

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 1171

6/21 Gomsrud requested to adopt rules as adopted w/o withdrawn section

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 6-20-85
DATE FOR REVIEW 6-29-85
DATE DUE 7-3-85

Adopted w/a hearing _____
Adopted w/o hearing ✓
Temporary rule _____

Approved 7-1-85 mjc Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State 7-2-85 Revisor approved 6/24/85 disapproved _____

? Rule as Adopted copies submitted include withdrawn section

✓ Rule as Proposed

✓ Order Adopting 6.14.85. Date

✓ Notice of Intent to Solicit Outside Opinion SR, 3.1984 + comment

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking minor deviation from 14.22 - no "encouragement"
✓ Sufficiency contains minimum small biz statement.

✓ Affidavit of Mailing Notice C+ Notice of Withdrawal or rulemaking
12.10.84 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
12.10.85 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

✓ Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

✓ Certificate of Board's Resolution Adopting Rules

✓ Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness contains small biz statement.

N/A Petition for Adoption of a Rule

✓ Record (includes transcript or tape, exhibits, comments received by agency, requests for a hearing, and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

N/A Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

✓ Statement of Agency Counsel Gomsrud re withdrawal of rule Section 2875.1590 from this promulgation

✓ Order for withdrawal of 2875.1590 + Notice of withdrawal.

SF-00006-04

DEPARTMENT : of Commerce

STATE OF MINNESOTA

Office Memorandum

PHONE : 296-5689

DATE : 6/20/85

TO : Judith Wehrwein
Attorney General's Office
204 Administration Building

FROM : Richard G. Gomsrud
Department Counsel

SUBJECT : Securities Rules

Enclosed are copies of the following materials regarding the above captioned rules (only those items with a circled number are enclosed):

(1.) Notice of Intent to Solicit Outside Opinion (2000.0400 subpart 1 B)

(2.) Written material received as a result of Notice to Solicit Outside Opinion (2000.0400 subpart 1 B)

(3.) Mailing List Certificate (2000.0400 subpart 1 E)

(4.) Statement of Need & Reasonableness (2000.0400 subpart 1 G)

(5.) Order for Notice of Intent to Adopt Rule Without Public Hearing (2000.0400 subpart 1 C)

(6.) Notice of Intent to Adopt Rule Without Public Hearing (2000.0400 subpart 2)

(7.) Affidavit of Mailing Notice of Intent to Adopt Rule Without Public Hearing (2000.0400 subpart 3)

(8.) Copy of Notice of Intent to Adopt Rule Without Public Hearing and rules as published in the State Register (2000.0400 subpart 4)

(9.) Written Comments on Rule (2000.0400 subpart 1 I)

(10.) Findings of Fact (if applicable) (2000.0400 subpart 1 F)

~~11.~~ Affidavit of Mailing Notice of Submission to Attorney General (2000.0400 subpart 1 K); or

12. Affidavit that no request for Notice of Submission to Attorney General were received

13. Original and three copies of Rule as adopted (2000.0400 subpart 5)

14. Two copies of the Order Adopting Rule (2000.0400 subpart 6)

15. Certificate of Compliance With Rulemaking Procedure (2000.0400 subpart 1 J).

16. Order for Withdrawal of Rule and Notice

17. Notice of Withdrawal of Rule

18. Affidavit of Mailing re: Notice of Withdrawal of Rule - same as #4

19. Mailing List Certificate re: Notice of Withdrawal of Rule - same as #5

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: MICHAEL A. HATCH, Commissioner
Department of Commerce

DATE: 7-1-85

ATTN: RICHARD G. GOMSRUD
Department Counsel

FROM: MARTHA J. CASSERLY MJC
Special Assistant Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Adoption of Rules Relating to Securities Regulation.

The above-referenced rule has been approved as to its legality by the Attorney General on July 1, 1985.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies of the approved rule with the Secretary of State, who will forward one copy to the Revisor of Statutes. The fourth copy is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submission or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

In order for a permanent rule without a hearing to become effective, your agency must publish a notice of adoption in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

If you have any questions in this regard, please contact me.

MJC:sz

Enclosures

cc: Maryanne Hruby
Executive Director
Legislative Commission to Review
Administrative Rules

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

Ag copy

Department of Commerce

Adopted Rules Relating to Securities Regulation

Rules as Adopted

2875.0150 ISOLATED SALES.

Subpart 1. [Unchanged.]

Subp. 2. **Computation.** For the purpose of computing the number of sales that have been made, or will have been made upon completion of a proposed offering pursuant to Minnesota Statutes, section 80A.15, subdivision 2, clause (a):

A. the following sales shall be excluded if made within 48 hours of a sale to another purchaser, which other sale is included in such computation:

(1) the sale to any relative or spouse of a purchaser and any relative of such spouse, who has the same home as such purchaser; and

(2) the sale to any trust or estate in which a purchaser and any of the persons related to him as specified in subitem (1) or (3) collectively have more than 50 percent of the beneficial interest (excluding contingent interest); and

(3) the sale to any corporation or other organization of which a purchaser and any of the persons related to him as specified in subitem (1) or (2) collectively are the beneficial owners of more than 50 percent of the equity securities (excluding directors' qualifying shares) or equity interests; and

B. and C. [Unchanged.]

D. the sales to any "accredited investor" within the meaning of Code of Federal Regulations, title 17, section 230.501(a) shall be excluded.

Subp. 3. and 4. [Unchanged.]

2875.0180 PERSONS TO WHOM SALES HAVE BEEN MADE.

Subpart 1. **Computing.** For the purpose of calculating the number of persons to whom sales have been made, or will have

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been made upon completion of a proposed offering pursuant to Minnesota Statutes, section 80A.15, subdivision 2, clause (h), the calculation shall follow the rules for calculation in Code of Federal Regulations, title 17, section 230.501(e).

Clients of an investment adviser, customers of a broker-dealer, or persons with similar relationships shall be considered to be separate purchasers regardless of the amount of discretion given to the investment adviser, broker-dealer, bank trust department, or other person to act on behalf of the client, customer, or trust.

Subp. 2. [See Repealer.]

Subp. 3. to 5. [Unchanged.]

2875.0185 EFFECTIVE DATES OF STATEMENT OF ISSUER.

The exemption set forth in Minnesota Statutes, section 80A.15, subdivision 2, paragraph (h)~~,-clause-(3)~~ shall only be effective for a period of one year commencing from ten days after the date on which the statement of issuer is filed with the commissioner.

~~2875.1590-BANKS,-SAVINGS-INSTITUTIONS,-AND-SAVINGS-AND-LOAN ASSOCIATIONS;-PROMOTION-OR-ESABLISHMENT-OF-SECURITIES-BROKERAGE SERVICES-INVOLVING-EXECUTION-OF-CUSTOMER-PURCHASE-AND-SALE ORDERS.~~

~~Subpart-1.--License-requirements.--A-bank,-savings institution,-or-savings-and-loan-association-which-is-not licensed-as-a-broker-dealer-may-effect-transactions-in securities-for-the-account-of-others-by-promoting-or establishing-accounts-for-broker-dealers-only-if-the-bank, savings-institution,-or-savings-and-loan-association:~~

~~A.--does-not-hold-itself-out-to-the-public-as-a securities-broker-through-publishing,-broadcasting, distributing,-or-circulating-any-form-of-advertising-through-any type-of-media-or-any-other-manner;~~

~~B.--contracts-with-a-broker-dealer-to-promote-or establish-accounts-for-that-broker-dealer-and-the-following conditions-are-all-met:~~

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OFFICE BY:

~~(1) the broker-dealer is a National Association of Securities Dealers member who is licensed in Minnesota;~~

~~(2) all determinations of suitability are made by the licensed broker-dealer;~~

~~(3) promotional or account establishing functions are only performed by persons who are licensed as agents to the broker-dealer; and~~

~~(4) the bank, savings association, or savings and loan association has a contract with only one broker-dealer during the same period of time;~~

~~C. does not engage in investment advice or underwriting in connection with the securities activities described in this rule;~~

~~D. conducts all securities activities in a manner not exceeding the powers conferred by federal and state laws regulating banks, savings institutions, and savings and loan associations; and~~

~~E. does not receive compensation for referrals to broker-dealers whose activities are not within the scope of these rules.~~

~~Subp. 2. **Employees as agents.** No bank employees may be licensed as agents to more than one broker-dealer.~~

~~Subp. 3. **Filing requirements.** If a bank, savings institution, or savings and loan association contracts with a licensed broker-dealer to promote or establish accounts, the following information must be provided to the commissioner at least 30 days prior to the effective date of the contract:~~

~~A. the training manual to be used in the training of bank employees by the broker-dealer and a description of all other training to be provided;~~

~~B. a written description of the allocation of the following functions between the contracting parties with respect to securities transactions;~~

~~(1) opening, approving, and monitoring of accounts;~~

~~(2) extension of credit;~~

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~~(3) maintenance of books and records;~~

~~(4) receipt of and delivery of funds and securities;~~

~~(5) safeguarding of funds and securities;~~

~~(6) confirmations and statements; and~~

~~(7) acceptance of orders and execution of transactions;~~

~~C. a written commitment from the bank, savings institution, or savings and loan association that the commissioner will have access to customer records of securities transactions in their possession;~~

~~D. identification of all bank, savings institution, or savings and loan association employees involved with the marketing program, a description of their functions and method of compensation, and identification of the agents of the licensed broker dealer; and~~

~~E. a U-4 application for designated agents of the licensed broker dealer.~~

2875.2410 ESCROW AGREEMENTS.

Subpart 1. **Conditions of registration.** As a condition of registration of securities by an issuer, restrictions on transferability of all cheap stock owned by officers, directors, or persons owning greater than ten percent of the then outstanding stock of the issuer, may be required for a period of up to three years. The restrictions on transferability may be by means of escrow of shares, legending of share certificates, or by other means, as may be determined by the commissioner upon the facts and circumstances of each case to be necessary for the protection of public investors, or by any combination of the foregoing.

Subp. 2. and 3. [Unchanged.]

2875.2490 ANNUAL SHAREHOLDERS' REPORT.

So long as a registration statement is effective, other than for industrial revenue bonds, within 150 days of the end of the fiscal year, the registrant shall distribute an annual

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OFFICE BY:

report to all shareholders. Said annual report shall contain a balance sheet, income statement, statement of changes in financial position, all of which must be audited by an independent certified public accountant with his opinion expressed thereon, and such other information as may be necessary for complete disclosure.

2875.2500 REPORT FORM.

So long as a registration statement is effective, other than for industrial revenue bonds, the issuer shall file an annual report in such form, and containing such information as the commissioner prescribes. At a minimum, the annual report shall contain the following:

A. to T. [Unchanged.]

2875.2510 REPORT FILINGS.

Subpart 1. **Alternate filings.** Any issuer filing annual reports under the Securities Exchange Act of 1934 may file, in lieu of the report required by part 2875.2500, a duplicate copy of the annual report filed with the Securities and Exchange Commission.

Any issuer filing reports under the Investment Company Act of 1940 may file, in lieu of the report required by part 2875.2500, a current updated prospectus as filed with the Securities and Exchange Commission or a copy of the annual report required to be filed with the Securities and Exchange Commission.

Subp. 2. **Filing of annual report or prospectus.** The annual report or prospectus required by parts 2875.2500 and 2875.2510 shall be filed on or prior to the 90th day (or 120th day in the case of issuers registered under the Investment Company Act of 1940) following the close of the issuer's fiscal year, except that if the information required by part 2875.2500, item S is not reasonably available at such time, such information may be filed on or before the 150th day following the close of the issuer's fiscal year.

Subp. 3. **Contents regarding registration of industrial**

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OFFICE BY:

revenue bonds. So long as a registration is effective for industrial revenue bonds, as an annual report there must be filed with the commissioner financial statements of the person or persons directly liable to make payments for the purpose of paying principal and interest. Notwithstanding parts 2875.0950 and 2875.0960, unless the foregoing financial statements are otherwise audited by independent certified public accountants, the financial statements filed need not be so audited, unless required by the commissioner, but must be prepared in accordance with generally accepted accounting principles unless otherwise permitted by order.

2875.3000 MINIMUM INVESTMENT REQUIRED.

Subpart 1. [Unchanged.]

Subp. 2. **Fair value of equity investment.** "Fair value of the equity investment" shall mean the higher of:

A. the total of all sums irrevocably conveyed to the issuer in cash, together with the reasonable value of all tangible assets irrevocably conveyed to the issuer, and together with an evaluation by a qualified independent appraiser or other reasonable demonstration of value of intangible assets including, but not limited to, patents, licenses, technologies, trademarks, and technical or professional services contributed by the promoters, as adjusted by the retained earnings of the issuer subsequent to the dates of such conveyances, payments, or contributions; or

B. the total shareholders' equity as set forth in a certified balance sheet prepared in accordance with parts 2875.0950 and 2875.0960, less the value assigned to any intangible assets for which no reasonable demonstration of value has been provided.

Subp. 3. and 4. [Unchanged.]

REPEALER. Minnesota Rules, parts 2875.0180, subpart 2; 2875.3920; and 2875.3930 are repealed.

APPROVED IN THE
REVISOR OF STATUTES
OFFICE BY:

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JUL - 2 1985 9:51
Joan Anderson Growe
Secretary of State

APPROVED AS TO FORM AND LEGALITY
July 1 19 85
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY M J Cassell
SPECIAL ASSISTANT ATTORNEY GENERAL

AG copy

This copy contains rule which was withdrawn.

Department of Commerce

Adopted Rules Relating to Securities Regulation

Rules as Adopted

2875.0150 ISOLATED SALES.

Subpart 1. [Unchanged.]

Subp. 2. **Computation.** For the purpose of computing the number of sales that have been made, or will have been made upon completion of a proposed offering pursuant to Minnesota Statutes, section 80A.15, subdivision 2, clause (a):

A. the following sales shall be excluded if made within 48 hours of a sale to another purchaser, which other sale is included in such computation:

(1) the sale to any relative or spouse of a purchaser and any relative of such spouse, who has the same home as such purchaser; and

(2) the sale to any trust or estate in which a purchaser and any of the persons related to him as specified in subitem (1) or (3) collectively have more than 50 percent of the beneficial interest (excluding contingent interest); and

(3) the sale to any corporation or other organization of which a purchaser and any of the persons related to him as specified in subitem (1) or (2) collectively are the beneficial owners of more than 50 percent of the equity securities (excluding directors' qualifying shares) or equity interests; and

B. and C. [Unchanged.]

D. the sales to any "accredited investor" within the meaning of Code of Federal Regulations, title 17, section 230.501(a) shall be excluded. FF

Subp. 3. and 4. [Unchanged.]

2875.0180 PERSONS TO WHOM SALES HAVE BEEN MADE.

Subpart 1. **Computing.** For the purpose of calculating the number of persons to whom sales have been made, or will have

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been made upon completion of a proposed offering pursuant to Minnesota Statutes, section 80A.15, subdivision 2, clause (h), the calculation shall follow the rules for calculation in Code of Federal Regulations, title 17, section 230.501(e).

Clients of an investment adviser, customers of a broker-dealer, or persons with similar relationships shall be considered to be separate purchasers regardless of the amount of discretion given to the investment adviser, broker-dealer, bank trust department, or other person to act on behalf of the client, customer, or trust.

Subp. 2. [See Repealer.]

Subp. 3. to 5. [Unchanged.]

2875.0185 EFFECTIVE DATES OF STATEMENT OF ISSUER.

The exemption set forth in Minnesota Statutes, section 80A.15, subdivision 2, paragraph (h)~~, clause (3)~~ shall only be effective for a period of one year commencing from ten days after the date on which the statement of issuer is filed with the commissioner.

2875.1590 BANKS, SAVINGS INSTITUTIONS, AND SAVINGS AND LOAN ASSOCIATIONS; PROMOTION OR ESABLISHMENT OF SECURITIES BROKERAGE SERVICES INVOLVING EXECUTION OF CUSTOMER PURCHASE AND SALE ORDERS.

Subpart 1. **License requirements.** A bank, savings institution, or savings and loan association which is not licensed as a broker-dealer may effect transactions in securities for the account of others by promoting or establishing accounts for broker-dealers only if the bank, savings institution, or savings and loan association:

A. does not hold itself out to the public as a securities broker through publishing, broadcasting, distributing, or circulating any form of advertising through any type of media or any other manner;

B. contracts with a broker-dealer to promote or establish accounts for that broker-dealer and the following conditions are all met:

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(1) the broker-dealer is a National Association of Securities Dealers member who is licensed in Minnesota;

(2) all determinations of suitability are made by the licensed broker-dealer;

(3) promotional or account-establishing functions are only performed by persons who are licensed as agents to the broker-dealer; and

(4) the bank, savings association, or savings and loan association has a contract with only one broker-dealer during the same period of time;

C. does not engage in investment advice or underwriting in connection with the securities activities described in this rule;

D. conducts all securities activities in a manner not exceeding the powers conferred by federal and state laws regulating banks, savings institutions, and savings and loan associations; and

E. does not receive compensation for referrals to broker-dealers whose activities are not within the scope of these rules.

Subp. 2. **Employees as agents.** No bank employees may be licensed as agents to more than one broker-dealer.

Subp. 3. **Filing requirements.** If a bank, savings institution, or savings and loan association contracts with a licensed broker-dealer to promote or establish accounts, the following information must be provided to the commissioner at least 30 days prior to the effective date of the contract:

A. the training manual to be used in the training of bank employees by the broker-dealer and a description of all other training to be provided;

B. a written description of the allocation of the following functions between the contracting parties with respect to securities transactions;

(1) opening, approving, and monitoring of accounts;

(2) extension of credit;

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(3) maintenance of books and records;

(4) receipt of and delivery of funds and securities;

(5) safeguarding of funds and securities;

(6) confirmations and statements; and

(7) acceptance of orders and execution of transactions;

C. a written commitment from the bank, savings institution, or savings and loan association that the commissioner will have access to customer records of securities transactions in their possession;

D. identification of all bank, savings institution, or savings and loan association employees involved with the marketing program, a description of their functions and method of compensation, and identification of the agents of the licensed broker-dealer; and

E. a U-4 application for designated agents of the licensed broker-dealer.

2875.2410 ESCROW AGREEMENTS.

Subpart 1. **Conditions of registration.** As a condition of registration of securities by an issuer, restrictions on transferability of all cheap stock owned by officers, directors, or persons owning greater than ten percent of the then outstanding stock of the issuer, may be required for a period of up to three years. The restrictions on transferability may be by means of escrow of shares, legending of share certificates, or by other means, as may be determined by the commissioner upon the facts and circumstances of each case to be necessary for the protection of public investors, or by any combination of the foregoing.

Subp. 2. and 3. [Unchanged.]

2875.2490 ANNUAL SHAREHOLDERS' REPORT.

So long as a registration statement is effective, other than for industrial revenue bonds, within 150 days of the end of the fiscal year, the registrant shall distribute an annual

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

report to all shareholders. Said annual report shall contain a balance sheet, income statement, statement of changes in financial position, all of which must be audited by an independent certified public accountant with his opinion expressed thereon, and such other information as may be necessary for complete disclosure.

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A. to T. [Unchanged.]

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Subp. 2. **Filing of annual report or prospectus.** The annual report or prospectus required by parts 2875.2500 and 2875.2510 shall be filed on or prior to the 90th day (or 120th day in the case of issuers registered under the Investment Company Act of 1940) following the close of the issuer's fiscal year, except that if the information required by part 2875.2500, item S is not reasonably available at such time, such information may be filed on or before the 150th day following the close of the issuer's fiscal year.

Subp. 3. **Contents regarding registration of industrial**

revenue bonds. So long as a registration is effective for industrial revenue bonds, as an annual report there must be filed with the commissioner financial statements of the person or persons directly liable to make payments for the purpose of paying principal and interest. Notwithstanding parts 2875.0950 and 2875.0960, unless the foregoing financial statements are otherwise audited by independent certified public accountants, the financial statements filed need not be so audited, unless required by the commissioner, but must be prepared in accordance with generally accepted accounting principles unless otherwise permitted by order.

2875.3000 MINIMUM INVESTMENT REQUIRED.

Subpart 1. [Unchanged.]

Subp. 2. **Fair value of equity investment.** "Fair value of the equity investment" shall mean the higher of:

A. the total of all sums irrevocably conveyed to the issuer in cash, together with the reasonable value of all tangible assets irrevocably conveyed to the issuer, and together with an evaluation by a qualified independent appraiser or other reasonable demonstration of value of intangible assets including, but not limited to, patents, licenses, technologies, trademarks, and technical or professional services contributed by the promoters, as adjusted by the retained earnings of the issuer subsequent to the dates of such conveyances, payments, or contributions; or

B. the total shareholders' equity as set forth in a certified balance sheet prepared in accordance with parts 2875.0950 and 2875.0960, less the value assigned to any intangible assets for which no reasonable demonstration of value has been provided.

Subp. 3. and 4. [Unchanged.]

REPEALER. Minnesota Rules, parts 2875.0180, subpart 2; 2875.3920; and 2875.3930 are repealed.

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of Rules Relating to Securities Regulation

ORDER ADOPTING RULES

Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on December 10, 1984 and was sent by the United States mail to all persons on the list maintained by the Department of Comerce pursuant to Minn. Stat. § 14.14, subd. 1a, on December 10, 1984.

After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than twenty-five (25) written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules, as modified by the Findings of Fact and Conclusion,

NOW, THEREFORE, IT IS ORDERED that these rules identified as Rules Relating to Securities Regulation are adopted this 14th day of June, 1985 pursuant to authority vested in me by Minnesota Statutes, sections 80A.21, subdivision 2, 80A.05; 80A.14, subdivision 4 and 45.023.

Michael A. Hatch
Commissioner of Commerce

State of Minnesota
Department of Commerce

Notice of Intent to Solicit Outside Opinion Regarding Amendments to Proposed Rules Relating to Securities including the Impact of the Rules on Small Businesses

Notice is hereby given that the Department of Commerce is seeking information or opinions from persons outside the agency in preparing to promulgate amendments to rules governing securities. Promulgation of these amendments is authorized by Minnesota Statutes, section 80A.25. The reason for promulgation of these amendments is to eliminate any outmoded portions of the rules in order to increase their effectiveness and to remove any provisions which are unduly burdensome in relation to their benefit to the investor. Suggestions are requested which will ease any undue burden of the rules while still protecting the interests of the public.

Outside opinion is also being solicited as to how these rules will affect small businesses as defined by Minnesota Laws 1983, ch. 188, codified as Minnesota Statutes § 14.115, subd. 1.

The Department of Commerce requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing to: Richard Gomsrud, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101, (612) 296-5689.

All statements of information and comment shall be accepted until April 18, 1984. Any written material received by the Department of Commerce shall become part of the record in the event that the rules are promulgated.



Michael A. Hatch
Commissioner of Commerce

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

Without Public Hearing

In the Matter of the Proposed Rules Relating to Securities Regulation

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 16th day of November, 1984 that Notice of Intent to Adopt Rules Without Public Hearing in the above-entitled matter be given to all persons who have registered their names with the Department of Commerce for that purpose and be published in the State Register.

Michael A. Hatch
Commissioner of Commerce

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption
of Rules Relating Securities Regulation
and the Notice of Withdrawal of the Proposed
Rules

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statutes, Sec. 14.14, subd. 1a, that their names be placed on file with and maintained by the Department of Commerce for the purpose of receiving notice of the proposed adoption and notice of withdrawal of rules is accurate and complete as of 12:00 P.M., this 10th day of December 1984.

Rose T. Weiner

ROSE T. WEINER

Daniel D. Foth
Associated Builders & Contractors
6300 Walker Street, Room 109
Minneapolis, MN 55416

Morris J. Anderson, Exec. Dir.
Association of Minnesota Counties
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St. Paul, MN 55103

Michael C. Black
Michael C. Black Law Office, Ltd.
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St. Paul, MN 55102

R. G. Lanham, Dir. of Research
Carleton Financial Computations
P.O. Box 570
South Bend, IN 46624

John F. Sheski, Counsel
Central Life Assurance Company
P.O. Box 5620
Madison, WI 53705

Glen Tullman
Certified Collateral Corporation
640 N. LaSalle, Suite 640
Chicago, IL 60610

M. D. Monette, V. P. & Counsel
Colonial Penn Group, Inc.
5 Penn Center Plaza
Philadelphia, PA 19181

Timothy L. Tucker
Consumer Credit Insurance Assoc.
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Chicago, IL 60601

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1380 Soo Line Bldg.
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Newport Beach, CA 92660

Michael Bernardino, Mgr.
Dean Witter Reynolds, Inc.
5 World Trade Center
New York, NY 10048

Workers Comp. Reinsurance Assoc.
900 Minnesota Mutual Life Center
400 North Robert Street
St. Paul, MN 55101

Security Life Insurance
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AFFIDAVIT OF MAILING

In the Matter of the Proposed Adoption of Rules Relating to Securities Regulation and the Notice of Withdrawal of the Proposed Rules

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Rose T. Weiner , being first duly sworn, deposes and says:

That on the 10th day of December, 1984, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Intent to Adopt Rules without a public hearing and notice of withdrawal of proposed rules by depositing in the State of Minnesota Central Mail System for United States mailing at said City of St. Paul, a copy properly prepared with first-class postage prepaid, on all persons and associations who have requested that their names be placed on file with the Department of Commerce for the purpose of receiving notice of the proposed adoption of rules.

A copy of the proposed rules is attached.

Rose T. Weiner
ROSE T. WEINER

Subscribed and sworn to before me this 14th day of June 1985.

Nancy I. Link
Notary Public

NANCY I. LINK
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
MY COMMISSION EXPIRES DECEMBER 31, 1990

State of Minnesota
Department of Commerce

In the Matter of the Proposed Adoption of
Rules Relating to Securities Regulation

Notice of Intent to Adopt Rules Without a Public Hearing

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Commerce has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, section 14.21.

Persons interested in these rules shall have 30 days to submit comments in support of or in opposition to the rules. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change.

No public hearing will be held unless twenty-five (25) or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, section 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to Kris Eiden, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101. Any person requesting a public hearing should state her/his name and address, identify the portion of the proposed rule addressed, the reason for the request and any change proposed and send this information to the above address.

Authority for the adoption of these rules is contained in Minnesota Statutes, 80A.25, subd. 1; 80A.05; 80A.12, subd. 5; 80A.14, subd. 4; and 45.023. Additionally, a Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

It has been determined that the rules may have an effect on small businesses. A discussion of the effect of the rules is contained in the Statement of Need and Reasonableness.

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Rose Weiner, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101.

A copy of the proposed rules is attached to this Notice.

Copies of this Notice and the proposed rules are available and may be obtained by contacting Rose Weiner at the above address.

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed

2875.0150 ISOLATED SALES.

Subpart 1. [Unchanged.]

Subp. 2. **Computation.** For the purpose of computing the number of sales that have been made, or will have been made upon completion of a proposed offering pursuant to Minnesota Statutes, section 80A.15, subdivision 2, clause (a):

A. the following sales shall be excluded if made within 48 hours of a sale to another purchaser, which other sale is included in such computation:

(1) the sale to any relative or spouse of a purchaser and any relative of such spouse, who has the same home as such purchaser; and

(2) the sale to any trust or estate in which a purchaser ~~or~~ and any of the persons related to him as specified in subitem (1) or (3) collectively have ~~100~~ more than 50 percent of the beneficial interest (excluding contingent interest); and

(3) the sale to any corporation or other organization of which a purchaser ~~or~~ and any of the persons related to him as specified in subitem (1) or (2) collectively are the beneficial owners of ~~all~~ more than 50 percent of the equity securities (excluding directors' qualifying shares) or equity interests; and

B. and C. [Unchanged.]

D. the sales to any "accredited investor" within the meaning of Code of Federal Regulations, title 17, section 230.501(a).

Subp. 3. and 4. [Unchanged.]

2875.0180 PERSONS TO WHOM SALES HAVE BEEN MADE.

Subpart 1. **Computing.** For the purpose of ~~computing~~ calculating the number of persons to whom sales have been made, or will have been made upon completion of a proposed offering pursuant to Minnesota Statutes, section 80A.15, subdivision 2, clause (h):

~~A. the following purchasers shall be excluded:~~

~~(1) any relative or spouse of a purchaser and any relative of such spouse, who has the same home as such purchaser, and~~

~~(2) any trust or estate in which a purchaser or any of the persons related to him as specified in subitem (1) or (3) collectively have 100 percent of the beneficial interest (excluding contingent interests), and~~

~~(3) any corporation or other organization of which a purchaser or any of the persons related to him as specified in subitem (1) or (2) collectively are the beneficial owners of all the equity securities (excluding directors' qualifying shares) or equity interests, and~~

~~B. there shall be counted as one purchaser any corporation, partnership, association, joint stock company, trust, or unincorporated organization except that if such entity was organized for the specific purpose of acquiring the securities offered each beneficial owner of equity interests or equity securities in such entity shall count as a separate purchaser, and~~, the calculation shall follow the rules for calculation in Code of Federal Regulations, title 17, section 230.501(e).

~~C.~~ Clients of an investment adviser, customers of a broker-dealer, or persons with similar relationships shall be considered to be separate purchasers regardless of the amount of discretion given to the investment adviser, broker-dealer, bank trust department, or other person to act on behalf of the client, customer, or trust.

Subp. 2. [See Repealer.]

Subp. 3. to 5. [Unchanged.]

2875.0185 EFFECTIVE DATES OF STATEMENT OF ISSUER.

The exemption set forth in Minnesota Statutes, section 80A.15, subdivision 2, paragraph (h), clause (3) shall only be effective for a period of one year commencing from ten days after the date on which the statement of issuer is filed with the commissioner.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

2875.1590 BANKS, SAVINGS INSTITUTIONS, AND SAVINGS AND LOAN ASSOCIATIONS; PROMOTION OR ESABLISHMENT OF SECURITIES BROKERAGE SERVICES INVOLVING EXECUTION OF CUSTOMER PURCHASE AND SALE ORDERS.

Subpart 1. License requirements. A bank, savings institution, or savings and loan association which is not licensed as a broker-dealer may effect transactions in securities for the account of others by promoting or establishing accounts for broker-dealers only if the bank, savings institution, or savings and loan association:

A. does not hold itself out to the public as a securities broker through publishing, broadcasting, distributing, or circulating any form of advertising through any type of media or any other manner;

B. contracts with a broker-dealer to promote or establish accounts for that broker-dealer and the following conditions are all met:

(1) the broker-dealer is a National Association of Securities Dealers member who is licensed in Minnesota;

(2) all determinations of suitability are made by the licensed broker-dealer;

(3) promotional or account-establishing functions are only performed by persons who are licensed as agents to the broker-dealer; and

(4) the bank, savings association, or savings and loan association has a contract with only one broker-dealer during the same period of time;

C. does not engage in investment advice or underwriting in connection with the securities activities described in this rule;

D. conducts all securities activities in a manner not exceeding the powers conferred by federal and state laws regulating banks, savings institutions, and savings and loan associations; and

E. does not receive compensation for referrals to broker-dealers whose activities are not within the scope of

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

these rules.

Subp. 2. **Employees as agents.** No bank employees may be licensed as agents to more than one broker-dealer.

Subp. 3. **Filing requirements.** If a bank, savings institution, or savings and loan association contracts with a licensed broker-dealer to promote or establish accounts, the following information must be provided to the commissioner at least 30 days prior to the effective date of the contract:

A. the training manual to be used in the training of bank employees by the broker-dealer and a description of all other training to be provided;

B. a written description of the allocation of the following functions between the contracting parties with respect to securities transactions;

(1) opening, approving, and monitoring of accounts;

(2) extension of credit;

(3) maintenance of books and records;

(4) receipt of and delivery of funds and securities;

(5) safeguarding of funds and securities;

(6) confirmations and statements; and

(7) acceptance of orders and execution of transactions;

C. a written commitment from the bank, savings institution, or savings and loan association that the commissioner will have access to customer records of securities transactions in their possession;

D. identification of all bank, savings institution, or savings and loan association employees involved with the marketing program, a description of their functions and method of compensation, and identification of the agents of the licensed broker-dealer; and

E. a U-4 application for designated agents of the licensed broker-dealer.

2875.2410 ESCROW AGREEMENTS.

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

Subpart 1. **Conditions of registration.** As a condition of registration of securities by an issuer, restrictions on transferability of all cheap stock owned by officers, directors, or persons owning greater than ten percent of the then outstanding stock of the issuer, may be required for a period of up to three years. The restrictions on transferability may be by means of escrow of shares, legending of share certificates, or by other means, as may be determined by the commissioner upon the facts and circumstances of each case to be necessary for the protection of public investors, or by any combination of the foregoing.

Subp. 2. and 3. [Unchanged.]

2875.2490 ANNUAL SHAREHOLDERS' REPORT.

So long as a registration statement is effective, other than for industrial revenue bonds, within 150 days of the end of the fiscal year, the registrant shall distribute an annual report to all shareholders. Said annual report shall contain a balance sheet, income statement, statement of changes in financial position, all of which must be audited by an independent certified public accountant with his opinion expressed thereon, and such other information as may be necessary for complete disclosure.

2875.2500 REPORT FORM.

So long as a registration statement is effective, other than for industrial revenue bonds, the issuer shall file an annual report in such form, and containing such information as the commissioner prescribes. At a minimum, the annual report shall contain the following:

A. to T. [Unchanged.]

2875.2510 ~~ALTERNATE SEC FORM~~ REPORT FILINGS.

Subpart 1. **Alternate filings.** Any issuer filing annual reports under the Securities Exchange Act of 1934 may file, in lieu of the report required by part 2875.2500, a duplicate copy of the annual report filed with the Securities and Exchange Commission.

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

Any issuer filing reports under the Investment Company Act of 1940 may file, in lieu of the report required by part 2875.2500, a current updated prospectus as filed with the Securities and Exchange Commission or a copy of the annual report required to be filed with the Securities and Exchange Commission.

Subp. 2. **Filing of annual report or prospectus.** The annual report or prospectus required by parts 2875.2500 and 2875.2510 shall be filed on or prior to the 90th day (or 120th day in the case of issuers registered under the Investment Company Act of 1940) following the close of the issuer's fiscal year, except that if the information required by part 2875.2500, item S is not reasonably available at such time, such information may be filed on or before the 150th day following the close of the issuer's fiscal year.

Subp. 3. **Contents regarding registration of industrial revenue bonds.** So long as a registration is effective for industrial revenue bonds, as an annual report there must be filed with the commissioner financial statements of the person or persons directly liable to make payments for the purpose of paying principal and interest. Notwithstanding parts 2875.0950 and 2875.0960, unless the foregoing financial statements are otherwise audited by independent certified public accountants, the financial statements filed need not be so audited, unless required by the commissioner, but must be prepared in accordance with generally accepted accounting principles unless otherwise permitted by order.

2875.3000 MINIMUM INVESTMENT REQUIRED.

Subpart 1. [Unchanged.]

Subp. 2. **Fair value of equity investment.** "Fair value of the equity investment" shall mean the higher of:

A. the total of all sums irrevocably conveyed to the issuer in cash, together with the reasonable value of all tangible assets irrevocably conveyed to the issuer, and together with an evaluation by a qualified independent appraiser or other reasonable demonstration of value of intangible assets

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including, but not limited to, patents, licenses, technologies, trademarks, and technical or professional services contributed by the promoters, as adjusted by the retained earnings of the issuer subsequent to the dates of such conveyances, payments, or contributions; or

B. the total shareholders' equity as set forth in a certified balance sheet prepared in accordance with parts 2875.0950 and 2875.0960, less the value assigned to any intangible assets ~~which have not been independently evaluated~~ for which no reasonable demonstration of value has been provided.

Subp. 3. and 4. [Unchanged.]

REPEALER. Minnesota Rules, parts 2875.0180, subpart 2; 2875.3920; and 2875.3930 are repealed.

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

OFFICE OF THE REVISOR OF STATUTES

Proposed Rule

RD518

Agency: Department of Commerce

Division:

Agency Contact: Dick Gomsrud

Minnesota Rules: Parts 2875.0150; 2875.0180; 2875.0185; 2875.1590; 2875.2410; 2875.2490; 2875.2500; 2875.2510; 2875.3000

Title: Proposed Rules Relating to Securities Regulation

Type of Rules: Permanent

Incorporations by Reference: None
Rule Number: Material Incorporated:

Steven C. Cross
Revisor of Statutes

Paul M. Marinac
Assistant Deputy Revisor
Phone: 296-0948
Date: November 13, 1984

STATE REGISTER

STATE OF MINNESOTA



VOLUME 9, NUMBER 24

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(7) All pull-tabs or tipboard tickets must be constructed to ensure that, when offered for sale to the public, the pull-tab or tipboard ticket is virtually opaque and free of security defects wherein winning pull-tabs or tipboard tickets cannot be determined prior to being opened through the use of high intensity lights or any other method.

7860.0310 DOMESTIC MANUFACTURE.

Any person manufacturing gambling equipment within the state of Minnesota shall first register the manufacturing activity with the board before selling, marketing, or otherwise distributing such equipment, in or out of state. An organization which manufactures equipment for lawful gambling for its own use shall also obtain a state registration stamp from the board for each item of equipment manufactured.

Department of Commerce

Proposed Rules Relating to Securities Regulation

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Commerce proposes to adopt the above-entitled rules without a public hearing. The Commissioner of Commerce has determined that the proposed adoption of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, section 14.21.

Persons interested in these rules shall have 30 days to submit comments in support of or in opposition to the rules. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change.

No public hearing will be held unless twenty-five (25) or more persons make a written request for a hearing within the 30-day comment period. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes, section 14.14, subd. 1.

Persons who wish to submit comments or a written request for a public hearing should submit them to Kris Eiden, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101. Any person requesting a public hearing should state her/his name and address, identify the portion of the proposed rule addressed, the reason for the request and any change proposed and send this information to the above address.

Authority for the adoption of these rules is contained in Minnesota Statutes, 80A.25, subd. 1; 80A.05; 80A.12, subd. 5; 80A.14, subd. 4; and 45.023. Additionally, a Statement of Need and Reasonableness describing the need for and reasonableness of each provision and identifying the data and information relied upon to support the proposed rules has been prepared and is available upon request.

It has been determined that the rules may have an effect on small businesses. A discussion of the effect of the rules is contained in the Statement of Need and Reasonableness.

Upon adoption of the final rules without a public hearing, the proposed rules, this notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Rose Weiner, Department of Commerce, 500 Metro Square Bldg., St. Paul, MN 55101.

A copy of the proposed rules is attached to this notice.

Copies of this notice and the proposed rules are available and may be obtained by contacting Rose Weiner at the above address.

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed

2875.0150 ISOLATED SALES.

Subpart 1. [Unchanged.]

Subp. 2. Computation. For the purpose of computing the number of sales that have been made, or will have been made upon completion of a proposed offering pursuant to Minnesota Statutes, section 80A.15, subdivision 2, clause (a):

A. the following sales shall be excluded if made within 48 hours of a sale to another purchaser, which other sale is included in such computation:

(1) the sale to any relative or spouse of a purchaser and any relative of such spouse, who has the same home as such purchaser; and

(2) the sale to any trust or estate in which a purchaser ~~or~~ and any of the persons related to him as specified in subitem (1) or (3) collectively have ~~100~~ more than 50 percent of the beneficial interest (excluding contingent interest); and

(3) the sale to any corporation or other organization of which a purchaser ~~or~~ and any of the persons related to him as specified in subitem (1) or (2) collectively are the beneficial owners of ~~all~~ more than 50 percent of the equity securities (excluding directors' qualifying shares) or equity interests; and

B. and C. [Unchanged.]

D. the sales to any "accredited investor" within the meaning of Code of Federal Regulations, title 17, section 230.501(a).

Subp. 3. and 4. [Unchanged.]

2875.0180 PERSONS TO WHOM SALES HAVE BEEN MADE.

Subpart 1. Computing. For the purpose of ~~computing~~ calculating the number of persons to whom sales have been made, or will have been made upon completion of a proposed offering pursuant to Minnesota Statutes, section 80A.15, subdivision 2, clause (h)~~:~~

~~A. the following purchasers shall be excluded:~~

~~(1) any relative or spouse of a purchaser and any relative of such spouse, who has the same home as such purchaser; and~~

~~(2) any trust or estate in which a purchaser or any of the persons related to him as specified in subitem (1) or (3) collectively have 100 percent of the beneficial interest (excluding contingent interests); and~~

~~(3) any corporation or other organization of which a purchaser or any of the persons related to him as specified in subitem (1) or (2) collectively are the beneficial owners of all the equity securities (excluding directors' qualifying shares) or equity interests; and~~

~~B. there shall be counted as one purchaser any corporation, partnership, association, joint stock company, trust, or unincorporated organization except that if such entity was organized for the specific purpose of acquiring the securities offered each beneficial owner of equity interests or equity securities in such entity shall count as a separate purchaser; and~~, the calculation shall follow the rules for calculation in Code of Federal Regulations, title 17, section 230.501(e).

~~C.~~ Clients of an investment adviser, customers of a broker-dealer, or persons with similar relationships shall be considered to be separate purchasers regardless of the amount of discretion given to the investment adviser, broker-dealer, bank trust department, or other person to act on behalf of the client, customer, or trust.

Subp. 2. [See Repealer.]

Subp. 3. to 5. [Unchanged.]

2875.0185 EFFECTIVE DATES OF STATEMENT OF ISSUER.

The exemption set forth in Minnesota Statutes, section 80A.15, subdivision 2, paragraph (h), clause (3) shall only be effective for a period of one year commencing from ten days after the date on which the statement of issuer is filed with the commissioner.

2875.1590 BANKS, SAVINGS INSTITUTIONS, AND SAVINGS AND LOAN ASSOCIATIONS; PROMOTION OR ESTABLISHMENT OF SECURITIES BROKERAGE SERVICES INVOLVING EXECUTION OF CUSTOMER PURCHASE AND SALE ORDERS.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

Subpart 1. License requirements. A bank, savings institution, or savings and loan association which is not licensed as a broker-dealer may effect transactions in securities for the account of others by promoting or establishing accounts for broker-dealers only if the bank, savings institution, or savings and loan association:

A. does not hold itself out to the public as a securities broker through publishing, broadcasting, distributing, or circulating any form of advertising through any type of media or any other manner;

B. contracts with a broker-dealer to promote or establish accounts for that broker-dealer and the following conditions are all met:

(1) the broker-dealer is a National Association of Securities Dealers member who is licensed in Minnesota;

(2) all determinations of suitability are made by the licensed broker-dealer;

(3) promotional or account-establishing functions are only performed by persons who are licensed as agents to the broker-dealer; and

(4) the bank, savings association, or savings and loan association has a contract with only one broker-dealer during the same period of time;

C. does not engage in investment advice or underwriting in connection with the securities activities described in this rule;

D. conducts all securities activities in a manner not exceeding the powers conferred by federal and state laws regulating banks, savings institutions, and savings and loan associations; and

E. does not receive compensation for referrals to broker-dealers whose activities are not within the scope of these rules.

Subp. 2. Employees as agents. No bank employees may be licensed as agents to more than one broker-dealer.

Subp. 3. Filing requirements. If a bank, savings institution, or savings and loan association contracts with a licensed broker-dealer to promote or establish accounts, the following information must be provided to the commissioner at least 30 days prior to the effective date of the contract:

A. the training manual to be used in the training of bank employees by the broker-dealer and a description of all other training to be provided;

B. a written description of the allocation of the following functions between the contracting parties with respect to securities transactions;

(1) opening, approving, and monitoring of accounts;

(2) extension of credit;

(3) maintenance of books and records;

(4) receipt of and delivery of funds and securities;

(5) safeguarding of funds and securities;

(6) confirmations and statements; and

(7) acceptance of orders and execution of transactions;

C. a written commitment from the bank, savings institution, or savings and loan association that the commissioner will have access to customer records of securities transactions in their possession;

D. identification of all bank, savings institution, or savings and loan association employees involved with the marketing program, a description of their functions and method of compensation, and identification of the agents of the licensed broker-dealer; and

E. a U-4 application for designated agents of the licensed broker-dealer.

2875.2410 ESCROW AGREEMENTS.

Subpart 1. Conditions of registration. As a condition of registration of securities by an issuer, restrictions on transferability of all cheap stock owned by officers, directors, or persons owning greater than ten percent of the then outstanding stock of the issuer, may be required for a period of up to three years. The restrictions on transferability may be by means of escrow of shares, legending of share certificates, or by other means, as may be determined by the commissioner upon the facts and circumstances of each case to be necessary for the protection of public investors, or by any combination of the foregoing.

Subp. 2. and 3. [Unchanged.]

2875.2490 ANNUAL SHAREHOLDERS' REPORT.

So long as a registration statement is effective, other than for industrial revenue bonds, within 150 days of the end of the fiscal year, the registrant shall distribute an annual report to all shareholders. Said annual report shall contain a balance sheet, income statement, statement of changes in financial position, all of which must be audited by an independent certified public accountant with his opinion expressed thereon, and such other information as may be necessary for complete disclosure.

2875.2500 REPORT FORM.

So long as a registration statement is effective, other than for industrial revenue bonds, the issuer shall file an annual report in such form, and containing such information as the commissioner prescribes. At a minimum, the annual report shall contain the following:

A. to T. [Unchanged.]

2875.2510 ~~ALTERNATE SEC FORM~~ REPORT FILINGS.

Subpart 1. Alternate filings. Any issuer filing annual reports under the Securities Exchange Act of 1934 may file, in lieu of the report required by part 2875.2500, a duplicate copy of the annual report filed with the Securities and Exchange Commission.

Any issuer filing reports under the Investment Company Act of 1940 may file, in lieu of the report required by part 2875.2500, a current updated prospectus as filed with the Securities and Exchange Commission or a copy of the annual report required to be filed with the Securities and Exchange Commission.

Subp. 2. Filing of annual report or prospectus. The annual report or prospectus required by parts 2875.2500 and 2875.2510 shall be filed on or prior to the 90th day (or 120th day in the case of issuers registered under the Investment Company Act of 1940) following the close of the issuer's fiscal year, except that if the information required by part 2875.2500, item S is not reasonably available at such time, such information may be filed on or before the 150th day following the close of the issuer's fiscal year.

Subp. 3. Contents regarding registration of industrial revenue bonds. So long as a registration is effective for industrial revenue bonds, as an annual report there must be filed with the commissioner financial statements of the person or persons directly liable to make payments for the purpose of paying principal and interest. Notwithstanding parts 2875.0950 and 2875.0960, unless the foregoing financial statements are otherwise audited by independent certified public accountants, the financial statements filed need not be so audited, unless required by the commissioner, but must be prepared in accordance with generally accepted accounting principles unless otherwise permitted by order.

2875.3000 MINIMUM INVESTMENT REQUIRED.

Subpart 1. [Unchanged.]

Subp. 2. Fair value of equity investment. "Fair value of the equity investment" shall mean the higher of:

A. the total of all sums irrevocably conveyed to the issuer in cash, together with the reasonable value of all tangible assets irrevocably conveyed to the issuer, and together with an evaluation by a qualified independent appraiser or other reasonable demonstration of value of intangible assets including, but not limited to, patents, licenses, technologies, trademarks, and technical or professional services contributed by the promoters, as adjusted by the retained earnings of the issuer subsequent to the dates of such conveyances, payments, or contributions; or

B. the total shareholders' equity as set forth in a certified balance sheet prepared in accordance with parts 2875.0950

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

and 2975.0960, less the value assigned to any intangible assets ~~which have not been independently evaluated~~ for which no reasonable demonstration of value has been provided.

Subp. 3. and 4. [Unchanged.]

REPEALER. Minnesota Rules, parts 2875.0180, subpart 2; 2875.3920; and 2875.3930 are repealed.

Department of Economic Security

Proposed Emergency Rules Governing Registration for Employment Services Under General Assistance

Notice of Intent to Adopt Emergency Rules and Request for Public Comment

Notice is hereby given that the Department proposes to adopt the above-entitled rules pursuant to Minnesota Statutes, section 14.30. The rules previously published in the *State Register* on August 6, 1984 (9 SR 290) are withdrawn.

The adoption of the rules is authorized by Minnesota Laws 1984, Chapter 654, Article 5, Section 34, which amended Minnesota Statutes 256D.111, subdivision 2 and requires the Commissioner to define a person who lacks work skills or training or who is unable to obtain the necessary work skills or training.

Persons interested in these rules shall have 25 days to submit comments in writing on the proposed rules.

The proposed rules may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substantial change in the proposed language.

After the 25-day comment period, the proposed rules as published, with any modifications, will be delivered to the Administration Division of the Office of the Attorney General for review as to its legality, and its form to the extent form relates to legality, including the issue of substantial change. Notice of the date of submission of the proposed rules to the Attorney General will be mailed to any person requesting to receive the notice.

Written comments, requests for a copy of the proposed rules and requests for notice of the date of submission to the Attorney General should be submitted to:

Donald M. Buckner
Office of Employment Initiatives
Minnesota Department of Economic Security
390 North Robert Street
St. Paul, Minnesota 55101

This notice, all written comments received, and the emergency rules, as adopted will become a part of the record in the final adoption. As required by Minnesota Statutes, sections 14.33 and 14.35, emergency rules shall take effect 5 working days after approval by the Attorney General, and will be in effect for 180 days.

A copy of the proposed rules is attached to this notice.

Barbara Beerhalter
Commissioner

Emergency Rules as Proposed (all new material)

CHAPTER 3320
DEPARTMENT OF ECONOMIC SECURITY
GENERAL ASSISTANCE; REGISTRATION FOR EMPLOYMENT SERVICES

3320.0005 [Emergency] PURPOSE.

Parts 3320.0005 to 3320.0030 [Emergency] clarify and provide procedures for those portions of Minnesota Statutes, section 256D.111, subdivisions 1 and 2, whose implementation are the sole responsibility of the Department of Economic Security or the joint responsibility of the Department of Economic Security and the Department of Human Services. These rules are to be read in conjunction with parts 3300.4010 to 3300.4120.

Nothing in these rules shall preclude any individual from seeking or participating in the full range of services available from the Department of Economic Security.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of Rules Relating to Securities Regulation

FINDINGS OF FACT AND CONCLUSIONS

Notice of the Intent to Adopt Rules Relating to Securities Regulation without a Public Hearing and the Proposed Rules were published in the State Register on December 10, 1984 at page 1296. Proper notice as required by Minnesota Statutes, Section 14.05 to 14.36 was served upon all persons, associations, and other interested groups registered with the State of Minnesota, Department of Commerce for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having considered all evidence adduced upon the records, files and proceedings herein, I find the following:

That Part 2875.0150, subpart 2, item D's itent would be clarified by the addition of the words "shall be excluded." to the end of that item. p.1

That Part 2875.0185 contains a typographihcal error in the citation to Minnesota Statute. The proper citation is "Minnesota Statutes, section 80A.15, subdivision 2, paragraph (h)". The words "clause (3)" at the end of that citation in the published rules is erroneous. p.2

That because of the interest in Part 2875.1590 originally included in the rules published on December 10, 1984 and despite the fact that the requisite number of persons had not requested it was felt that a public hearing on that rule was appropriate. Accordingly by Order dated December 7, 1984 that Part was withdrawn and Notice of Withdrawal was mailed to all persons on the list maintained pursuant to Minnesota Statutes, Section 14.14 subdivision 1a.

That the changes noted are not substantial and the above captioned rules as modified are needed and reasonable.

Michael A. Hatch
Commissioner of Commerce

Dated: June 14, 1985

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE

In the Matter of the Proposed Securities rule amendments for the purpose of computing sales made under certain exemptions, regulating financial institution securities practices, modifying registration requirements, and providing for modified annual reporting for industrial revenue bonds.

STATEMENT OF AUTHORITY

Minn. Stat. Sec. 80A.25, subd. 1 gives the Commissioner of Commerce ("Commissioner") authority to "from time to time make, amend, and rescind such rules, forms and orders as are necessary to carry out the provisions of Sections 80A.01 to 80A.31...."

Additional rulemaking authority pertaining to the proposed amendments is found at Minn. Stat. Sec. 80A.05 (rules concerning broker-dealer licensing), 80A.12, Subd. 5 (rules pertaining to registration), 80A.14, subd. 4 (rules defining broker-dealers), and 80A.15 (rules modifying certain exemptions).

The Commissioner finds the proposed amendments necessary and appropriate in the public interest for the protection of investors and consistent with the purposes fairly intended by the policy and

provisions of Sections 80A.01 to 80A.31. The Commissioner further finds that the proposed amendments will have the effect of establishing less stringent compliance and reporting requirements for certain small businesses, consolidate and simplify compliance and reporting requirements for small businesses, and will have a favorable regulatory impact on small business in accordance with Minn. Stat. Sec. 14.115.

The Commissioner further finds that the proposed amendments are consistent with the statutory policy of Minn. Stat. Sec. 80A.31, which calls for the coordination of interpretations of Minn. Stat. Ch. 80A. with laws of other states and related federal regulation.

History

On March 19, 1984, the Commissioner published notice of intent to solicit outside information at 8 S.R. 2120 for his consideration in the promulgation of rules and amendments under Minnesota Statutes Chapter 80A. After a review of comments solicitated, the Commissioner published the proposed rules in the State Register on _____

Facts Establishing Reasonableness

Minnesota Rules, Part 2875.0150

Minnesota Rules, Part 2875.0150, Subpart 2, governs the method of computation of sales for purposes of determining the number of sales under the "isolated sales" exemption set forth in Minn. Stat. Sec. 80A.15, subd. 2(a). The purpose of the proposed amendment to Part 2875.0150 is to bring it into comformity with the counting provisions contained in federal rule 501 of Regulation D. The Commissioner believes that the present federal method of computation is consistent with the purposes intended by chapter 80A in the regulation of securities. Also, adoption of the proposed rule will remove inconsistencies between state and federal law.

Federal Rule 501 lowered the requisite beneficial interest a purchaser and related persons must have in a trust, estate, corporation or organization in order for that trust, estate, corporation or organization to be excluded from being counted as a purchaser. A trust, estate, corporation or organization is thus now exempt under federal rule 501 (e) (ii) from being counted as a purchaser if a purchaser and persons related to him collectively have more than a 50 percent beneficial interest in that trust, estate, corporation or organization. The proposed amendment to the Minnesota rule would therefore conform to federal Regulation D.

In addition, for the purpose of determining the requisite beneficial interest, Rule 501 was changed to allow aggregation of the purchaser's beneficial interest with that of persons related to him. Therefore, under federal law the beneficial interest

threshold is based on the collective beneficial interest of the purchaser and related persons. The proposed amendments are also designed to coordinate with this aspect of Regulation D.

Additionally, under the proposed amendments, sales to accredited investors are excluded from the computation of sales. Again, this is in conformity with Federal Rule 501. See rule 501 (e)(iv).

Minnesota Rules, Part 2875.0180

Consistent with the discussion pertaining to Part 2875.0150, the proposed amendment to Part 2875.0180, Subpart 1, is necessary to coordinate with the provisions of the federal law.

Minnesota Rules Part 2875.0185

Minnesota Rules Part 2875.0185 is being proposed to addresses the question of the length of time that a statement of issuer is effective for an offering exempt under Minn. Stat. Sec. 80A.15, Subd. 2(h). Presently, neither the statute nor the rules prescribe when a statement of issuer must be refiled to continue an offering. Accordingly, an offering could conceivably continue indefinitely so long as sales have not been made to twenty-five persons. As a result, investors may be basing their investment decisions on outdated information.

The proposed rule makes the statement of issuer effective for a period of twelve months from its effective date. The issuer would thus be required to file a new statement of issuer if sales of the same issue are to be made after the twelve month effective period.

Minnesota Rules Part 2875.159Ø

Minnesota Rules, Part 2875.159Ø, Subparts 1 and 2 are added in response to 1984 amendments to Minn. Stat. Sec. 8ØA.14, subd. 4 which gave the Commissioner rule-making authority to determine when banks, savings institutions, or savings and loan associations could act for the account of others without being licensed as a broker-dealer. The statute was modified because securities activities and related promotional practices of banks, savings institutions, and savings and loan associations have recently changed significantly from the accommodation functions contemplated by the drafters of the Uniform Securities Act, which contained an exclusion for such financial institutions from the definition of broker-dealer. See J. Long, 1985 Blue Sky Handbook, § 6.Ø3 [3][C] (1984).

Today as a result of recent federal interpretations, "discount brokerage" is often aggressively pursued and promoted by financial institutions. In exchange for promotions in order-handling services, these institutions may receive a portion of the customer's commissions paid to the entity that executes the securities transactions. This changes the nature of brokerage services offered by banks. Rather than merely providing

accommodation services to existing customers, services may now be provided that are functionally indistinguishable from those offered by licensed securities broker-dealers.

In view of the mass-marketing of discount brokerage services through banks which is now occurring and the aforementioned 1984 legislation, the Commissioner is proposing Part 2875.1590. The overriding purpose of 2875.1590 is to indicate the circumstances under which the financial institutions would require securities licensure in the context of marketing discount brokerage services to their customers.

Consistent with the functional regulation concept of Minn. Stat. Chapter 80A, the general approach taken by the rule is to state the conditions for activities which would not require licensure. Accordingly, if the financial institution does not hold itself out to the public as a securities broker through advertising or mass solicitation, and does not contract with licensed broker-dealers to mass market their services without some degree of regulatory accountability; it will not require a broker-dealer license. The proposed rule at Subpart 1(c) makes it clear that investment advice and underwriting are not permitted.

The provisions of proposed Part 2875.1590 are aimed at restricting mass-marketing to the general public without licensure. A concomitant goal, which is set forth at Subpart 1 is to establish a degree of regulatory accountability in those

instances where the financial institutions are marketing the services for licensed broker-dealers by requiring training, supervision, and responsibility by the broker-dealer. There is also a provision for access to records at Subpart 2(C) which would enable the Commissioner to follow-up on complaints about these services without resistance under the bank secrecy laws. It is believed that these requirements will not be burdensome and will address major investor-protection concerns without unnecessary red tape.

Subpart 1(D) is added to clarify that the rules are not intended to confer additional powers on the designated financial institutions.

Minnesota Rules, Part 2875.159Ø at Subpart 2 goes on to state the nature of information and undertakings which must be provided to the Commissioner if the typical program of offering access to the services of a licensed discount broker through financial institutions is undertaken. Among the items of information required would be a description of training programs for bank employees, a written description of the allocation of securities transactions functions between the broker-dealer and the bank, a written commitment from the bank providing the Commissioner access to records of securities transactions in its possession, identification of bank employees who would be involved in marketing securities, and a securities application for persons designated as agents of the licensed broker-dealer. This

information assists in establishing compliance with Minnesota law and would provide useful information for enforcement purposes in the event of future complaints.

In summary, the object of Minnesota Rules Part, 2875.1590 is to establish boundaries for bank activity without broker-dealer licensure, provide fundamental investor protection, and establish where possible a level playing field among those who market financial services.

Minnesota Rule Part 2875.2410

Rule 2875.2410 allows the commissioner, as a condition of registration, to reqiure the escrow of cheap stock shares owned by officers, directors, or persons owning more than ten percent of the outstanding stock of the issuer. The purpose of the rule is to ensure that promoters of the issuer are bound to the company and do not "bail out" to the detriment of public shareholders.

A maximum three year escrow period is proposed as being a reasonable length of time in which to retain the promoters' interest in the issuer. The amendment to Part 2875.2410 therefore removes some of the uncertainty which currently exists as to the time period for escrow.

Minnesota Rules, Parts 2875.2490 and 2875.2500

The proposed rule amendments at 2875.2490 and 2875.2500 are intended to facilitate secondary trading for industrial revenue bonds by providing for financial information in annual report filings about the actual obligor on the bonds rather than the technical issuer, which is often a municipality. Essentially the rule changes provide that information concerning the borrower (which is the source of the investor's return) would be submitted in the annual report filings and that such information would be in accordance with generally accepted accounting principles, however not necessarily audited.

It has been estimated that as many as one-third of small business borrowers are closely-held corporations and therefore do not routinely obtain financial audits. It would impose unnecessarily burdensome expense for such companies to obtain financial audits unless required by the Commissioner in approporiate cases simply for the purpose of filing an annual report. The rules currently require annual reporting by the issuer, which is often a municipality, and therefore the current rules are technically addressed to informing investors and others about the financial condition of the source of return. Both of these problems are dealt with by the proposed rules.

Minnesota Rules, Part 2875.3000

Minnesota Rules Part 2875.3000 requires that a minimal investment have been made in an issuer prior to securities registration. The rule defines what then constitutes the equity investment of the issuer.

Currently, intangible assets, such as patents and trademarks, can be applied to the equity investment of the issuer if they have been evaluated by a qualified independent appraiser. The amendment to Part 2875.3000, Subp. 2, A., allows the evaluation of intangible assets by any reasonable demonstration of value. The allowance for more than a single type of evaluation is being proposed because an evaluation by an independent appraiser can be extremely costly, and many first time issuers cannot afford that expense. The commissioner believes that a reasonable demonstration of value provides issuers with alternatives as to determining the value of intangible assets while maintaining the integrity and purpose of the rule.

For the same reasons just described, 2875.3000, Subp. 2, B., is being amended to reflect the acceptablity of an evaluation of intangible assets through a reasonable demonstration of value.

Minnesota Rules, Parts 2875.3920 and 2875.3920

Finally, the repeal of Minnesota Rules, Parts 2875.3920 and 2875.3930 is being proposed. The primary reason for the proposed repeal is to enhance uniformity between state and federal regulation in accordance with Minn. Stat. Section 80A.31.

Part 2875.3920 places certain limitations and prohibitions on the investments of investment companies. Many of these restrictions duplicate or conflict with provisions of the Investment Company Act of 1940 and the interpretations of the Securities and Exchange Commission. As the federal government imposes restrictions on the investments of investment companies and as conflicting requirements between state and federal regulatory agencies create confusion and inconsistency, the repeal of Part 2875.3920 is necessary.

Part 2875.3930 specifies speculative activities which must be disclosed in boldface type on the cover or following two pages of an investment company's prospectus. Due to the belief that under prior disclosure requirements prospectuses were too lengthy and complex, the Securities and Exchange Commission recently adopted new guidelines to be followed by an investment company when preparing a prospectus. A prospectus prepared according to the new guidelines will be shorter and more likely to be read by investors in its entirety. Thus, the need for highlights in the front of the prospectus is no longer necessary.

In order to allow a standard, uniform prospectus to be filed in Minnesota, the department is proposing that 2875.3930 be repealed. A reduction in unnecessary expenses to investment companies should result, without any reduction in investor protection.

SMALL BUSINESS CONSIDERATIONS

Minnesota Statutes § 14.115 requires that the impact of proposed rules on small businesses be considered in the development of those rules. Specifically, the statute, at subdivision 2, requires that less stringent compliance standards and reporting requirements for small businesses be considered. The statute also requires that methods designed to reduce the impact of the rules on small businesses be incorporated into the rules if they are feasible and consistent with the statutory objectives associated with the rules.

Despite the lack of comments resulting from the department's Notice to Solicit Outside Opinion, the Commissioner considered whether the provisions of the rule might be modified to accomodate the interests of small businesses. Consideration was given to possible ways in which the requirements might be relaxed for small businesses or amended to reduce any burden on small businesses.

The rules were amended and modified in various ways to reduce the burden on small businesses and in many cases on all businesses. The impact of the changes are described in the sections describing each part.

Each of the methods described at Minnesota Statutes § 14.115, subdivision 2 (a) - (3) was considered in proposing the rule. The provisions contained in the proposed rule are believed to be necessary to achieve the legislative purposes.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of Rules Relating to Securities Regulation

CERTIFICIATE OF COUNSEL

I, Alan I. Gilbert , Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the rulemaking record, and that, based on my examination, the Administrative Procedure Act and the rules of the Attorney General have been followed. Any exceptions are noted below.

Alan I. Gilbert
Special Assistant
Attorney General

Dated: 6/20/85

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption
of Rules Relating to Securities Regulation

STATEMENT OF
RICHARD G. GOMSRUD

The undersigned, Department Counsel for the Department of Commerce as part of his duties supervised the promulgation of the above-captioned rules. The rules as originally published on December 10, 1984 at page 1296 of the State Register contained Part 2875.1590 pertaining to what is know as Bank Discount Brokerage Rules. Because of the controversy surrounding this one rule and the non-controversial nature of the remaining rules, that Part was withdrawn and a hearing scheduled for that Part.

No written comments or request for hearing were received regarding any of the Parts except Part 2875.1590. All matters pertaining to that Part are a part of the separate record regarding that rule.

No requests for Notice of Submission to the Attorney General were received

Richard G. Gomsrud

May 30, 1985

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Rules Relating to Securities Regulation

ORDER FOR WITHDRAWAL OF RULE AND NOTICE OF INTENT TO WITHDRAW RULES

IT IS ORDERED this 7th day of December, 1984 that proposed Minnesota Rules, Part 2875.1590, to be published in the State Register on December 10, 1984 at 9 S.R. 1271 is withdrawn. Notice of the withdrawal shall be given to all persons who have registered their names with the Department of Commerce for that purpose, pursuant to Minnesota Statutes, Section 14.14, subdivision 1(a), and be published in the State Register.

Michael A. Hatch
Commissioner of Commerce

NOTICE OF WITHDRAWAL

Rule 2875.1590 is being withdrawn from the attached rules. It will be republished as a controversial rule in the State Register. A hearing has tentatively been scheduled for February 12, 1984.