization or liquidation under chapter 11 or liquidate under chapter 7 of the Bankruptcy Code. In either event, the Debtors believe that NRG's unsecured creditors (including the holders of public debt) would realize a less favorable distribution of value, or, in certain cases, none at all, for their claims. In addition, any alternative other than confirmation of the Plan could result in extensive delays and increased administrative expenses resulting in smaller distributions to the holders of claims.

Applicants state that upon implementation of the Plan, the ownership interests, direct and indirect, of Xcel in NRG and its subsidiaries will terminate. In addition, Xcel and its subsidiaries (other than NRG and its subsidiaries) ("Xcel Entities") will have limited obligations going forward with respect to the Debtors. Xcel believes that Xcel's disaffiliation with the Debtors is beneficial to Xcel and its investors.

According to Applicants, NRG is restructuring its operations to become a domestic based owner-operator of a fuel-diverse portfolio of electric generation facilities engaged in the sale of energy, capacity and related products. NRG is working toward this goal by selective divestiture of non-core assets, consolidation of management, reorganization and redirection of power marketing philosophy and activities and an overall financial restructuring that will improve liquidity and reduce debt. NRG does not anticipate any new significant acquisitions or construction, and instead will focus on operational performance and asset management. NRG has already made significant reductions in expenditures, business development activities and personnel. Power sales, fuel procurement and risk management will remain a key strategic

element of NRG's operations. NRG's objective will be to optimize the fuel input and the energy output of its facilities within an appropriate risk and liquidity profile. Despite NRG's focus on domestic electric generation, NRG will continue to hold international assets until it can optimize the divestiture of such assets.

B. Settlement Agreement

Applicants state that in connection with the implementation of the Plan, Xcel will enter into a settlement agreement ("Settlement Agreement") with NRG. The Settlement Agreement constitutes the definitive documentation in respect of the settlement terms agreed to in the Plan Support Agreement. Under the Settlement Agreement and the Plan, Xcel will pay up to \$752 million to NRG and its creditors to settle all claims of NRG against Xcel, including all claims under the Plan Support Agreement, and in return for releases of claims against Xcel from NRG, the other debtors in the Proceedings and NRG's creditors. The terms of the Settlement Agreement between NRG and Xcel require that the order of the Bankruptcy Court confirming the Plan provide that the right of any holder of an equity unit to acquire shares of Xcel common stock terminate as of the Petition Date.

Applicants state that, in general terms, the Settlement Agreement provides for the following: (i) Payment by Xcel of \$250 million in exchange for the release of claims and causes of action which NRG may have in respect of the Plan Support Agreement; and (ii) payment by Xcel of up to \$390 million ("Release-Based Amount") in exchange for releases of Xcel and certain injunctions for the benefit of Xcel. In addition, under a Separate Bank Release Agreement between Xcel and the lenders under the NRG Credit Facilities, Xcel would agree to pay \$112 million ("Separate Bank Settlement Payment") for the benefit of the lenders under the NRG Credit Facilities in exchange for such lenders' release of claims against Xcel.

C. Treatment of Creditors Under the Plan

According to Applicants, the Plan generally classifies the creditors of, and other investors in, the NRG Applicants into several classes. In general terms, the Plan provides for the treatment of the creditors of the NRG Applicants, as follows:

- (i) Holders of priority claims will receive payment in full;
- (ii) Holders of unsecured claims against any NRG Applicant, which are

Xcel Wholesale, purchased through an exchange offer the 26 percent of NRG common stock held by the public so that it again held 100 percent ownership of NRG on December 31, 2002.

equal to or less than \$50,000 or is reduced to \$50,000 at the election of the holder of such claim, will receive cash in the amount of such claim;

(iii) Holders of secured claims against the NRG Applicants will receive either the collateral securing such claim or cash in an amount equal to the net proceeds realized upon the sale of such collateral, or as may otherwise be agreed upon by the Debtors and the claimant;

(iv) Each holder of NRG's unsecured debt and claims will receive its pro rata share of senior notes of Reorganized NRG,⁷ common stock of Reorganized NRG, ("New NRG Common Stock") and, if such holder makes the election on its ballot to release Xcel from claims or such holder is bound by a final order of the Bankruptcy Court to releases of claims against Xcel as provided in the Plan, equal to its pro rata share of the Release-Based Amount;

(v) Each of the holders of unsecured claims against NRG PMI will receive its pro rata share of senior notes of Reorganized NRG and New NRG Common Stock;

(vi) Intercompany claims among the Debtors and between the Debtors and certain of NRG's other subsidiaries will be divided into two classes: (1) Claims that will be cancelled without any distribution to the holders and (2) claims that will be reinstated on the Effective Date (as described below);

(vii) Any and all outstanding equity interests in NRG will be canceled without consideration; and

(viii) NRG will retain its 100% ownership in NRG PMI.

The Plan contains a mechanism that would allow holders of unsecured debt and claims against NRG and NRG PMI to elect to receive equity instead of cash and/or debt, or cash and/or debt instead of equity. Reallocation will occur to the extent there are willing parties on each side.⁸

Applicants state that, generally, the claims of the Xcel Entities against the Debtors would receive one of two different types of treatment under the Plan. As to claims of approximately \$32 million arising prior to January 31, 2003, Xcel has agreed to settle such claims in exchange for a promissory note to be issued by NRG to Xcel in the original principal amount of \$10 million

("Xcel Note"). The estimated recovery on account of such claims is approximately 31%.

According to Applicants, any intercompany claims of Xcel against NRG or any of its subsidiaries arising from the provision of intercompany goods or services after January 31, 2003, will be paid in full in cash in the ordinary course. Payments on Guarantees and indemnities made by Xcel after January 31, 2003, will be reimbursed in full by NRG on the effective date of the Plan ("Effective Date"). The ownership interests, direct and indirect, of Xcel in NRG and its subsidiaries will terminate. According to Applicants, the new stock and other securities to be issued by the NRG Applicants under the Plan are as follows:

(i) The New NRG Common Stock shall consist of 100,000,000 shares of new common stock, par value \$0.01 per share. The New NRG Common Stock (subject to dilution for management incentive plan) will be distributed on a pro rata basis to holders of NRG's unsecured debt and claims and holders of unsecured claims against NRG PMI;

(ii) Reorganized NRG will also issue senior notes which shall (a) be in an initial principal amount of \$500,000,000, (b) accrue interest at a rate of 10% per annum if payable in cash or 12% per annum if payable in kind, and (c) mature on the seventh anniversary of the issuance. The senior notes are to be distributed on a pro rata basis to holders of NRG's unsecured debt and claims and holders of unsecured claims against NRG PMI; and

(iii) The Xcel Note shall (a) be a non-amortizing promissory note in an initial principal amount of \$10 million, (b) accrue interest at a rate of 3% per annum and (c) mature 2½ years after the effective date of the Plan.

D. Third Amended Disclosure Statement

The Plan was filed with the Bankruptcy Court along with the disclosure statement accompanying the Plan ("Disclosure Statement"). Applicants state that under section 1125 of the Bankruptcy Code, the Debtors may not solicit votes for acceptances of the Plan until the Bankruptcy Court approves the Disclosure Statement as containing information of a kind, and in sufficient detail, adequate to enable creditors to make an informed judgment whether to vote for acceptance or rejection of the Plan. According to Applicants, the Bankruptcy Court held a hearing on the Disclosure Statement on June 30, 2003, and is continuing its review of the Disclosure Statement.

Upon receipt of requisite approvals of the Disclosure Statement, the Debtors will solicit votes on the Plan. According to Applicants, the solicitation process is expected to take approximately 45 days. After the votes are cast, a confirmation hearing will be scheduled and notice of the hearing will be provided to creditors and parties-in-interest. Creditors and parties-in-interest will have an opportunity to object to the confirmation of the Plan at the confirmation hearing. At the confirmation hearing, the Bankruptcy Court must determine whether the confirmation of the Plan meets the requirements of section 1129 of the Bankruptcy Code. If the Bankruptcy Court determines that the Plan meets the requirements of section 1129, the Bankruptcy Court should confirm the Plan.

The Debtors may alter, amend or modify the Plan under section 1127(a) of the Bankruptcy Code at any time prior to the confirmation hearing, with the written consent of the Unsecured Creditors Committee, the Global Steering Committee and Xcel. The Debtors may alter, amend or modify any exhibits to the Plan under section 1127(a) of the Bankruptcy Code at any time prior to the confirmation hearing, with the written consent of the Unsecured Creditors Committee, the Global Steering Committee and Xcel. After the confirmation of the Plan by the Bankruptcy Court, and prior to substantial consummation of the Plan with respect to any Debtor as defined in section 1102 of the Bankruptcy Code, any Debtor may, with the written consent of the Unsecured Creditors Committee, the Global Steering Committee and Xcel, under section 1127(b) of the Bankruptcy Code, institute proceedings in the Bankruptcy Court to remedy any defect or omission or reconcile any inconsistencies in the Plan, the Disclosure Statement, or the confirmation order, and such matters as may be necessary to carry out the purposes and effects of the Plan. A holder of a claim that has accepted the Plan shall be deemed to have accepted the Plan as altered, amended or modified, if the proposed alteration, amendment or modification does not materially and adversely change the treatment of the claim of such holder. Applicants state that modification of or amendments to the Plan will be promptly filed with the Commission by amendment to the Application.

III. Obligations of Xcel Under the Plan and the Settlement Agreement

Applicants also state that under the Settlement Agreement, Xcel and NRG

⁷ Reorganized NRG refers to NRG, or any successor thereto by merger, consolidation or otherwise, as contemplated by the Plan.

⁸ The reallocation procedure is completely voluntary, and no party can be required or compelled to take part in the reallocation procedure. Creditors who do not participate in the reallocation procedure will receive the distribution to which they are otherwise entitled under the distribution provisions of the Plan.

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

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

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

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

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

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

IV. Post Reorganization Ownership Structure

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

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

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 03-20262 Filed 8-7-03; 8:45 am]

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SECURITIES AND EXCHANGE COMMISSION

[Release No. 34-48281]

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

August 4, 2003.

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

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

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

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

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

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

² Public Law 107-204.

³ Section 101 of the Act.

⁴ Section 205(c)(2) of the Act.

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

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