

Minnesota Attorney General: Administrative Rules Proceedings

Copyright Notice:

This material may be protected by copyright law (U.S. Code, Title 17). Researchers are liable for any infringement. For more information, visit www.mnhs.org/copyright.

Version 3
August 20, 2018

Our File No. 1264 05.0009.0110

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 4-7-86
DATE FOR REVIEW 4-16-86
DATE DUE 4-21-86

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

Approved 4-21-86 Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State 4-21-86 Revisor approved _____ disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed See SR.

✓ Order Adopting 3.28.86 Date

N/A Notice of Intent to Solicit Outside Opinion

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency includes small biz statement.

✓ Affidavit of Mailing Notice or rulemaking
1.7.86 At least 30 days prior to ~~hearing~~/adoption
✓ Affidavit of Additional Mailing. 1.7.86
✓ Mailing list Certificate

✓ Publication in State Register
1.13.86 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

N/A Agency's Findings of Fact

LCRAR Report or agency Affidavit

Certificate of Board's Resolution Adopting Rules

Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness
✓ Amended SONR.
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

✓ Affidavit of ~~Mailing~~ Notice of Submission to Attorney General

N/A Notice of Submission to the Attorney General

✓ Statement re Additional Discretionary Notice

✓ Affidavit Regarding Dual Notice

✓ Memo, Gomerud to Wehrwein, re this Rulemaking

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: MICHAEL A. HATCH, Commissioner
Department of Commerce

ATTN: BARRY GRELLER
Special Assistant Attorney General

DATE: 4/21/86

FROM: MARTHA J. CASSERLY
Special Assistant Attorney General

PHONE: 296-4692

SUBJECT: In the Matter of the Proposed Amendments to Securities Rules Regulating the Securities Practices of Financial Institutions, Including Banks, Savings Institutions and Savings and Loan Associations

The above-referenced rule has been approved as to its legality by the Attorney General on April 21, 1986.

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:pmf

Enclosures

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

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

RR1264

PG copy

Department of Commerce

Adopted Rules Relating to Brokerage Services by Financial Institutions

Rule as Adopted

2875.1590 BANKS, SAVINGS INSTITUTIONS, AND SAVINGS AND LOAN ASSOCIATIONS.

Subpart 1. **Licensing requirement.** The term "broker-dealer" as defined in Minnesota Statutes, section 80A.14, subdivision 4 includes a bank, savings institution, or savings and loan association that:

A. solicits brokerage business for which it receives transaction-related compensation, unless the bank, savings institution, or savings and loan association enters into a contractual or other arrangement with a broker-dealer licensed under Minnesota Statutes, chapter 80A pursuant to which the broker-dealer will offer brokerage services on or off the premises of the bank, savings institution, or savings and loan association provided that:

(1) the broker-dealer is clearly identified as the person performing the brokerage services;

(2) bank, savings institution, or savings and loan association employees perform only clerical and ministerial functions in connection with brokerage transactions unless the employees are licensed agents pursuant to Minnesota Statutes, chapter 80A;

(3) bank, savings institution, or savings and loan association employees do not receive, directly or indirectly, compensation for any brokerage activities unless the employees are licensed agents pursuant to Minnesota Statutes, chapter 80A; and

(4) the services are provided by the broker-dealer on a basis in which all customers are fully disclosed;

B. directly or indirectly receives transaction related compensation for providing brokerage services for trust, managing agency, or other accounts to which the bank, savings institution, or savings and loan association provides advice; provided, however, that this item does not apply if the bank, savings institution, or savings and loan association executes transactions through a broker-dealer licensed under Minnesota Statutes, chapter 80A and:

(1) each account independently chooses the broker-dealer through which execution is effected;

(2) bank, savings institution, or savings and loan association employees do not receive, directly or indirectly, compensation for any brokerage activities or compensation based upon the number of accounts choosing to use the broker-dealer; and

(3) the brokerage services are provided by the broker-dealer on a basis in which all customers are fully disclosed;

C. deals in or underwrites securities.

Subp. 2. **Applicability.** This part shall not apply to any bank, savings institution, or savings and loan association that engages in one or more of the following activities only:

A. effects transactions in commercial paper, bankers' acceptances, or commercial bills;

B. effects transactions for the investment portfolio of alliliated companies; affiliated ?

C. effects transactions as part of a program for the investment or reinvestment of deposit funds into any no-load open-end investment company registered pursuant to the Investment Company Act of 1940 that attempts to maintain a constant net asset value per share or has an investment policy calling for investment of at least 80 percent of its assets in debt securities maturing in 13 months or less;

D. effects transactions as part of any bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock ownership, stock appreciation, stock

option, dividend reinvestment, or similar plan for employees or shareholders of an issuer or its subsidiaries; or

E. effects transactions pursuant to Minnesota Statutes, section 80A.15, subdivision 2, paragraph (g) and the rules adopted under that provision.

Subp. 3. **Exemptions.** The commissioner, upon written request, or upon a motion, may exempt a bank, savings institution, or savings and loan association, either conditionally or on specific terms and conditions, where the commissioner determines that the activities of the bank, savings institution, or savings and loan association are not within the intended meaning and purpose of this part.

? in effect a variance - what are the criteria

Subp. 4. **Transaction related compensation.** For the purposes of this part, the term "transaction related compensation" means monetary profit in excess of cost recovery for providing brokerage execution services.

B. directly or indirectly receives transaction related compensation for providing brokerage services for trust, managing agency, or other accounts to which the bank, savings institution, or savings and loan association provides advice; provided, however, that this item does not apply if the bank, savings institution, or savings and loan association executes transactions through a broker-dealer licensed under Minnesota Statutes, chapter 80A and:

(1) each account independently chooses the broker-dealer through which execution is effected;

(2) bank, savings institution, or savings and loan association employees do not receive, directly or indirectly, compensation for any brokerage activities or compensation based upon the number of accounts choosing to use the broker-dealer; and

(3) the brokerage services are provided by the broker-dealer on a basis in which all customers are fully disclosed;

C. deals in or underwrites securities.

Subp. 2. **Applicability.** This part shall not apply to any bank, savings institution, or savings and loan association that engages in one or more of the following activities only:

A. effects transactions in commercial paper, bankers' acceptances, or commercial bills;

B. effects transactions for the investment portfolio of affiliated companies;

C. effects transactions as part of a program for the investment or reinvestment of deposit funds into any no-load open-end investment company registered pursuant to the Investment Company Act of 1940 that attempts to maintain a constant net asset value per share or has an investment policy calling for investment of at least 80 percent of its assets in debt securities maturing in 13 months or less;

D. effects transactions as part of any bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock ownership, stock appreciation, stock

option, dividend reinvestment, or similar plan for employees or shareholders of an issuer or its subsidiaries; or

E. effects transactions pursuant to Minnesota Statutes, section 80A.15, subdivision 2, paragraph (g) and the rules adopted under that provision.

Subp. 3. **Exemptions.** The commissioner, upon written request, or upon a motion, ~~may~~ shall exempt a bank, savings institution, or savings and loan association, either conditionally or on specific terms and conditions, where the commissioner determines that the activities of the bank, savings institution, or savings and loan association are not within the intended meaning and purpose of this part.

Subp. 4. **Transaction related compensation.** For the purposes of this part, the term "transaction related compensation" means monetary profit in excess of cost recovery for providing brokerage execution services.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
APR 21 1986 4:20 P.M.
Joan Anderson Growe
Secretary of State

APPROVED AS TO FORM AND LEGALITY
April 21 1986
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY M J Cassely
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Amendment of Securities Regulating Financial Institutions, including Banks, Savings Institutions and Savings and Loan Associations, Securities Practices

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 January 13, 1986 at page 1525 and was sent by the United States mail to all persons on the list maintained by the Department of Commerce pursuant to Minnesota Statutes Section 14.14, subd. 1a, on January 7, 1986.

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,

NOW THEREFORE, IT IS ORDERED that these rules identified as Amendments of Securities Regulating Financial Institutions, including Banks, Savings Institutions and Savings and Loan Associations, Securities Practices are adopted this 28th day of March 1986 pursuant to authority vested in me by Minnesota Statutes Sections 45.023 and 80A.14, subd. 4, 80A.25, subd. 1 and 80A.05.

MICHAEL A. HATCH
Commissioner of Commerce

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE

In the Matter of the Proposed Amendment of Securities Rules Regulating Financial Institutions, including Banks, Savings Institutions and Savings and Loan Associations, Securities Practices	SUPPLEMENTAL FINDINGS OF FACT AND ORDER ADOPTING RULES

On March 28, 1986, the Commissioner of Commerce issued his Order Adopting Rules in the above captioned matter.

Subsequent to the execution of that Order the rules and all pertinent materials were submitted to the Attorney General's Office pursuant to Minnesota Statutes Section 14.26.

As a result of the review two matters of concern were raised by the Attorney General's Office. In 2875.1590, subpart 2 (B) the word "affiliated" is mispelled as "alliliated". In subpart 3 of part 2875.1590 the word "may" is used regarding the commissioner's authority to grant exemptions for those persons or institutions not within the intended meaning and purpose of the rule. The use of the word may, contrary to the intent of this section and the intent expressed in the Statement of Need and Reasonableness would appear to imply that the commissioner had discretionary authority to grant or not grant an exemption even when a person or institution were not within the intended meaning and purpose of the rule. The word "must" should be replaced with the word "shall" to eliminate this problem.

Neither of the two changes are substantial and both are necessary.

NOW THEREFORE, IT IS ORDERED that these rules identified as Amendments of Securities Rules Regulating Financial Institutions, including Banks, Savings Institutions and Savings and Loan Associations, Securities Practices are adopted this 21st day of April 1986 with the two modifications set forth in the foregoing, pursuant to the authority vested in me by Minnesota Statute Section 45.023, 80A.14 subd. 4, 80A.25 subd. 1 and 80A.05.

MICHAEL A. HATCH
Commissioner of Commerce

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Amendment of Securities Regulating Financial Institutions, including Banks, Savings Institutions and Savings and Loan Associations, Securities Practices

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

IT IS ORDERED this 23rd day of December 1985 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
Department of Commerce

In the Matter of the Proposed Amendment of Securities Regulating Financial Institutions, including Banks, Savings Institutions and Savings and Loan Associations, Securities Practices

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 Department and does 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 Richard G. Gomsrud, Department Counsel, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101 telephone (612) 296-5689. Any person requesting a public hearing should state her or his name and address and is encouraged to 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.

The Commissioner proposes to adopt Amendment of Securities Regulating Financial Institutions, including Banks, Savings Institutions & Savings & Loan Associations, Securities Practices. Authority for the adoption of these rules is the securities activities of financial institutions. The purpose of the rules is to extend to customers of financial institutions the protections found elsewhere in the securities industry. The rules were authorized by a change to Minnesota Statutes § 80A.14 subdivision 4.

Additional authority is found in Minnesota Statutes § 80A.25 subdivision 1; Minnesota Statutes Section 80A.05 and Minnesota Statutes Section 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.

Pursuant to Minnesota Laws 1983, chapter 188 codified as Minnesota Statute Section 14.115, subdivision 2, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth 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 Reasonablenss, 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 Richard G. Gomsrud, Department Counsel, 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 proposed rules are available and may be obtained by contacting Richard G. Gomsrud at the above address.



Michael A. Hatch
Commissioner of Commerce

In the Matter of the Proposed Adoption of Rules
In Regard to Brokerage Activities by Financial Institutions

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

AFFIDAVIT OF MAILING

Richard G. Gomsrud, being first duly sworn, deposes and says:

That on the 7th day of January 1986, at the City of St. Paul, County of Ramsey, State of Minnesota, the attached dual Notice of Hearing was served 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 Minnesota Department of Commerce for the purpose of receiving notice of the proposed adoption of rules by the department.

Richard G. Gomsrud

Subscribed and sworn to before me
this 7th day of January 1986.

Nancy I. Link
Notary Public

NANCY I. LINK
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
MY COMMISSION EXPIRES DECEMBER 3, 1990

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE
500 METRO SQUARE BUILDING
ST. PAUL, MN 55101

ATTENTION:
RULE RELATED MATERIAL

FIRST CLASS MAIL

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonablenss, 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 Richard G. Gomsrud, Department Counsel, 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 proposed rules are available and may be obtained by contacting Richard G. Gomsrud at the above address.

Michael A. Hatch
Commissioner of Commerce

The rules will set the requirements, called for by Minnesota Statutes § 80A.14, subd. 4, for financial institutions to conduct securities activities. When financial institutions must be licensed, when they are exempt and how they must conduct such activities are described.

Notice is hereby given that a Statement of Need and Reasonableness is now available for review at the Department of Commerce and is available at the Office of Administrative Hearings. This Statement of Need and Reasonableness includes a summary of all of the evidence and arguments which the Department anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the Department of Commerce or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Pursuant to Minnesota Laws 1983, chapter 188 codified as Minnesota Statute Section 14.155, subdivision 2, the impact on small business has been considered in the promulgation of the rules. Every small business having insurance will be affected by these rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

All interested or affected persons will have an opportunity to participate by presenting oral and/or written evidence at the hearing. Questioning of agency representatives or witnesses, and of interested persons making oral statements will be allowed in order to explain the purpose or intended operation of the proposed rules, or a suggested modification, or for other purposes material to the evaluation or formulation of the proposed rules. As a result of the hearing process, the proposed rule may be modified so all interested persons are encouraged to participate.

Written material may be submitted to the Administrative Law Judge and recorded in the hearing record for five working days after the public hearing ends. The comment period may be extended for a longer period not to extend 20 calendar days if ordered by the Adminsitrative Law Judge at the hearing. Comments received during the comment period will be available for review at the Office of Administrative Hearings. Following the five to twenty day comment period, there will be a three day period in which the Commissioner and interested persons may respond in writing to any new information submitted. During the three day period, the agency may indicate in writing whether there are any amendments suggested by other persons which the agency is willing to adopt. Additional evidence may not be submitted during the three day period. The written responses will be added to the record of the proceeding.

Department of Commerce

Proposed Rules Relating to Brokerage Services by Financial Institutions

Rule as Proposed (all new material)

2875.1590 BANKS, SAVINGS INSTITUTIONS, AND SAVINGS AND LOAN ASSOCIATIONS.

Subpart 1. Licensing requirement. The term "broker-dealer" as defined in Minnesota Statutes, section 80A.14, subdivision 4 includes a bank, savings institution, or savings and loan association that:

A. solicits brokerage business for which it receives transaction-related compensation, unless the bank, savings institution, or savings and loan association enters into a contractual or other arrangement with a broker-dealer licensed under Minnesota Statutes, chapter 80A pursuant to which the broker-dealer will offer brokerage services on or off the premises of the bank, savings institution, or savings and loan association provided that:

(1) the broker-dealer is clearly identified as the person performing the brokerage services;

(2) bank, savings institution, or savings and loan association employees perform only clerical and ministerial functions in connection with brokerage transactions unless the employees are licensed agents pursuant to Minnesota Statutes, chapter 80A;

(3) bank, savings institution, or savings and loan association employees do not receive, directly or indirectly, compensation for any brokerage activities unless the employees are licensed agents pursuant to Minnesota Statutes, chapter 80A; and

(4) the services are provided by the broker-dealer on a basis in which all customers are fully disclosed;

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

option, dividend reinvestment, or similar plan for employees or shareholders of an issuer or its subsidiaries; or

E. effects transactions pursuant to Minnesota Statutes, section 80A.15, subdivision 2, paragraph (g) and the rules adopted under that provision.

Subp. 3. **Exemptions.** The commissioner, upon written request, or upon a motion, may exempt a bank, savings institution, or savings and loan association, either conditionally or on specific terms and conditions, where the commissioner determines that the activities of the bank, savings institution, or savings and loan association are not within the intended meaning and purpose of this part.

Subp. 4. **Transaction related compensation.** For the purposes of this part, the term "transaction related compensation" means monetary profit in excess of cost recovery for providing brokerage execution services.

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

In the Matter of the Proposed Adoption of Rules
In Regard to Brokerage Activities by Financial Institutions

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

ADDITIONAL AFFIDAVIT
OF MAILING

Richard G. Gomsrud, being first duly sworn, deposes and says:

That on the 7th day of January 1986 at the City of St. Paul, County of Ramsey, State of Minnesota, the attached notice was served 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 requested a hearing or showed interest in prior rulemaking on the same subject matter other than those on the list required by Minnesota Statutes, section 14.14, subd. 1a.

Richard G. Gomsrud

Subscribed and sworn to before me this
7th day of January 1986.

Nancy I. Link
Notary Public

NANCY I. LINK
NOTARY PUBLIC-MINNESOTA
HENNEPIN COUNTY
MY COMMISSION EXPIRES DECEMBER 3, 1990

Washington [redacted]deral
625 Hillside Avenue
Pine City, MN 55063

United Federal Savings & Loan
Starbuck, MN 56381

Jeff Saunders
1800 Conwed Tower
St. Paul, MN 55101

Wayne Hummer & Company
175 W. Jackson Blvd. #1700
P.O. Box 750
Chicago, IL 60604

Marine Bank, National Association
d/b/a
Commodore Discount Brokerage
111 E. Wisconsin Avenue
Milwaukee, WI 53202

Randall Schumann, General Counsel
State of WI, Office of the Comm. of Securities
111 W. Wilson Street
Box 1768
Madison, WI 53701

Dennis S. Kaminsky, President
Thrift Discount Brokerage Inc.
1014 Midland Financial Building
Des Moines, Iowa 50309

Carol Alley
c/o The Equitable
1100 Northern Federal Building
386 North Wabasha
St. Paul, MN 55102

Margret Getz
Director of Compliance
Security Pacific Brokers, Inc.
297 North Marengo Avenue
Pasadena, California 91101

Bonnie Dailey
Security Pacific Brokers, Inc.
P.O. Box 7000
Pasadena, California 91109-9990

Alan M. Parness
Cadawalader, Wickersham & Taft
One Wall Street
New York, NY 10005

Lynn A. Betcher
Financial Planning Officer
Goodhue County National Bank
Red Wing, MN 55066

BS[redacted] Securities, Inc.
39[redacted]uth LaSalle Street
Suite 1220
Chicago, IL 60603

Faribault Federal Savings
Faribault, MN 55021

Washington Federal
200 East Chestnut Street
Stillwater, MN 55082

United Federal Savings & Loan
613 Broadway
Alexandria, MN 56308

Washington Federal Savings & Loan
Glenwood, MN 56334

United Federal
10 N. Central
Elbow Lake, MN 56531

First Federal Savings & Loan
of Granite Falls
918 Prentice
Granite Falls, MN 56241

First Federal Savings & Loan
Ortonville, MN 56278

First Federal Savings & Loan
Madison, MN 56256

United Federal Savings & Loan
Sauk Centre, MN 56378

United Federal
Viking Plaza
Alexandria, MN 56308

Washington Federal
Box 716, 209 N. 1st Street
Montevideo, MN 56265

The First State Bank of Rosemount
3025 145[redacted] Street West
Rosemount, MN 55068

Northwoods Bank of Minnesota
RR 3
P. O. Box 112
Dorset-Park Rapids, MN 56470

Joseph P. Hildebrant
Foley & Lardner
1st WI Plaza, 1 S. Pickney St.
P.O. Box 1497
Madison, WI 53701-1497

David B. Boies
Sr. Vice President & Trust Officer
The Wayzata Bank & Trust Company
Easy Place - 900 East Wayzata Blvd.
Wayzata, MN 55391

John Kost, Esq.
Fredrikson, Byron, Colborn, Bisbee & Hansen
4744 IDS Center
Minneapolis, MN 55402

Galen T. Pate
Mi[redacted]esota Bankers Association
3[redacted] Baker Building
Minneapolis, MN 55402

Tweedy Browne
Investors Access
67 Wall Street
New York, NY 10005

Arlington State Bank
230 W. Main Street
Arlington, MN 55307

The First National Bank of Cokato
365 Broadway Avenue
Cakato, MN 55321

First National Bank of LeCenter
10 West Minnesota Street
LeCenter
LeCenter, MN 56057

State Bank of Aurora
Aurora, MN 55705

Forest Lake State Bank
208 So. Lake Street
Forest Lake, MN 55025

American Bank Mankato
302 N. Front
Mankato, MN 56001

Perham State Bank
Perham, MN 56573

First National Bank of Wayzata
1053 E. Wayzata Blvd.
Wayzata, MN 55391

First State Bank of Wabasha
111 W. Main Street
Wabasha, MN 55981

Vermillion State Bank
Vermillion, MN 55085

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE
500 METRO SQUARE BUILDING
ST. PAUL, MN 55101

ATTENTION:

RULE RELATED MATERIAL

FIRST CLASS MAIL

Upon adoption of the final rules without a public hearing, the proposed rules, this Notice, the Statement of Need and Reasonablenss, 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 Richard G. Gomsrud, Department Counsel, 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 proposed rules are available and may be obtained by contacting Richard G. Gomsrud at the above address.

Michael A. Hatch
Commissioner of Commerce

The rules will set the requirements, called for by Minnesota Statutes § 80A.14, subd. 4, for financial institutions to conduct securities activities. When financial institutions must be licensed, when they are exempt and how they must conduct such activities are described.

Notice is hereby given that a Statement of Need and Reasonableness is now available for review at the Department of Commerce and is available at the Office of Administrative Hearings. This Statement of Need and Reasonableness includes a summary of all of the evidence and arguments which the Department anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the Department of Commerce or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Pursuant to Minnesota Laws 1983, chapter 188 codified as Minnesota Statute Section 14.155, subdivision 2, the impact on small business has been considered in the promulgation of the rules. Every small business having insurance will be affected by these rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

All interested or affected persons will have an opportunity to participate by presenting oral and/or written evidence at the hearing. Questioning of agency representatives or witnesses, and of interested persons making oral statements will be allowed in order to explain the purpose or intended operation of the proposed rules, or a suggested modification, or for other purposes material to the evaluation or formulation of the proposed rules. As a result of the hearing process, the proposed rule may be modified so all interested persons are encouraged to participate.

Written material may be submitted to the Administrative Law Judge and recorded in the hearing record for five working days after the public hearing ends. The comment period may be extended for a longer period not to extend 20 calendar days if ordered by the Adminsitrative Law Judge at the hearing. Comments received during the comment period will be available for review at the Office of Administrative Hearings. Following the five to twenty day comment period, there will be a three day period in which the Commissioner and interested persons may respond in writing to any new information submitted. During the three day period, the agency may indicate in writing whether there are any amendments suggested by other persons which the agency is willing to adopt. Additional evidence may not be submitted during the three day period. The written responses will be added to the record of the proceeding.

Department of Commerce

Proposed Rules Relating to Brokerage Services by Financial Institutions

Rule as Proposed (all new material)

2875.1590 BANKS, SAVINGS INSTITUTIONS, AND SAVINGS AND LOAN ASSOCIATIONS.

Subpart 1. **Licensing requirement.** The term "broker-dealer" as defined in Minnesota Statutes, section 80A.14, subdivision 4 includes a bank, savings institution, or savings and loan association that:

A. solicits brokerage business for which it receives transaction-related compensation, unless the bank, savings institution, or savings and loan association enters into a contractual or other arrangement with a broker-dealer licensed under Minnesota Statutes, chapter 80A pursuant to which the broker-dealer will offer brokerage services on or off the premises of the bank, savings institution, or savings and loan association provided that:

(1) the broker-dealer is clearly identified as the person performing the brokerage services;

(2) bank, savings institution, or savings and loan association employees perform only clerical and ministerial functions in connection with brokerage transactions unless the employees are licensed agents pursuant to Minnesota Statutes, chapter 80A;

(3) bank, savings institution, or savings and loan association employees do not receive, directly or indirectly, compensation for any brokerage activities unless the employees are licensed agents pursuant to Minnesota Statutes, chapter 80A; and

(4) the services are provided by the broker-dealer on a basis in which all customers are fully disclosed;

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

option, dividend reinvestment, or similar plan for employees or shareholders of an issuer or its subsidiaries; or

E. effects transactions pursuant to Minnesota Statutes, section 80A.15, subdivision 2, paragraph (g) and the rules adopted under that provision.

Subp. 3. **Exemptions.** The commissioner, upon written request, or upon a motion, may exempt a bank, savings institution, or savings and loan association, either conditionally or on specific terms and conditions, where the commissioner determines that the activities of the bank, savings institution, or savings and loan association are not within the intended meaning and purpose of this part.

Subp. 4. **Transaction related compensation.** For the purposes of this part, the term "transaction related compensation" means monetary profit in excess of cost recovery for providing brokerage execution services.

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption of Rules
In Regard to Brokerage Activities by Financial Institutions

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statutes, section 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 of rules is accurate and complete as of 12:00 P.M., this 7th day of January 1986.

Richard G. Gomsrud

Susan J. Ladwig

900 Midland Bank Building
Minneapolis, MN 55401

Ron Marien

9604 13th Ave. S.
Bloomington, MN 55420

Katie McLenighan

299 E. State Office Bldg.
St. Paul, MN 55155

Randy Nornes

1740 W. Larpenteur Ave. 3F
St. Paul, MN 55113

Edward G. Farmer, Jr., V.P.
Union Fidelity Life Insurance Co.
Union Fidelity Office Park
Trevose, PA 19049

Jim Schloner

7733 W. 24th St.
Minneapolis, MN 55426

Jerome Scheibl, Vice President
Wausau Insurance Group
2000 Westwood Dr.
Wausau, WI 54401

Archibald Spencer

3500 IDS Center
Minneapolis, MN 55402-2213

Larry J. Smith Asst Sec'y Public Affairs
Western Insurance Companies
14 East First
Fort Scott, Kansas 66701

Joseph T. Justice, Counsel
Alexander Howden Group U.S. Inc.
P.O. Box 19539
Atlanta, GA 30325

John A. Knapp
Winthrop, Weinstine & Sexton
1800 Conwed Tower, 444 Cedar
Saint Paul, MN 55101

Attn: Debra G. Wozniak
Alliance of American Insurers
1501 Woodfield Rd., Suite 400 West
Schaumberg, IL 60195

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

Willys P. Jones
Allison-Williams Co.
2300 IDS Center
Minneapolis, MN 55402

Gerald G. Dederick, Esq.

6800 France Ave. S., #750
Edina, MN 55435

Mr. Robert J. Demichelis
American Council of Life Insurance
1850 K Street NW
Washington, DC 20006

Conrad M. Fredin

811 Norwest Center
Duluth, MN 55802

Fred McGarvey
American Insurance Association
230 W. Monroe
Chicago, IL 60606

George H. Frisch

1781 Saunders
St. Paul, MN 55116

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

Morris J. Ander[illegible], Exec. Dir.
Association of Minnesota Counties
555 Park Street, Suite 300
St. Paul, MN 55103

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.
307 N. Michigan Ave.
Chicago, IL 60601

Controllers Dept.
c/o Continental American Life
Ins. Co.
P.O. Box 15750
Wilmington, DE 19850

Coury, Schwinn, Kodadek & McRoberts
400 Marquette Ave. Suite 300
Minneapolis, MN 55401

Norman E. Nelson, Govt. Affairs Dept.
Crum & Forster Corporation
305 Madison Avenue
Morristown, NJ 07960

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

Richard H. Smith, Dir.
Dept. of Land Registration
P.O. Box 569
Bentonville, AR 72712

Director
Developmental Disabilities Office
201 Capitol Square Building
St. Paul, MN 55101

Domi[illegible]J. Sposeto
Dominic Sposeto & Associates
3916 Chowen Ave. S.
Minneapolis, MN 55410

David L. Boehnen
Dorsey & Whitney
1st Bank Place East
Minneapolis, MN 55402

Nicholas T. Kakos
Federal Cartridge Corporation
Twin Cities Army Ammunition Plant
New Brighton, MN 55112

Richard Russell, Esq.
Finley, Kumble, Wagner, et al
425 Park Ave.
New York, NY 10022

Fireman's Fund Emp. Ins. Co.
Contracts Department
P.O. Box 1100
Green Bay, WI 54305

Michael D. Johnson
Frundt, Frundt & Johnson
117 W. 5th Street
Blue Earth, MN 56013

Gerard P. Davey Attorney at Law
One Newport Pl., Suite 900
Newport Beach, CA 92660

Mr. Larry A. Bakken
Hamline Law School
1536 Hewitt
St. Paul, MN 55102

Harold J. Soderberg, Esq.
Hessian, McKasy & Soderberg
4700 IDS Center
Minneapolis, MN 55402

Peggy Jacobs
IDS Financial Services
IDS Tower
Minneapolis, MN 55402

Norbert A. McCrady
Independent Bankers of Minn.
7850 Metro Pkway., Suite 213
Bloomington, MN 55420

Charles Munson CPCU
Insurance Services Office
12 South Sixth Street
Minneapolis, MN 55402

Richard Schinler, President
Integrity Mutual Insurance Company
526 West Wisconsin Avenue
P.O. Box 539
Appleton, WI 54912

Investment Company Institute
1775 K Street NW
Washington, DC 20006

Jerrold T. Miller
J. T. Miller Company
1000 Currie Avenue
Minneapolis, MN 55403

John B. LaMacchia & Associates
Actuaries Management Consultants
12 North Central Avenue
St. Louis, MO 63105

Vincent A. Pellerito, President
Land Registrations, Inc.
4603 N. 16th St., Suite 2
Phoenix, AZ 85016

Kathleen P. Burek
LCRAR Exec. Dir.
Rm. 510, State Office Building
St. Paul, MN 55155

League Service Corporation
575 University Avenue
St. Paul, MN 55103

John R. Houston, Esq.
Lindquist & Vennum
4200 IDS Center
Minneapolis, MN 55402

Tara Heinecke
Local 17
Suite 444 - 312 Central Avenue S.E.
Minneapolis, MN 55414

Mary Beth Brody
MacIntosh & Commers
430 Marquette
Minneapolis, MN 55402

Jean M. Reynolds, Treasurer
Mairs and Power, Inc.
W-2062 First National Bank Bldg.
St. Paul, MN 55101

Mr. Ronald R. Radtke, Mgr., Comp. Svcs.
Metropolitan Prop. & Liability Ins. Co.
700 Quaker Lane
Warwick, RI 02887

Michael C. Black
Michael C. Black Law Office, Ltd.
Suite 201- 265 W 7th St (Fort Road)
St. Paul, MN 55102

D. F. Hennen, Plant Manager
Midland Glass Company, Inc.
P.O. Box 69
Shakopee, MN 55379

John S. Jackson, Gen. Counsel
Minnesota Bankers Association
332 Baker Building
Minneapolis, MN 55402

Gene Johannes
Minnesota Chiropractic Assoc.
2353 Rice St., Suite 125
St. Paul, MN 55113

Thomas Houser
Minnesota Insurance Guaranty Association
4640 West 77th Street Suite 266
Minneapolis, MN 55435

Minnesota League of Credit Unions
575 University Ave.
St. Paul, MN 55103

Ms. Lois Wattman DeWitt
Minnesota Medical Association
2221 University Ave. SE, #400
Minneapolis, MN 55414

James N. Denn
Minnesota Motor Transport Assn.
1821 University Ave., Room 134N
St. Paul, MN 55104

Minn. Consumer Finance Confer.
810 Norwest Center
St. Paul, MN 55101

Jean Dawson
Minn. Government Report
B-12 Press Room, State Capitol
St. Paul, MN 55155

Joan M. Archer
Minn. Mfg. Housing Assoc.
222 E. Little Canada Rd., S222
St. Paul, MN 55117

Jack Horner
Minnesota Multi Housing Assn.
3100 W. Lake St.
Minneapolis, MN 55416

Minn. Petroleum Council
1025 Northern Federal Bldg.
St. Paul, MN 55102

John Van Doorn
Minn. Retail Merchants Assoc.
180 Metro Square Bldg.
St. Paul, MN 55101

Minn. School of Real Est. Inc.
9944 Q. 74th St.
Eden Prairie, MN 55344

Maureen Adrian, Exec. Asst.
Minn. State Builders Assoc.
666 Transfer Rd.
St. Paul, MN 55114

Abe Rosenthal, Exec. Vice Pres.
Minn. Transport Services Assn.
1821 University Ave.
St. Paul, MN 55104

Philip B. Sears, Esq.
Mosburg & Wright, Inc.
2200 Classen Blvd., 4th Fl.
Oklahoma City, OK 73106

Michael J. Ahern
Moss & Barnett
200 S. Sixth St.
Minneapolis, MN 55402

John F. Stone
Moss & Barnett
200 S. Sixth St.
Minneapolis, MN 55402

Leslie Urban, President
National Service Corporation
831 Livestock Exchange Building
P. O. Box 7608
Omaha, NE 68107

John B. Crosby, V.P. & Gen. Couns.
Natl. Assoc. of Ind. Insurers
2600 River Road
Des Plaines, IL 60018

William R. Anderson, Counsel
Natl. Assoc. of Life Underwriters
1922 F Street, NW
Washington, D.C. 20006

Richard Bouhan, Gov't. Relations Dir.
Natl. Assoc. of Prof. Surplus Lines Off.
P.O. Box 1507
Roswell, GA 30077

Lee T. Peterson
Nelson, Kufus & Assoc.
665 N. Snelling Ave.
St. Paul, MN 55104

NIARS Corporation
Three Eighteen West Franklin
Minneapolis, MN 55404

Dan Boyle, Assoc. Gen'l Counsel
Northern Assurance Co. of Amer.
One Beacon Street
Boston, MA 02108

Mark A. Welshons, Secretary
NWNL Reinsurance Company
P.O. Box 20
Minneapolis, MN 55440

Sam Ruhle
Office of Administrative Hearings
400 Summit Bank Building
Minneapolis, MN 55415

Mark Lawrence, Contract Specialist
Ohio State Life Insurance Company
2500 Farmers Drive
Columbus, OH 43085

Oppenheimer, Wolff, Foster, Shepard & Donnelly
1700 1st National Bank Building
St. Paul, MN

Orion Group, Inc. Law Division
9 Farm Springs Dr.
Farmington, CT 06032

Howard McDowell, I-5
Pennsylvania Life Insurance Company
3130 Wilshire Blvd.
Santa Monica, CA 90406

Roger A. Peterson
Peterson, Engberg & Peterson
700 Title Insurance Bldg.
Minneapolis, MN 55401

Peter S. Popovich
Peterson, Popovich, Knutson & Flynn
2229 River Rd. S. & St. Marys Point
Lakeland, MN 55043-9775

Phillips Legislative Service, Inc.
459 Rice Street
St. Paul, MN 55103

Vickie McCormick
Physicians of Minnesota
9900 Bren Road East
Minnetonka, MN 55343

Celeste B. Relyea, Dir. of St. Affairs
Professional Insurance Agents
400 N. Washington St.
Alexandria, VA 22314

Bruce A. Poulsen, V.P. & Counsel
Prudential Insurance Co. of America
8th Fl., P.O. Box 1143
Minneapolis, MN 55440

Charles A. Kroeger
QSS, Inc.
P.O. Box 838
Faribault, MN 55021

James M. Shamberger, Vice President
Reinsurance Association of America
1025 Connecticut Ave., Suite 512
Washington, D.C. 20036

Stan Jacobson
Research Dept., State of MN
Room 17, State Capitol
St. Paul, MN 55155

John P. Flaten
Rider, Bennett, Egan & Arundel
2500 First Bank Pl. W.
Minneapolis, MN 55402

Robert R. Abrohams Agency, Inc.
1112 Plymouth Bldg.
Minneapolis, MN 55402

Bernard Rosenberg
Robins, Zelle, Larson & Kaplan
1800 International Centre
900 South Second Avenue South
Minneapolis, MN 55402

Richard B. Allyn
Robins, Zelle, Larson & Kapland
1800 International Centre
900 Second Avenue South
Minneapolis, MN 55402

Kevin J. Nolan, Atty.
Securities Industry Association
120 Broadway
New York, NY 10271

Security Life Insurance % Robbins & Rashke, P.A.
5200 Willson Rd., Suite 407
Minneapolis, MN 55424
Mr/Ms:

Ted Burton
Securities Schools
268 West Burnsville Parkway
Burnsville, MN 55337

Cezar M. Froelich, Esq.
Shefsky, Saitlin & Froelich, Ltd.
444 N. Michigan Ave., Suite 2300
Chicago, IL 60611

Stan Bass
Snyder, Larsen & Peters
2636 Portland Avenue
Minneapolis, MN 55407

George M. Boyd
Squire, Sanders & Dempsey
1800 Huntington Building
Cleveland, OH 44115

David A. Peterson
State Bond & Mortgage Company
100 North Minnesota Street
New Ulm, MN 56073

Charles F. Happach, Treas. & Gen. Mgr.
State Capitol Credit Union
95 Sherburne
St. Paul, MN 55103

A. Edward Hunter, Asst. Director
State Planning Agency
101 Capitol Square Building
St. Paul, MN 55101

Mary Stanton, Staff Assoc./Fin.
State University System
555 Park St., Suite 230
St. Paul, MN 55103

W. J. Hay
St. Paul Companies, Inc.
385 Washington Street
St. Paul, MN 55102

Karen Langland, Government Affairs
St. Paul Fire & Marine Ins. Co.
385 Washington St.
St. Paul, MN 55102

Gary Gandrud
Stolpestad, Brown & Smith
2000 North Central Tower
St. Paul, MN 55101

Robert E. Swift, Vice President
Title Insurance Company of MN
400 Second Avenue South
Minneapolis, MN 55401

STATE REGISTER

STATE OF MINNESOTA



VOLUME 10, NUMBER 29

January 13, 1986

Pages 1521-1552

CONTENTS

MINNESOTA RULES AMENDMENTS AND ADDITIONS

Issues 27-29, Inclusive 1524

PROPOSED RULES

Commerce Department

Proposed Rules Relating to Brokerage Services by Financial Institutions 1525

Proposed Rules Relating to Coordination of Benefits for Group Health and Accident Insurance 1528

ADOPTED RULES

Pollution Control Agency

Adopted Rules Relating to Environment; General Permit Fee Rule 1537

OFFICIAL NOTICES

Aitkin County

Notice of Filing Fees for County Law Library 1539

Environmental Quality Board

Outside Opinion Sought Regarding Proposed Rules Governing Environmental Review 1539

Finance Department

Maximum Interest Rate for Municipal Obligations, January, 1986 1539

Health Department

Outside Opinion Sought Regarding Rules Governing the Practice of Mortuary Science 1540

Labor and Industry Department

Correction to Prevailing Wage Rates 1540

Metropolitan Council

Public Hearing on an Amendment to the Water Resources Management Development Guide Policy Plan Part I 1541

Public Safety Department
Driver and Vehicle Services Division

Informal Public Hearing Notice for Proposed Rules Governing Alcohol Problem Assessments—Rules and Standards for Reimbursements to Counties 1541

Secretary of State's Office

Vacancies in Multi-Member State Agencies 1542

Transportation Department

Meeting Notice, State Aid Standard Variance Committee 1542

STATE CONTRACTS

Administration Department
Procurement Division

Commodities Contracts and Requisitions Currently Open for Bidding 1543

Human Services Department
Health Care Programs Division

Contract Available for Psychiatric Services 1544

Transportation Department

Debarment Order for Kenneth G. Odland 1544

Debarment Order for McLaughlin & Schulz, Inc. 1545

Proposed Debarment of Charles E. Regenscheid 1545

Suspension Order for Charles E. Regenscheid 1546

SUPREME COURT DECISIONS

Decisions Filed Friday, January 3, 1986 1546

ERRATA

Attorney General's Office

Correction of Proposed Rules Relating to Rule Reviews 1547

Health Department

Correction of Proposed Rules Governing the Cost Effectiveness and Economic Impact of the Regulation of Human Service Occupations 1548

Labor and Industry Department

Correction to Workers' Compensation; Medical Service Fees 1548

PROPOSED RULES

Pursuant to Minn. Stat. of 1982, §§ 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. **that they have 30 days in which to submit comment on the proposed rules;**
2. **that no public hearing will be held unless 25 or more persons make a written request for a hearing within the 30-day comment period;**
3. **of the manner in which persons shall request a hearing on the proposed rules; and**
4. **that the rule may be modified if the modifications are supported by the data and views submitted.**

If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Commerce

Proposed Rules Relating to Brokerage Services by Financial Institutions

Notice of Hearing

Notice is given that a public hearing will be held pursuant to Minnesota Statute Section 14.14, subdivision 1 (1984), in the above-entitled matter in the Large Hearing Room, 500 Metro Square Building, St. Paul, Minnesota 55101, on February 18, 1986 at 9:00 a.m. and continuing until all interested persons and groups have had an opportunity to be heard concerning adoption of these proposed rules by submitting either oral or written data, statements, or arguments. Statements, briefs or written material may be submitted within the comment period described in this notice without appearing at the hearing by sending them to the administrative law judge assigned to conduct the hearing, Administrative Law Judge Peter C. Erickson, 4th Floor, Summit Bank Building, 310 4th Avenue South, Minneapolis, Minnesota 55415, telephone (612) 341-7606. The rule hearing procedure is governed by Minnesota Statute Section 14.14-14.20 and by Minnesota Rules Parts 1400.0200-1400.1200, as amended (amended rules published at 9 S.R. 2276). Questions regarding procedure may be directed to the Administrative Law Judge at the above-listed address.

PLEASE NOTE, HOWEVER, THAT THIS HEARING WILL BE CANCELLED IF FEWER THAN TWENTY-FIVE PERSONS REQUEST A HEARING IN RESPONSE TO THE NOTICE OF INTENT TO ADOPT THESE SAME RULES WITHOUT A HEARING PUBLISHED IN THE SAME *STATE REGISTER* AND MAILED THE SAME DATE AS THIS NOTICE.

The Commissioner proposes to adopt amendments to Securities Rules Regulating Financial Institutions, including Banks, Savings Institutions & Savings & Loan Associations, Securities Practices. The purpose of the rules is to extend to customers of financial institutions the protections found elsewhere in the securities industry. The rules were authorized by a change to Minnesota Statutes § 80A.14 subdivision 4 found at Laws of Minnesota for 1984, Chapter 552, Section 4. Additional authority is found in Minnesota Statutes § 80A.25, subdivision 1; Minnesota Statutes Section 80A.05 and Minnesota Statutes Section 45.023.

The rules will set the requirements, called for by Minnesota Statutes § 80A.14, subd. 4, for financial institions to conduct securities activities. When financial institutions must be licensed, when they are exempt and how they must conduct such activities are described.

Notice is hereby given that a Statement of Need and Reasonableness is now available for review at the Department of Commerce and is available at the Office of Administrative Hearings. This Statement of Need and Reasonableness includes a summary of all of the evidence and arguments which the Department anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the Department of Commerce or the Office of Administrative Hearings and copies may be obtained from the Office of Administrative Hearings at the cost of reproduction.

Pursuant to Minnesota Laws 1983, chapter 188 codified as Minnesota Statute Section 14.155, subdivision 2, the impact on small business has been considered in the promulgation of the rules. Every small business having insurance will be affected by these rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

All interested or affected persons will have an opportunity to participate by presenting oral and/or written evidence at the hearing. Questioning of agency representatives or witnesses, and of interested persons making oral statements will be allowed in order to explain the purpose or intended operation of the proposed rules, or a suggested modification, or for other purposes material to the evaluation or formulation of the proposed rules. As a result of the hearing process, the proposed rule may be modified so all interested persons are encouraged to participate.

Written material may be submitted to the Administrative Law Judge and recorded in the hearing record for five working days after the public hearing ends. The comment period may be extended for a longer period not to extend 20 calendar days if ordered by the Administrative Law Judge at the hearing. Comments received during the comment period will be available for review at the Office of Administrative Hearings. Following the five to twenty day comment period, there will be a three day period in which the Commissioner and interested persons may respond in writing to any new information submitted. During the three day period, the agency may indicate in writing whether there are any amendments suggested by other persons which the agency is willing to adopt. Additional evidence may not be submitted during the three day period. The written responses will be added to the record of the proceeding.

Notice: Any person may request notification of the date on which the Administrative Law Judge's report will be available after which date the Department of Commerce may not take any final action on the rules for a period of five working days. If you desire to be so notified, you may so indicate at the hearing. After the hearing, you may request notification by sending a written request to the Administrative Law Judge. Any person may request notification of the date on which the rules were adopted and filed with the Secretary of the State. The notice must be mailed on the same day that the rules are filed. If you want to be so notified you may so indicate at the hearing or send a request in writing to the Department of Commerce at any time prior to the filing of the rules with the Secretary of State.

Minnesota Statutes chapter 10A requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minnesota Statute Section 10A.01, subdivision 11 as an individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including traveling expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, St. Paul, Minnesota, 55155 telephone (612) 296-5615.

One free copy of this notice and the proposed rules may be obtained by contacting Richard G. Gomsrud, Department Counsel, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101. Additional copies will be available at the door on the date of the hearing.

December 22, 1985

Michael A. Hatch
Commissioner of Commerce

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 Department and does 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 Richard G. Gomsrud, Department Counsel, Department of Commerce, 500 Metro Square Building, St. Paul, MN 55101 telephone (612) 296-5689. Any person requesting a public hearing should state her or his name and address and is encouraged to 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.

The Commissioner proposes to adopt amendments to rules concerning Securities Regulating Financial Institutions, including Banks, Savings Institutions & Savings & Loan Associations, Securities Practices. Authority for the adoption of these rules is the securities activities of financial institutions. The purpose of the rules is to extend to customers of financial institutions the protections found elsewhere in the securities industry. The rules were authorized by a change to Minnesota Statutes § 80A.14 subdivision 4.

Additional authority is found in Minnesota Statutes § 80A.25 subdivision 1; Minnesota Statutes Section 80A.05 and Minnesota Statutes Section 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.

Pursuant to Minnesota Laws 1983, chapter 188 codified as Minnesota Statute Section 14.115, subdivision 2, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth 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 Richard G. Gomsrud, Department Counsel, 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 proposed rules are available and may be obtained by contacting Richard G. Gomsrud at the above address.

Michael A. Hatch
Commissioner of Commerce

Rule as Proposed (all new material)

2875.1590 BANKS, SAVINGS INSTITUTIONS, AND SAVINGS AND LOAN ASSOCIATIONS.

Subpart 1. **Licensing requirement.** The term "broker-dealer" as defined in Minnesota Statutes, section 80A. 14, subdivision 4 includes a bank, savings institution, or savings and loan association that:

A. solicits brokerage business for which it receives transaction-related compensation, unless the bank, savings institution, or savings and loan association enters into a contractual or other arrangement with a broker-dealer licensed under Minnesota Statutes, chapter 80A pursuant to which the broker-dealer will offer brokerage services on or off the premises of the bank, savings institution, or savings and loan association provided that:

(1) the broker-dealer is clearly identified as the person performing the brokerage services;

(2) bank, savings institution, or savings and loan association employees perform only clerical and ministerial functions in connection with brokerage transactions unless the employees are licensed agents pursuant to Minnesota Statutes, chapter 80A;

(3) bank, savings institution, or savings and loan association employees do not receive, directly or indirectly, compensation for any brokerage activities unless the employees are licensed agents pursuant to Minnesota Statutes, chapter 80A; and

(4) the services are provided by the broker-dealer on a basis in which all customers are fully disclosed;

B. directly or indirectly receives transaction related compensation for providing brokerage services for trust, managing agency, or other accounts to which the bank, savings institution, or savings and loan association provides advice; provided, however, that this item does not apply if the bank, savings institution, or savings and loan association executes transactions through a broker-dealer licensed under Minnesota Statutes, chapter 80A and:

(1) each account independently chooses the broker-dealer through which execution is effected;

(2) bank, savings institution, or savings and loan association employees do not receive, directly or indirectly, compensation for any brokerage activities or compensation based upon the number of accounts choosing to use the broker-dealer; and

(3) the brokerage services are provided by the broker-dealer on a basis in which all customers are fully disclosed;

C. deals in or underwrites securities.

Subp. 2. **Applicability.** This part shall not apply to any bank, savings institution, or savings and loan association that engages in one or more of the following activities only:

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.

A. effects transactions in commercial paper, bankers' acceptances, or commercial bills;

B. effects transactions for the investment portfolio of alliliated companies;

C. effects transactions as part of a program for the investment or reinvestment of deposit funds into any no-load open-end investment company registered pursuant to the Investment Company Act of 1940 that attempts to maintain a constant net asset value per share or has an investment policy calling for investment of at least 80 percent of its assets in debt securities maturing in 13 months or less;

D. effects transactions as part of any bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock ownership, stock appreciation, stock option, dividend reinvestment, or similar plan for employees or shareholders of an issuer or its subsidiaries; or

E. effects transactions pursuant to Minnesota Statutes, section 80A.15, subdivision 2, paragraph (g) and the rules adopted under that provision.

Subp. 3. **Exemptions.** The commissioner, upon written request, or upon a motion, may exempt a bank, savings institution, or savings and loan association, either conditionally or on specific terms and conditions, where the commissioner determines that the activities of the bank, savings institution, or savings and loan association are not within the intended meaning and purpose of this part.

Subp. 4. **Transaction related compensation.** For the purposes of this part, the term "transaction related compensation" means monetary profit in excess of cost recovery for providing brokerage execution services.

Department of Commerce

Proposed Rules Relating to Coordination of Benefits for Group Health and Accident Insurance

Notice of Hearing

Notice is given that a public hearing will be held pursuant to Minnesota Statute Section 14.14, subdivision 1 (1984), in the above-entitled matter in the Large Hearing Room, 500 Metro Square Building, St. Paul, Minnesota 55101, on February 20, 1986 at 9:00 a.m. and continuing until all interested persons and groups have had an opportunity to be heard concerning adoption of these proposed rules by submitting either oral or written data, statements, or arguments. Statements, briefs or written material may be submitted within the comment period described in this notice without appearing at the hearing by sending them to Administrative Law Judge, Howard Kaibel, 4th Floor, Summit Bank Building, 310 4th Avenue South, Minneapolis, Minnesota 55415, telephone (612) 341-7608. The rule hearing procedure is governed by Minnesota Statute Section 14.14-14.20 and by Minnesota Rules Parts 1400.0200-1400.1200, as amended (amended rules published at 9 SR 2276). Questions regarding procedure may be directed to the Administrative Law Judge at the above-listed address.

The Commissioner proposes to adopt rules regarding Coordination of Benefits for Group Health and Accident Insurance. Authority for the adoption of these rules is contained in Minnesota Statutes Section 72A.19 and Section 45.023. A text of the proposed rules follows this notice in the *State Register*. These rules are not identical in all respects to the Coordination of Benefit Rules published in the *State Register* on September 16, 1985 (10 S.R. 676-684). The changes have been made to make the rules conform to Model Coordination of Benefit Rules of the National Association of Insurance Commissioners (NAIC).

The proposed rules, if adopted will govern the coordination of benefits payable to persons covered by more than one accident and health insurance plan.

Notice is hereby given that a Statement of Need and Reasonableness is now available for review at the Department of Commerce and is available at the Office of Administrative Hearings. This Statement of Need and Reasonableness includes a summary of all of the evidence and arguments which the Department anticipates presenting at the hearing justifying both the need for and the reasonableness of the proposed rules. Copies of the Statement of Need and Reasonableness may be reviewed at the Department of Commerce or the Office of Administrative Hearings at the cost of reproduction.

Pursuant to Minnesota Laws 1983, chapter 188 codified as Minnesota Statute Section 14.155, subdivision 2, the impact on small business has been considered in the promulgation of the rules. The rules will affect small businesses in respect to the accident and health insurance they provide their employees, members or subscribers. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in greater detail in the Statement of Need and Reasonableness.

All interested or affected persons will have an opportunity to participate by presenting oral and/or written evidence at the hearing. Questioning of agency representatives or witnesses, and of interested persons making oral statements will be allowed in order

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE

IN THE MATTER OF THE PROPOSED AMENDMENTS) TO SECURITIES RULES REGULATING THE SEC-) URITIES PRACTICES OF FINANCIAL INSTITU-) TIONS, INCLUDING BANKS, SAVINGS INSTITU-) TIONS AND SAVINGS AND LOAN ASSOCIATIONS)

STATEMENT OF NEED AND REASONABLENESS

STATEMENT OF AUTHORITY

Minnesota Statutes Section 80A.14, subd. 4 contains the definition of "broker-dealer". This section provides that "broker-dealer" does not include "... a bank, savings institution, savings and loan association acting for the account of others, provided that such activities are conducted in compliance with such rules and regulations as may be adopted by the commissioner."

Additional rulemaking authority pertaining to the proposed amendments is found at Minnesota Statutes Section 80A.25, subd. 1, Minnesota Statutes Section 80A.05, and Minnesota Statutes Section 45.023.

The Commissioner finds the proposed rule necessary and appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of Minnesota Statutes Sections 80A.01 to 80A.31.

The Commissioner further finds that the proposed amendments are consistent with the statutory policy of Minnesota

Statutes Section 80A.31, which calls for the coordination of interpretations of Minnesota Statutes Chapter 80A with the related federal regulation.

FACTS ESTABLISHING REASONABLENESS

Minnesota Rule, part 2875.1590 is proposed in response to a 1984 amendment to Minnesota Statutes Section 80A.14, subd. 4 which expressly grants the Commissioner rule-making authority to determine when banks, savings institutions, or savings and loan associations can act for the account of others in securities transactions without being licensed as broker-dealers. 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 accomodation functions contemplated by the drafters of the Uniform Securities Act, upon which Chapter 80A is based, which contained an exclusion for such financial institutions from the definition of broker-dealer. Today, financial institutions have become aggressively involved in the securities business. Advertising and public solicitations urge consumers to become brokerage customers of financial institutions. Employees of financial institutions take orders and hold funds and securities, and then forward these to a clearing broker. The expansion of securities activities by financial institutions has brought about a need for this rule to assure an adequate level of investor protection. The rule closely resembles Rule 3b-9 under the Securities Exchange Act of 1934 which was recently adopted by the Securities

and Exchange Commission (SEC) to resolve parallel concerns at the federal level.

Without proposed Part 2875.1590, the increase in securities activities of financial institutions raises substantial investor protection concerns. The securities laws, as administered by the Department of Commerce and the SEC, provide for a comprehensive and coordinated system of regulation of securities activities specifically and uniquely designed to assure the protection of investors. The securities laws are also designed to assure fair competition among all participants in the securities markets. Broker-dealer licensing is an important part of this regulatory system. Absent broker-dealer licensing, the securities activities of financial institutions are regulated only under federal and state banking laws which were enacted primarily to protect depositors and to preserve the financial soundness of these institutions. Such bank regulation takes place outside the coordinated system of securities regulation and does not focus on the concerns the securities laws were intended to address. Regulators of financial institutions do not have the expertise nor equivalent authority to regulate securities activities in such a way as to provide investors the same protection provided under the securities laws.

For example, all persons associated with a broker-dealer (other than employees with purely clerical or ministerial

duties) are required to pass qualification examinations covering their knowledge of substantive aspects of the securities business in order to become licensed to sell securities. These qualification requirements are supplemented by the broker-dealer's affirmative duty to supervise its employees in order to prevent violations of the securities laws. Minn. Stat. Sec. 80A.07, subd. 1(b)(10)(1984). In contrast, personnel of financial institutions are not subject to any licensing to test their knowledge of securities laws and the securities business.

Further, financial institutions which engage in securities activities are not subject to compliance with suitability rules. Minn. Rules, part 2875.1050 (1985). Suitability rules govern the activities of individuals as well as entities engaged in the securities business and are intended to ensure that a particular investment is appropriate for a client based on the client's financial condition, sophistication and investment objectives. Individuals effecting securities transactions on behalf of a financial institution are not subject to such regulations. State and federal laws governing financial institutions regulate institutions, not the conduct and activities of individuals. Indeed, the Department has encountered problems with regard to the limitations of its authority over individuals under the banking laws when, during the course of a regular examination of a bank, it uncovered criminal activity on the part of a bank officer. Under the authority of state banking law, the Department revoked the bank's charter. The Department has no authority

under banking law or any of the laws regulating financial institutions, however, to take any action against the officer of a finanical institution.

Additionally, many rural banks are suffering due to difficult economic times. In some cases, severe economic problems have driven normally honest, hard-working individuals to commit dishonest and illegal acts. Generally, when illegal activity occurs in the context of banking, the financial stability of the bank is adversely affected. Depositors face little risk of loss because their funds are insured by the FDIC. No comparable protections are provided to consumers when illegal activities are committed by financial institutions in the securities area. The purpose of the securities laws is to protect the consumer, and as a necessary means of carrying out this purpose, the laws provide the commissioner with the requisite authority to take administrative action against individuals as well as organizations.

Financial institution and securities regulations are also different in the area of advertising. Broker-dealers must comply with specific guidelines concerning the content and review of advertisements. Minn. Rules, parts 2875.0501-0550(1985). There are no equivalent rules governing the advertising of securities activities of financial institutions.

Recognizing the expansion of the activities of financial institutions into the securities business, the Legislature

enacted an amendment to the previous exemption for banks, savings institutions, and savings and loan associations from the definition of "broker-dealer" contained in Minnesota Statutes Section 80A.14, subd. 4. The amended statute allows banks, savings institutions and savings and loan associations to (1) act for its own account, (2) act in certain fiduciary capacities, and (3) act for the account of others when those activities are in compliance with rules adopted by the Commissioner. Minnesota Rules, part 2875.1590 defines the scope of item (3).

Part 2875.1590, subpart 1

Part 2875.1590, subpart 1, paragraph A provides that a bank, savings institution or savings and loan association may not solicit brokerage business for which it receives transaction-related compensation unless the financial institution enters into a contractual or other arrangement with a broker-dealer licensed under Minnesota Statutes Chapter 80A and certain other specific requirements discussed below are met.

This subpart will not disturb the existing arrangements between some financial institutions and broker-dealers where the financial institution advertises the services of the broker-dealer, and the broker-dealer performs all brokerage functions. In such situations the presence of a licensed broker-dealer adequately addresses investor protection concerns. If, on the other hand, the financial institution solicits

brokerage services not conducted by a licensed broker-dealer, then it must be licensed as a broker-dealer, or an affiliate or subsidiary of it must be licensed.

This provision is intended to permit financial institutions to engage in so-called "networking" arrangements with licensed broker-dealers. For example, a financial institution may contract to advertise the availability of the services of a licensed broker-dealer through promotional literature that provides a telephone number for the placement of orders by customers directly with the broker-dealer. If the requirements of paragraph A, items 1-4 are met, and if the financial institution's brokerage services are being performed through a licensed broker-dealer, no separate broker-dealer licensure would be required.

Paragraph A, item 1 requires that the licensed broker-dealer be clearly identified as the person performing the brokerage services. This would allow the financial institution to work with the broker-dealer to develop literature promoting the services, but require that such literature be approved by the broker-dealer and be viewed as that of the broker-dealer. In this manner, consumers will be informed as to who is responsible for the brokerage services. Additionally, the content of advertising literature will be required to comply with state securities laws.

Under paragraph A, item 2, employees of the financial institution may perform only clerical and ministerial functions in connection

with brokerage transactions unless they are licensed as securities agents with the broker-dealer. If an individual performs purely clerical or ministerial functions, there is no need for the protections and safeguards afforded by the licensing requirements of Minnesota Statutes Chapter 80A because of this individual's limited role in the transaction. The financial institution's employee may distribute advertising materials and assist customers in completing basic information on account opening forms. However, the handling of customers' orders, funds or securities is not considered to be purely clerical or ministerial and cannot be performed without separate licensure.

Under paragraph A, item 3, the financial institution's employee may not receive compensation for brokerage activities unless the employee is a licensed securities agent. If employees perform activities which are more than clerical and ministerial in nature in connection with brokerage transactions or if the financial institution permits employees to receive compensation related to the volume of securities transactions, such employees must be licensed as securities agents pursuant to Minnesota Statutes Chapter 80A.

To ensure that the Commissioner has access to all customer records to facilitate the examination of the broker-dealer's records and detect any potential violations of the securities laws regarding financial institution-related accounts, paragraph A, item 4 requires the broker-dealer to perform services

on a basis in which all customers are fully disclosed. Accounts maintained on a fully-disclosed basis are maintained in only the name of the individual client, rather than in the name of the broker-dealer.

Subpart 1, paragraph B requires a financial institution to be licensed as a broker-dealer if it receives transaction related compensation for providing brokerage services for trust accounts or other accounts to which the financial institution provides investment advice. Investment advice includes individualized advice as well as investment seminars and research on particular securities. Licensing is not required if the financial institution executes transactions through a licensed broker-dealer and the provisions of paragraph B, items 1-3 are met.

Financial institutions that provide investment advice to accounts from which they also generate profits through the execution of transactions are performing activities that are no different from those of full service broker-dealers. The availability of transaction related compensation can provide the inducement for a variety of illegal conduct, including churning (excess trading through which a broker-dealer advances his own interests by generating unnecessary commissions) and unsuitable recommendations. The anti-fraud provisions of the Minnesota Securities Law and rules prohibit broker-dealers from engaging in churning and from recommending securities transactions which are not suitable for the customer, in addition to prohibiting the broker-dealer from engaging

in a variety of other illegal acts. Minn. Stat. Sec. 80A.02-03 (1984); Minn. Rules parts 2875.1030-1150 (1985). This rule assures that financial institutions that act as though they were broker-dealers in virtually all respects are subject to the same requirements as licensed broker-dealers. The clients of both thus have the necessary protections.

However, under paragraph B, the financial institution engaged in the specified securities activities will not be required to obtain a broker-dealer license if (1) the customer is free to choose the executing broker-dealer in an affirmative way, with no provision that sends trades automatically any particular broker-dealer if the customer makes no choice; (2) bank personnel do not receive any compensation for trades executed for accounts to which the financial institution provides investment advice or compensation related to the number of accounts choosing to use the broker-dealer; and (3) the executing broker-dealer carries the accounts on a fully disclosed basis.

Subpart 1, paragraph C provides that the exclusion contained in Minnesota Statutes Section 80A.14, subd. 4 is unavailable to a bank, savings institution or savings and loan association that deals in or underwrites securities. For purposes of the rule, the Commissioner interprets "underwrite" consistent with the definition of the term "underwriter" in §2(11) of the Federal Securities Act of 1933, which provides that "underwriter" means: "any person who has purchased from an issuer with a view to, or offers or sells for an in connection

with, the distribution of any security or participates or has a direct or indirect participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributor's or seller's commission." The exclusion is not available to a financial institution which engages in underwriting because underwriting inherently involves a risk of a large degree of self-interest on the part of the underwriter and also is the primary means of publicly distributing large amounts of securities. Therefore, as the protections afforded by Minnesota Statutes Chapter 80A are necessary, a financial institution which engages in underwriting must obtain a broker-dealer license.

Subpart 2, paragraph C provides an exception for financial institutions that operate certain sweep accounts. Specifically, the exception permits a financial institution to direct the customer's deposit funds into investment companies registered pursuant to the Investment Company Act of 1940 which do not impose a sales charge and which attempt to maintain a constant net asset value. Given the automatic nature of these activities, the high level of regulation of investment companies and the constant net asset value of the shares, there is no serious risk of abuse in this area.

Under subpart 2, paragraph D, an exception from broker-dealer licensure for financial institutions that effect transactions

as part of a variety of shareholder and employee plans. This exception recognizes that financial institutions have been engaging in such securities activities for many years without raising significant investor protection concerns.

Subpart 2, paragraph E provides an exception for financial institutions that effect transactions only with other financial institutions or institutional buyers. Because these institutions employ professionals who are knowledgeable and skilled in the area of securities and also because they possess the financial wherewithal to take risks in the securities market, the protections afforded by the securities laws are not deemed to be necessary.

Part 2875.1590, subpart 2

Subpart 2 excepts from the scope of the rule banks, savings institutions, and savings and loan association which effect transactions in certain securities under certain circumstances where the requirement of licensure is unnecessary to assure adequate investor protection.

Under subpart 2, paragraph A, a bank, savings institution or savings and loan association may effect transactions in commercial paper, bankers' acceptance or commercial bills without being required to obtain a broker-dealer license. Minnesota Statutes Section 80A.15 exempts these securities from registration and filing requirements. Additionally, as a financial institution's involvement in these securities

is of a more traditional and accomodational nature, a financial institution which effects transactions in only those securities specified in paragraph A is performing the traditional functions of a financial institution. Financial institutions have effected transactions in these securities for many years without creating a need for additional consumer protections. Hence, no licensure is deemed necessary.

Under subpart 2, paragraph B, banks, savings institutions or savings and loan associations which effect transactions for the investment portfolio of affiliated companies only would be excepted from the broker-dealer licensing requirement. These transactions are a logical outgrowth of the investment purchases a financial institution is permitted to make for its own investment portfolios and therefore, this exception is appropriate. Additionally, the need for consumer protection is not present when a financial institution engages in these limited activities.

Part 2875.1590, subpart 3

Subpart 3 of the rules allows the Commissioner to exempt financial institutions from the broker-dealer licensing requirements of the rule when he deems that the activities of the financial institution are not within the intended meaning and purpose of the rule. This subpart may permit financial institutions to continue certain present securities activities which do not pose a threat of harm to investors

without being licensed as broker-dealers.

Part 2875.1590, subpart 4

Subpart 4 defines "transaction related compensation" as "monetary profit in excess of cost recovery for providing brokerage execution services". The definition includes, among other things, a percentage of commissions and brokerage fees from accounts to which a financial institution provides investment advice if the fees exceed the cost of execution.

In summary, the purpose of Minnesota Rules, part 2875.1590 is to establish boundaries for financial institution activity without broker-dealer licensure in order to achieve the fundamental goal of providing an acceptable level of investor protection.

SMALL BUSINESS CONSIDERATIONS

Minnesota Statutes Section 14.115 requires that the impact of proposed rules on small business be considered in the rulemaking process.

Subdivision 2 of that section specifies a number of methods for reducing the impact of the rules. The department has considered these methods in the preparation of the rules.

Item (a) of subdivision 2 requires the consideration of

less stringent compliance or reporting requirements for small businesses. The goal of proposed part 2875.1590 is the protection of individual investors who transact securities business with financial institutions. A lesser compliance standard for small businesses would result in reduced protection for the investor. This is inconsistent with the goal of consumer protection. Further, if it is perceived that there is less consumer protection if a small financial institution offers securities services, investors may choose to deal with large institutions to achieve the most security.

Items (b) and (c) are not applicable to the proposed rule as there are no new reporting requirements, and the only compliance schedule that arguably exists is that a financial institution must comply with the provisions of the rule before it engages in securities activities. No other standard is acceptable if the investor is to be protected.

Item (a) is not applicable to this rule as performance, design or operational standards are not involved.

Item (e) is inapplicable for the reasons discussed with regard to item (a).

Despite the foregoing, the Department did consider small businesses as it developed the rule. The rule is intended to impose as light a regulatory burden as possible while still protecting the consumer to ensure that the activities which the rule regulates could be undertaken by small as

well as large organizations.

Also, the concept of "networking" allows even the smallest financial institution to provide a wide array of securities products to its customers without being required to become licensed as a broker-dealer. If financial institutions which are involved in "networking" arrangements were required to become licensed as broker-dealers, all but the larger financial institutions might be precluded from engaging in securities activities.

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE

IN THE MATTER OF THE PROPOSED AMENDMENTS) TO SECURITIES RULES REGULATING THE SEC-) URITIES PRACTICES OF FINANCIAL INSTITU-) TIONS, INCLUDING BANKS, SAVINGS INSTITU-) TIONS AND SAVINGS AND LOAN ASSOCIATIONS)

AMENDED STATEMENT OF NEED AND REASONABLENESS

STATEMENT OF AUTHORITY

Minnesota Statutes Section 80A.14, subd. 4 contains the definition of "broker-dealer". This section provides that "broker-dealer" does not include "... a bank, savings institution, savings and loan association acting for the account of others, provided that such activities are conducted in compliance with such rules and regulations as may be adopted by the commissioner."

Additional rulemaking authority pertaining to the proposed amendments is found at Minnesota Statutes Section 80A.25, subd. 1, Minnesota Statutes Section 80A.05, and Minnesota Statutes Section 45.023.

The Commissioner finds the proposed rule necessary and appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of Minnesota Statutes Sections 80A.01 to 80A.31.

The Commissioner further finds that the proposed amendments are consistent with the statutory policy of Minnesota Statutes Section 80A.31, which calls for the coordination of interpretations of Minnesota Statutes Chapter 80A with the related federal regulation.

FACTS ESTABLISHING NEED AND REASONABLENESS

Minnesota Rule, part 2875.1590 is proposed in response to a 1984 amendment to Minnesota Statutes Section 80A.14, subd. 4 which expressly grants the Commissioner rule-making authority to determine when banks, savings institutions, or savings and loan associations can act for the account of others in securities transactions without being licensed as broker-dealers. 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 accomodation functions contemplated by the drafters of the Uniform Securities Act, upon which Chapter 80A is based, which contained an exclusion for such financial institutions from the definition of broker-dealer. Today, financial institutions have become aggressively involved in the securities business. Advertising and public solicitations urge consumers to become brokerage customers of financial institutions. Employees of financial institutions take orders and hold funds and securities, and then forward these to a clearing broker. The expansion of securities activities by financial institutions has brought about a need for this rule to assure an adequate level of investor protection.

The rule closely resembles Rule 3b-9 under the Securities

Exchange Act of 1934 which was recently adopted by the Securities and Exchange Commission (SEC) to resolve parallel concerns at the federal level.

Without proposed Part 2875.1590, the increase in securities activities of financial institutions raises substantial investor protection concerns. The securities laws, as administered by the Department of Commerce and the SEC, provide for a comprehensive and coordinated system of regulation of securities activities specifically and uniquely designed to assure the protection of investors. The securities laws are also designed to assure fair competition among all participants in the securities markets. Broker-dealer licensing is an important part of this regulatory system. Absent broker-dealer licensing, the securities activities of financial institutions are regulated only under federal and state banking laws which were enacted primarily to protect depositors and to preserve the financial soundness of these institutions. Such bank regulation takes place outside the coordinated system of securities regulation and does not focus on the concerns the securities laws were intended to address. Regulators of financial institutions do not have the expertise nor equivalent authority to regulate securities activities in such a way as to provide investors the same protection provided under the securities laws.

For example, all persons associated with a broker-dealer (other than employees with purely clerical or ministerial duties) are required to pass qualification examinations

covering their knowledge of substantive aspects of the securities business in order to become licensed to sell securities. These qualification requirements are supplemented by the broker-dealer's affirmative duty to supervise its employees in order to prevent violations of the securities laws. Minn. Stat. Sec. 80A.07, subd. 1(b)(10)(1984). In contrast, personnel of financial institutions are not subject to any licensing to test their knowledge of securities laws and the securities business.

Further, financial institutions which engage in securities activities are not subject to compliance with suitability rules. Minn. Rules, part 2875.1050 (1985). Suitability rules govern the activities of individuals as well as entities engaged in the securities business and are intended to ensure that a particular investment is appropriate for a client based on the client's financial condition, sophistication and investment objectives. Individuals effecting securities transactions on behalf of a financial institution are not subject to such regulations. State and federal laws governing financial institutions regulate institutions, not the conduct and activities of individuals. Indeed, the Department has encountered problems with regard to the limitations of its authority over individuals under the banking laws when, during the course of a regular examination of a bank, it uncovered criminal activity on the part of a bank officer. Under the authority of state banking law, the Department revoked the bank's charter. The Department has extremely restricted authority under banking law or any of the laws regulating financial institutions, however, to take any

action against the officer of a financial institution. There is considerable doubt whether, under state laws regulating financial institutions, the department could take administrative action against a financial institution officer or employee for misconduct or wrongdoing in the area of securities.

Additionally, many rural banks are suffering due to difficult economic times. In some cases, severe economic problems have driven normally honest, hard-working individuals to commit dishonest and illegal acts. Generally, when illegal activity occurs in the context of banking, the financial stability of the bank is adversely affected. Depositors face little risk of loss because their funds are insured by the FDIC. No comparable protections are provided to consumers when illegal activities are committed by financial institutions in the securities area. The purpose of the securities laws is to protect the consumer, and as a necessary means of carrying out this purpose, the laws provide the commissioner with the requisite authority to take administrative action against individuals as well as organizations.

Financial institution and securities regulations are also different in the area of advertising. Broker-dealers must comply with specific guidelines concerning the content and review of advertisements. Minn. Rules, parts 2875.0501-0550(1985). There are no equivalent rules governing the advertising of securities activities of financial institutions.

Recognizing the expansion of the activities of financial

institutions into the securities business, the Legislature enacted an amendment to the previous exemption for banks, savings institutions, and savings and loan associations from the definition of "broker-dealer" contained in Minnesota Statutes Section 80A.14, subd. 4. The amended statute allows banks, savings institutions and savings and loan associations to (1) act for their own account, (2) act in certain fiduciary capacities, and (3) act for the account of others when those activities are in compliance with rules adopted by the Commissioner. Minnesota Rules, part 2875.1590 defines the scope of item (3).

Part 2875.1590, subpart 1

Part 2875.1590, subpart 1, paragraph A provides that a bank, savings institution or savings and loan association may not solicit brokerage business for which it receives transaction-related compensation unless the financial institution enters into a contractual or other arrangement with a broker-dealer licensed under Minnesota Statutes Chapter 80A and certain other specific requirements discussed below are met.

This subpart will not disturb the existing arrangements between some financial institutions and broker-dealers where the financial institution advertises the services of the broker-dealer, and the broker-dealer performs all brokerage functions. In such situations the presence of a licensed broker-dealer adequately addresses investor protection concerns. If, on the other hand, the financial institution solicits

brokerage services not conducted by a licensed broker-dealer, then it must be licensed as a broker-dealer, or an affiliate or subsidiary of it must be licensed.

This provision is intended to permit financial institutions to engage in so-called "networking" arrangements with licensed broker-dealers. For example, a financial institution may contract to advertise the availability of the services of a licensed broker-dealer through promotional literature that provides a telephone number for the placement of orders by customers directly with the broker-dealer. If the requirements of paragraph A, items 1-4 are met, and if the financial institution's brokerage services are being performed through a licensed broker-dealer, no separate broker-dealer licensure would be required.

Paragraph A, item 1 requires that the licensed broker-dealer be clearly identified as the person performing the brokerage services. This would allow the financial institution to work with the broker-dealer to develop literature promoting the services, but require that such literature be approved by the broker-dealer and be viewed as that of the broker-dealer. In this manner, consumers will be informed as to who is responsible for the brokerage services. Additionally, the content of advertising literature will be required to comply with state securities laws.

Under paragraph A, item 2, employees of the financial institution may perform only clerical and ministerial functions in connection

with brokerage transactions unless they are licensed as securities agents with the broker-dealer. If an individual performs purely clerical or ministerial functions, there is no need for the protections and safeguards afforded by the licensing requirements of Minnesota Statutes Chapter 80A because of this individual's limited role in the transaction. The financial institution's employee may distribute advertising materials and assist customers in completing basic information on account opening forms. However, the handling of customers' orders, funds or securities is not considered to be purely clerical or ministerial and cannot be performed without separate licensure.

Under paragraph A, item 3, the financial institution's employee may not receive compensation for brokerage activities unless the employee is a licensed securities agent. If employees perform activities which are more than clerical and ministerial in nature in connection with brokerage transactions or if the financial institution permits employees to receive compensation related to the volume of securities transactions, such employees must be licensed as securities agents pursuant to Minnesota Statutes Chapter 80A.

To ensure that the Commissioner has access to all customer records to facilitate the examination of the broker-dealer's records and detect any potential violations of the securities laws regarding financial institution-related accounts, paragraph A, item 4 requires the broker-dealer to perform services on a basis in which all customers are fully disclosed.

Accounts maintained on a fully-disclosed basis are maintained in only the name of the individual client, rather than in the name of the broker-dealer.

Subpart 1, paragraph B requires a financial institution to be licensed as a broker-dealer if it receives transaction related compensation for providing brokerage services for trust accounts or other accounts to which the financial institution provides investment advice. Investment advice includes individualized advice as well as investment seminars and research on particular securities. Licensing is not required if the financial institution executes transactions through a licensed broker-dealer and the provisions of paragraph B, items 1-3 are met.

Financial institutions that provide investment advice to accounts from which they also generate profits through the execution of transactions are performing activities that are no different from those of full service broker-dealers. The availability of transaction related compensation can provide the inducement for a variety of illegal conduct, including churning (excess trading through which a broker-dealer advances his own interests by generating unnecessary commissions) and unsuitable recommendations. The anti-fraud provisions of the Minnesota Securities Law and rules prohibit broker-dealers from engaging in churning and from recommending securities transactions which are not suitable for the customer, in addition to prohibiting the broker-dealer from engaging in a variety of other illegal acts. Minn. Stat. Sec. 80A.02-03

(1984); Minn. Rules parts 2875.1030-1150 (1985). This rule assures that financial institutions that act as though they were broker-dealers in virtually all respects are subject to the same requirements as licensed broker-dealers. The clients of both thus have the necessary protections.

However, under paragraph B, the financial institution engaged in the specified securities activities will not be required to obtain a broker-dealer license if (1) the customer is free to choose the executing broker-dealer in an affirmative way, with no provision that sends trades automatically to any particular broker-dealer if the customer makes no choice; (2) bank personnel do not receive any compensation for trades executed for accounts to which the financial institution provides investment advice or compensation related to the number of accounts choosing to use the broker-dealer; and (3) the executing broker-dealer carries the accounts on a fully disclosed basis.

Subpart 1, paragraph C provides that the exclusion contained in Minnesota Statutes Section 80A.14, subd. 4 is unavailable to a bank, savings institution or savings and loan association that deals in or underwrites securities. For purposes of the rule, the Commissioner interprets "underwrite" consistent with the definition of the term "underwriter" in §2(11) of the Federal Securities Act of 1933, which provides that "underwriter" means: "any person who has purchased from an issuer with a view to, or offers or sells for an in connection with, the distribution of any security or participates or

has a direct or indirect participation in the direct or indirect underwriting of any such undertaking; but such term shall not include a person whose interest is limited to a commission from an underwriter or dealer not in excess of the usual and customary distributor's or seller's commission." The exclusion is not available to a financial institution which engages in underwriting because underwriting inherently involves a risk of a large degree of self-interest on the part of the underwriter and also is the primary means of publicly distributing large amounts of securities. Therefore, as the protections afforded by Minnesota Statutes Chapter 80A are necessary, a financial institution which engages in underwriting must obtain a broker-dealer license.

Part 2875.1590, subpart 2

Subpart 2 excepts from the scope of the rule banks, savings institutions, and savings and loan associations which effect transactions in certain securities under circumstances where the requirement of licensure is unnecessary to assure adequate investor protection.

Under subpart 2, paragraph A, a bank, savings institution or savings and loan association may effect transactions in commercial paper, bankers' acceptance or commercial bills without being required to obtain a broker-dealer license. Minnesota Statutes Section 80A.15 exempts these securities from registration and filing requirements. Additionally, as a financial institution's involvement in these securities

is of a more traditional and accomodational nature, a financial institution which effects transactions in only those securities specified in paragraph A is performing the traditional functions of a financial institution. Financial institutions have effected transactions in these securities for many years without creating a need for additional consumer protections. Hence, no licensure is deemed necessary.

Under subpart 2, paragraph B, banks, savings institutions or savings and loan associations which effect transactions for the investment portfolio of affiliated companies only would be excepted from the broker-dealer licensing requirement. These transactions are a logical outgrowth of the investment purchases a financial institution is permitted to make for its own investment portfolios and therefore, this exception is appropriate. Additionally, the need for consumer protection is not present when a financial institution engages in these limited activities.

Subpart 2, paragraph C provides an exception for financial institutions that operate certain sweep accounts. Specifically, the exception permits a financial institution to direct the customer's deposit funds into investment companies registered pursuant to the Investment Company Act of 1940 which do not impose a sales charge and which attempt to maintain a constant net asset value. Given the automatic nature of these activities, the high level of regulation of investment companies and the constant net asset value of the shares, there is no serious risk of abuse in this area.

Under subpart 2, paragraph D, an exception from broker-dealer licensure is provided for financial institutions that effect transactions as part of a variety of shareholder and employee plans. This exception recognizes that financial institutions have been engaging in such securities activities for many years without raising significant investor protection concerns.

Subpart 2, paragraph E provides an exception for financial institutions that effect transactions only with other financial institutions or institutional buyers. Because these institutions employ professionals who are knowledgeable and skilled in the area of securities and also because they possess the financial wherewithal to take risks in the securities market, the protections afforded by the securities laws are not deemed to be necessary.

Part 2875.1590, subpart 3

Subpart 3 of the rules allows the Commissioner to exempt financial institutions from the broker-dealer licensing requirements of the rule when he deems that the activities of the financial institution are not within the intended meaning and purpose of the rule. This subpart may permit financial institutions to continue certain present securities activities which do not pose a threat of harm to investors without being licensed as broker-dealers.

Part 2875.1590, subpart 4

Subpart 4 defines "transaction related compensation" as "monetary profit in excess of cost recovery for providing brokerage execution services". The definition includes, among other things, a percentage of commissions and brokerage fees from accounts to which a financial institution provides investment advice if the fees exceed the cost of execution.

In summary, the purpose of Minnesota Rules, part 2875.1590 is to establish boundaries for financial institution activity without broker-dealer licensure in order to achieve the fundamental goal of providing an acceptable level of investor protection.

SMALL BUSINESS CONSIDERATIONS

Minnesota Statutes Section 14.115 requires that the impact of proposed rules on small business be considered in the rulemaking process.

Subdivision 2 of that section specifies a number of methods for reducing the impact of the rules. The department has considered these methods in the preparation of the rules.

Item (a) of subdivision 2 requires the consideration of less stringent compliance or reporting requirements for

small businesses. The goal of proposed part 2875.1590 is the protection of individual investors who transact securities business with financial institutions. A lesser compliance standard for small businesses would result in reduced protection for the investor. This is inconsistent with the statutory goal of consumer protection which is the basis for the rule. Further, if it is perceived that there is less consumer protection if a small financial institution offers securities services, investors may choose to deal with large institutions to achieve the most security.

Items (b) and (c) require the consideration of the establishment of less stringent schedules or deadlines for compliance or reporting requirements for small business and the consideration of the consolidation or simplification of compliance or reporting requirements for small businesses, respectively. The proposed rule requires small financial institutions to comply with broker-dealer reporting requirements. The broker-dealer reporting provisions require broker-dealers to submit an annual report with audited financial statements. Because this annual reporting requirement provides the Commissioner with financial information necessary to monitor the protection of customer funds, any lesser reporting requirements or less frequent reporting requirements for small financial institutions are not feasible and contrary to the statutory objectives which are the bases for the proposed rule. Additionally, with regard to compliance schedules and requirements, such requirements are necessary to ensure an adequate level of investor protection. No other standard would fulfill statutory objectives.

Item (d) is not applicable to this rule as performance, design or operational standards are not involved.

Exemption of small businesses under Item (e) is not feasible and would be contrary to statutory objectives for the reasons discussed with regard to item (a).

Despite the foregoing, the Department did consider small businesses as it developed the rule. The rule is intended to impose as light a regulatory burden as possible while still protecting the consumer to ensure that the activities which the rule regulates could be undertaken by small as well as large organizations.

Also, the concept of "networking" allows even the smallest financial institution to provide a wide array of securities products to its customers without being required to become licensed as a broker-dealer. If financial institutions which are involved in "networking" arrangements were required to become licensed as broker-dealers, all but the larger financial institutions might be precluded from engaging in securities activities.

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of Rules in Regard to Brokerage Activities by Financial Institutions, also known as the Matter of the Proposed Amendments to Securities Rules Regulating the Securities Practices of Financial Institutions, including Banks, Savings Institutions and Savings and Loan Associations.

CERTIFICATE OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, Barry R. Greller, do hereby declare that I have examined the above-captioned rules and all related documents and that based on my examination and my personal familiarity with the applicable procedures, the Administrative Procedure Act, the rules of the Office of Administrative Hearings, and the rules of the Attorney General have been followed without exception.

Dated: April 2, 1986.

Barry R. Greller

BARRY R. GRELLER
Special Assistant
Attorney General

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Amendment of Securities Regulating Financial Institutions, including Banks, Savings Institutions and Savings and Loan Associations, Securities Practices	AFFIDAVIT RE NOTICE OF SUBMISSION TO THE ATTORNEY GENERAL

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Richard G. Gomsrud, being first duly sworn, deposes and says:

That he is Department Counsel for the Department of Commerce.

That part of his duties is the promulgation and adoption of departmental rules, including those captioned above.

That to date, no person has requested notice of submission of the rules in the above-entitled matter to the Attorney General.

Richard G. Gomsrud
Department Counsel, Department of Commerce

Subscribed and sworn to before me this
28th day of March 1986.

SAMUEL F. JOHNSON
NOTARY PUBLIC — MINNESOTA
HENNEPIN COUNTY
My commission expires 10-9-91

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE

In the Matter of the Proposed Amendment of Securities Regulating Financial Institutions, including Banks, Savings Institutions and Savings and Loan Associations, Securities Practices	STATEMENT IN REGARD TO ADDITIONAL DISCRETIONARY NOTICE

Richard Gomsrud being first duly sworn does hereby state and avow that he is Department Counsel for the Department of Commerce and has been actively involved in the promulgation of the above captioned rules

Approximately one year ago rules dealing with similar activities were proposed by the department. The notice provided at that time consisted of the notice in the State Register required by statute and rule as well as a mailing to the people on the appropriate list maintained by the department for that purpose. As a result of those notification procedures it is the department's belief that all parties affected by the rules who wish to participate in the rulemaking process were made aware of the promulgation of the rules. Intense discussions between those parties and the department ocurred which resulted in the rule being withdrawn and certain statutory changes being made by the legislature. The department has, as indicated in its additional affidavit of mailing, notified those persons of this proceeding who requested a hearing on the prior rules.The department does not feel at this time that additional discretionary notice beyond that is necessary because of its past experience showing the adequacy of notice based upon the statutory and rule requirements of the Administrative Procedures Act. Should it appear to the department that any significant group that might be affected by the rule is not aware of the promulgation of the rule it would be the department's intent to put them on notice. Additionally the department has maintained a policy of seeking to encourage the local newspapers of general circulation, such as the Star and Tribune and the Pioneer Press to make the public aware of rules such as these. The department will follow that policy in regard to these rules but is unable to guarantee that the papers would choose to so inform the public.

Richard G. Gomsrud
Department Counsel

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE

In the Matter of the Proposed Amendment of Securities Regulating Financial Institutions, including Banks, Savings Institutions and Savings and Loan Associations, Securities Practices

Affidavit Regarding Dual Notice

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

Richard G. Gomsrud, being first duly sworn, deposes and states as follows:

That he is Department Counsel to the Department of Commerce.

That part of his duties is the promulgation and adoption of departmental rules including those captioned above.

That approximately one year before the commencement of the subject rulemaking proceedings the department had promulgated rules in regard to the same subject matter. That at that time those rules were highly controversial and accordingly the department withdrew them for further study. That subsequent to the withdrawal of those rules additional statutory authority was provided to the department and the Securities and Exchange Commission also promulgated rules in this area. Many of the questions that were raised in regard to the first set of rules were resolved by these two events. However, because of the reaction the first time rules were promulgated and because of the need to have these rules in place as soon as possible a dual notice procedure was followed whereby while the department was proceeding to adopt the rules noncontroversially an additional notice was filed published simultaneously with the Notice of Intent to Adopt Rules Without Hearing that should twenty five or more persons request such a hearing that a hearing would be held and a date specified. Accordingly to satisfy the requirements of the Office of Administrative Hearings all materials required by its rules were submitted to the Office of Administrative Hearings and procedures for implementing a hearing were followed.

As twenty five or more people did not request a hearing no hearing was held and accordingly materials were returned to the department and the Office of Administrative Hearings filed the matter closed.

In the materials submitted to the Attorney General's Office for their review copies of the Dual Notice and the Order for Hearing were included to make the record as complete as possible in matters pertainent to the noncontroversial proceedings. The materials submitted to the Office of Administrative Hearings were not submitted as part that record because they are essentially duplicative and therefore aren't necessary. However, they will be maintained as part of the file on this rulemaking proceeding in the Department of Commrce.

Richard G. Gomsrud
Department Counsel

Subscribed and sworn before
me this 28th day of March

Notary Public

SAMUEL F. JOHNSON
NOTARY PUBLIC — MINNESOTA
HENNEPIN COUNTY
My Commission expires 10-9-91

SF-00006-04

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : of Commerce

PHONE : 296-5689

DATE : April 7, 1986

TO : Judith Wehrwein

FROM : Richard G. Gomsrud

SUBJECT : Brokerage Rules for Financial Institutions

Enclosed are the documents for your review of the Brokerage Rules for Financial Institutions. In regard to that particular designation please note that a variety of different titles were unfortunately used on the documents. They all designate the same sets of rules and I think clearly indicate that the rules are intended to regulate the Securities Brokerage Activities of Financial Institutions. However I did want to bring to your attention that there is some inconsistency in the titles although I do not think that has any substantive effect. To the best of my knowledge no one has been misled by this inconsistency.

An amended Statement of Need and Reasonableness enclosed with the documents. The amended Statement of Need and Reasonableness was a result of some concerns that the Administrative Law Judge had that he wanted addressed and was prepared prior to the date of publication in the State Register. If this were a normal noncontroversial proceedings and dual notice had not been involved I would presume that the "amended" Statement of Need and Reasonableness would merely have been substituted as the only Statement of Need and Reasonableness since it is not required to be prepared and available prior to the publication date in the State Register. However because a copy was already on file with the Administrative Law Judge this amended version was prepared and is now part of the record. No one has requested either the Statement of Need and Reasonableness or the amended Statement of Need and Reasonableness.

There are also two Notices of Intent to Adopt Rules included. That is because the State Register, through an error on its part, printed only half of the dual notice and it had to be reprinted with both notices included in subsequent edition of the State Register. That is set forth in my affidavit but I wanted you to know why you may have some additional documents. I think this takes care of all the points of possible confusion.

The Commissioner would like this rule in place as soon as possible so anything that you can do to shorten the time period of your review to the absolute minimum would be greatly appreciated. I would be more than happy to come up there to meet with whomever is reviewing this or do whatever else would be necessary to expedite this.

To: Marty.

Date: 4.15.86

Re: Commerce — Brokerage Services by Financial Institutions.

Rules as Adopted

.1590, subp. 2. B.

p.2, line 26 I think they mean "affiliated" rather than "allitiated".

p.3, line 6 .1590, subp. 3

This section permits the commissioner to exempt certain financial institutions from the Rule — in effect, to grant a variance. There are no stated criteria for granting of the variance.

DEPARTMENT : of Commerce

PHONE : 296-5689

DATE :

TO : Judith Wehrwein
Administrative A-G

FROM : Richard G. Gomsrud
Department Counsel

SUBJECT : Brokerage Service by Financial Inst.'

STATE OF MINNESOTA
Office Memorandum

SF-00006-04

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)

(4a) Amended Statement of Need and Reasonableness

(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) & Notice of Hearing

(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) Statement re additional discretionary Notice

(17) Order for hearing

(18) Affidavit re dual notice

(19) Affidavit of mailing additional notice