

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

RULE REVIEW CHECKLIST

File No. 1339 Docket No. OS.0009.0112

DATE RECEIVED 12-23-86
REVIEW DATE 1-2-86
DUE DATE 1-6-86

APPROVED 1-5-87
DISAPPROVED
WITHDRAWN

ADOPTED W/O HEARING X
EMERGENCY RULE

REVISOR APPROVED 12-30-86
REVISOR DISAPPROVED
FILED W/SEC. STATE 1/9/87
RETURNED TO AGENCY Called 1/7

X Rule as adopted (4 copies)

X Notice to Solicit Outside Information/Opinion
Date published in State Register
Comments

Petition for Adoption of a Rule

Board's Authorizing Resolution

X Proposed rule
Revisor's Certificate

X Notice of Intent to Adopt Rule
45.023, 48.93-48.99 Statutory Authority
yes Small business statement
none Expenditure of public money statement
yes Signature

X Statement of Need and Reasonableness

X Affidavit of Mailing Notice of Intent to Adopt Rule
10-31-86 Date 30/25 days before adoption

X Publication in State Register
11-3-86 Date 30/25 days before adoption

Resolution Adopting

X Findings of Fact, Conclusions & Order Adopting
Date

X Written requests, submissions or comments

Declaration of attorney
Name of SAAG representing agency

[redacted] Notice of Submission to Attorney General

X Affidavit of Mailing Notice to Attorney General

X Certificate

X order for notice of intent to adopt

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: MICHAEL A. HATCH, Commissioner
Department of Commerce

DATE: 1/07/87

ATTN: RICHARD G. GOMSRUD
Counsel, Department of Commerce

FROM: J. MICHAEL MILES
Assistant Attorney General

PHONE: 296-6555

SUBJECT: Permanent Rules Relating to Interstate Banking

The above-referenced rule has been approved as to its legality by the Attorney General on 1/5/87.

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.

JMM/rmk
Enclosures

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

Duane Harves
Chief Administrative Law Judge
Office of Administrative Hearings

RR#1339

Department of Commerce

Adopted Permanent Rules Relating to Interstate Banking

Rules as Adopted

2655.0100 APPLICABILITY AND SCOPE.

Parts 2655.0100 to 2655.0600 govern applications by a bank holding company, with its principal place of business located in another state, to acquire a Minnesota bank under Minnesota Statutes, sections 48.93 and 48.99.

2655.0200 DEFINITIONS.

Subpart 1. **Scope.** As used in parts 2655.0100 to 2655.0600, the following terms have the meanings given them.

Subp. 2. **Acquiree.** "Acquiree" means the Minnesota bank or bank holding company being acquired by the applicant.

Subp. 3. **Affiliate.** "Affiliate" means a person who directly or indirectly has beneficial ownership of ten percent or more of any class of voting securities.

Subp. 4. **Alternate energy loans and alternate conservation loans.** "Alternate energy loans and alternate conservation loans" means all loans for any purpose under Minnesota Statutes, section 116M.03, subdivision 26.

Subp. 5. **Applicant.** "Applicant" means a bank holding company that has filed an application to acquire a Minnesota bank under the Minnesota Reciprocal Interstate Banking Act.

Subp. 6. **Control.** "Control" means, with respect to a bank holding company, bank, or bank to be organized under Minnesota Statutes, chapters 46, 47, 48, 300, and parts 2655.0100 to 2655.0600:

A. the ownership, directly or indirectly, or acting through one or more other persons, control of or the power to vote 25 percent or more of any class of voting securities;

B. control in any manner over the election of a majority of the directors; or

C. the power to exercise, directly or indirectly, a

controlling influence over management and policies.

Subp. 7. **Commissioner.** "Commissioner" means the commissioner of the Department of Commerce.

Subp. 8. **Community.** "Community" means the area the bank has designated for purposes of compliance with the Community Reinvestment Act of 1977 (12 USC 2901-2905), as being the area that it serves.

Subp. 9. **Community development corporation.** "Community development corporation" is as defined in Minnesota Statutes, section 116M.04.

Subp. 10. **Developmental loans.** "Developmental loans" include the following categories:

A. low and moderate income housing;

B. operating loans for family farmers;

C. loans made in distressed areas;

D. minority- and woman-owned businesses;

E. alternative energy and energy conservation practices;

F. community development corporations;

G. Indian reservations and student education loans; and

H. any other specifically defined class of people, businesses, or projects which meet the standards under Minnesota Statutes, section 645.445, subdivision 5, for socially or economically disadvantaged persons, projects, or businesses.

Subp. 11. **Developmental investments.** "Developmental investments" shall include investments for the following purposes:

A. low and moderate income housing;

B. operating loans for family farmers;

C. loans made in distressed areas;

D. minority- and woman-owned businesses;

E. alternative energy and energy conservation practices;

F. community development corporations;

G. Indian reservations and student education loans;

and

H. any other specifically defined class of people, businesses, or projects which meet the standards under Minnesota Statutes, section 645.445, subdivision 5, for socially or economically disadvantaged persons, projects, or businesses.

Subp. 12. **Distressed area.** "Distressed area" is defined to include any area designated as a distressed area under Code of Federal Regulations, title 24, section 570.452 (1986) by the United States Department of Housing and Urban Development.

Subp. 13. **Equity capital.** "Equity capital" means the sum of common stock, preferred stock, surplus, and undivided profits.

Subp. 14. **Family farmers.** "Family farmers" means family farms and family farm corporations as defined in Minnesota Statutes, section 500.24.

Subp. 15. **Investments.** "Investments" means funds or capital extended, contributed, or otherwise invested, but not loaned.

Subp. 16. **Low and moderate income housing.** "Low and moderate income housing" means housing defined as such by any of the following:

A. regulations promulgated by the Farmers Home Administration; and

B. section 8 of the United States Housing Act of 1937, and the regulations promulgated under the act.

Subp. 17. **Minnesota loan.** "Minnesota loan" means loans made to Minnesota residents to be used in Minnesota or loans where the bank has been advised by the borrower that the loan proceeds will be used in Minnesota.

Subp. 18. **Minnesota residents.** "Minnesota residents" are:

A. individuals located within a Minnesota zip code;

B. private profit or nonprofit corporations, or subsidiaries or divisions thereof, located and doing business within Minnesota;

C. profit or nonprofit partnerships, trust, or any form of other business enterprise located and doing business within Minnesota; and

D. any municipality, agency, or other public authority established and operating under the laws of Minnesota.

Subp. 19. **Minority-owned business and woman-owned business.** "Minority-owned business" and "woman-owned business" means any socially or economically disadvantaged person under Minnesota Statutes, section 645.445, subdivision 5. A minority-owned business or woman-owned business must have at least 50 percent of the ownership interest controlled by such disadvantaged class of persons.

Subp. 20. **Net new funds.** "Net new funds" means a net increase in lending, investment and credit involvement brought to Minnesota on behalf of the acquiree as described in the application filed with the commissioner.

Subp. 21. **Relevant market area.** "Relevant market area" includes the standards established by the Federal Reserve Board for evaluation of concentration of financial institution deposits.

2655.0300 APPLICATION.

Subpart 1. **Attachments.** Each application shall include, but not be limited to, the following attachments:

A. A certified copy of the applicant board's resolution authorizing submission of the application and designating the officers authorized to sign it.

B. A copy of the most recent Report of Bank Holding Company Inspection for the applicant. If the applicant is prohibited from releasing this report, it shall file a copy of a written request to the appropriate federal reserve bank requesting delivery of the report to the commissioner.

C. A copy of all invitations, tenders, or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition.

D. A copy of all acquisition agreements, detailing the terms and conditions of any proposed acquisition.

E. An organizational chart of the applicant and its

subsidiaries.

F. A copy of the most recent consolidated report of condition and statement of earnings of the applicant.

G. A pro forma balance sheet of the applicant on a consolidated basis both before and after the acquisition.

H. The names and addresses of the anticipated board of directors of the Minnesota bank being acquired by the applicant. If a bank holding company located in Minnesota is being acquired, provide the names and addresses of the anticipated board of directors of the bank's subsidiary located in Minnesota of the bank holding company. If the anticipated board is not known, an explanation of how the directors will be determined must be included.

I. If a bank holding company located in Minnesota is being acquired, list the names and addresses of all of its subsidiaries.

J. Any other exhibit that the commissioner deems relevant to a determination of whether the acquisition will result in a satisfactory level of developmental loans or net new funds.

Subp. 2. **Information.** The application shall include, but not be limited to, the following:

A. The name and address of the applicant.

B. The name and address of the acquiree.

C. The full name of each shareholder who owns or controls ten percent or more of the stock of the acquiree who is tendering its stock.

D. The total number of shares presently held by each shareholder who owns or controls ten percent or more of the stock of the acquiree who is tendering its stock.

E. The total number of shares to be sold or transferred by each shareholder who owns or controls ten percent or more of the stock of the acquiree.

F. The total number of shares to be held by each shareholder of the acquiree who will hold or control ten percent or more of the stock following completion of the proposed

transaction.

G. The total number of voting shares authorized by either the acquiree bank or the acquiree bank holding company.

H. The total number of outstanding voting shares of the acquiree.

I. The number of shares involved in this transaction.

J. The total number of shares of the acquiree currently held by the applicant.

K. The total consideration for the proposed transaction.

L. The identity, personal history, business background, and experience of the applicant. If known to the applicant, or any officer or director of the applicant, the identity, personal history, business background and experience of its affiliates, including any material business activities and affiliations during the past five years.

M. A description of any material pending legal or administrative proceeding in which the applicant is a party, and any criminal indictment or conviction of that person by a state or federal court; and, if known by the applicant or any officer or director of the applicant, similar proceedings involving an affiliate of the applicant must be disclosed.

N. A statement of the assets and liabilities of the applicant, as of the end of the calendar year for each of the five years immediately preceding the date of the application, together with related statements of income, sources, and application of funds for each of the calendar years then concluded, all prepared in accordance with generally accepted accounting principles, consistently applied.

O. An interim statement of assets and liabilities of the applicant, together with related statements of income, source, and application of funds as of a date not more than 90 days before the date of the filing of the application.

P. The source and amount of funds or other consideration, except those funds borrowed, to be used in making the acquisition. The applicant should particularly describe any

of its assets that are to be liquidated to finance the acquisition.

Q. If any part of the funds or other consideration are to be borrowed for the purpose of making the acquisition, the applicant must describe the collateral to be pledged and the terms of the transaction, including the name of the lender, interest rates, requirements, guarantors, endorsers, and any other arrangements, agreements, and understandings between and among the parties. The application must include copies of any loan commitments obtained from lenders in connection with the proposed acquisition.

R. If borrowed funds are to be obtained, the applicant must indicate the sources of funds for debt service. Additionally, the applicant shall detail the extent to which the applicant intends to rely on dividends and fees or other funds from the bank being acquired for debt servicing requirements.

S. The applicant must identify any person retained or compensated by the applicant, or by any person on the applicant's behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of any retainer or arrangements for compensation.

T. The applicant must disclose any plans or proposals regarding any partial or full liquidation of the acquiree, of any plans or proposals to sell the acquiree's assets or merge it, or any other major change in the acquiree's business or corporate structure or management.

U. The applicant must describe how the acquisition will bring net new funds, under part 2655.0500, to Minnesota.

V. The application must also disclose how the acquisition will not result in undue concentration of resources or a substantial lessening of competition in Minnesota. The application shall delineate the relevant market area of the bank or banks to be acquired and located in Minnesota. This delineation is to be described by map or drawing showing the other commercial banks and thrift institutions accompanied by a

schedule of correspondent current total deposits of each.

W. The applicant shall describe its plan of compliance in providing the developmental loans and investments.

X. The applicant must describe developmental loans or developmental investments as set forth in part 2655.0400.

Y. The commissioner may additionally require other information as may be necessary to determine whether the application should be approved.

2655.0400 DEVELOPMENTAL LOANS.

Subpart 1. **Mandatory factors.** The commissioner shall consider the following factors in determining an acceptable level of developmental loans in the community by an applicant through its acquiree:

A. the level of developmental loans, in terms of number and amount, held by the acquiree at the end of:

(1) its last calendar quarter immediately before the date of the application; and

(2) each of the last two calendar years immediately before the date of application;

B. the projected level of developmental loans, in terms of number and amount, held at the end of each of the next three calendar years from the date of application;

C. any developmental investments for the classifications listed under developmental loans held at the time periods described in items A and B;

D. any developmental loans or developmental investments originated by the acquiree which has or will be participated in or sold to other institutions during the time periods described in items A and B;

E. the acquiree's financial condition at the close of the time periods described in items A and B;

F. the bank's asset quality at the close of the time periods described in items A and B;

G. the economic condition of the community during the time periods described in items A and B;

H. the asset mix of the bank and the socioeconomic makeup of the community in terms of socially and economically disadvantaged persons;

I. the extent of loans made by the acquiree in its Community Reinvestment Act territories during the time periods described in items A and B; and

J. the volume of developmental loans made in the community during the time periods described in items A and B.

Subp. 2. **Permissive factors.** The commissioner may also consider:

A. Any peer group average for developmental loans and investments by similar financial institutions concerning geography, financial condition, asset quality, asset mix, and community reinvestment criteria.

B. Any other material fact or information concerning the appropriate level of developmental loans to be made by the acquiree.

2655.0500 NET NEW FUNDS.

Subpart 1. **Lending, investment, and capital involvement.** In determining whether additional lending, investment, and capital involvement by the acquiree will occur as a result of the application being approved, the commissioner shall consider the following data at the close of each of its last two calendar years, and the close of its most recent calendar quarter before the filing of the application, together with projections of the same data for the close of its next three calendar years:

A. the total deposits of the acquiree;

B. the total loans of the acquiree;

C. the total equity capital of the acquiree;

D. the total Minnesota loans;

E. the total loan-to-asset ratio;

F. the total loan-to-deposit ratio;

G. the total loan-to-equity capital ratio;

H. the total Minnesota loan-to-asset ratio;

I. the total Minnesota loan-to-deposit ratio;

J. the total Minnesota loan-to-equity capital ratio;

K. the total Minnesota loan-to-total loan ratio;

L. the total loan-to-deposit ratio considering only loans made in the acquiree's community; and

M. the total loan-to-deposit ratio considering only loans made outside the acquiree's community.

Subp. 2. **Acquiree; community economic factors.** The commissioner shall also consider:

A. the acquiree's financial condition on the dates described in subpart 1;

B. the acquiree's asset quality on the dates described in subpart 1;

C. the economic characteristics of the community served by the acquiree including, but not limited to, population trends, area use for residential, commercial, industrial, and agricultural purposes, the level of socially and economically disadvantaged persons, families of low and moderate income and low and moderate income housing, and location therein of enterprise zones and distressed areas;

D. the extent of loans and investments made by the acquiree in the community served by it on the dates described in subpart 1; and

E. the initial capital investment of the applicant, and with respect to the acquiree, its loan policy, investment policy, dividend policy, and general plan of business, including the full range of consumer and business services which will be offered.

Subp. 3. **Affiliated banks.** In order to determine whether the applicant will actively participate in the community and in Minnesota, the commissioner shall also consider the following data for each bank affiliated with the applicant at the close of its last two calendar years and at the end of its most recent calendar quarter before the filing of the application:

A. the total deposits of each bank;

B. the total loans of each bank;

C. the total equity capital of each bank;

D. the total loan-to-deposit ratio considering only loans made in the bank's community; and

E. the total loan-to-deposit ratio considering only loans made outside of the bank's community.

Subp. 4. **Additional factors.** The commissioner shall also consider:

A. any peer group averages of other Minnesota banks for market share, loan-to-deposit ratio, net interest spread, return on average assets, return on average equity, net charge offs, capital, and loans for real estate, consumers, financial institutions, farmers, and commercial property;

B. any other material fact or information brought to the commissioner's attention concerning the appropriate level of net new funds; and

C. a business plan as to any lending, investment, bank service, or grant program administered by the applicant, or any affiliate of the applicant, which serves the needs and communities of people defined by the development loan categories of these regulations, accompanied by a statement of how the programs will be applied to the applicant's or applicant affiliate's programs and activities in Minnesota.

2655.0600 NOTICE.

Subpart 1. **Publication.** Within 30 days of the filing of an application, the applicant shall publish a notice of the filing of the application in a newspaper of general circulation within the county in which the bank to be acquired or the proposed bank is located. In addition, the applicant shall mail by certified mail, return receipt requested, notice of the filing of the application to all commercial banks within a three mile radius of the bank to be acquired or located.

Subp. 2. **Proof of publication.** The applicant shall submit to the commissioner a certified publisher's affidavit, including a tear sheet of the publication, setting forth the fact that the publication has been made.

Subp. 3. **Proof of mailing.** The applicant shall file with

the commissioner the receipts certifying that the notices were sent by first class mail to the commercial banks located within the three mile radius of the bank to be acquired or located.

Subp. 4. **Content of notice.** The application shall disclose the following:

A. the name and address of the applicant or the applicant's attorney;

B. the name and address of the bank to be acquired or chartered;

C. the date that the application was filed with the department;

D. notice that public comment addressed to the name and address of the commissioner will be accepted for a period of not less than 30 days from the date of publication;

E. that the application to acquire or charter a bank by an interstate bank holding company must establish certain statutory criteria for approval under Minnesota Statutes;

F. that the application, before being approved, must demonstrate that the acquisition of the bank:

(1) will not result in undue concentration of resources or substantial lessening of competition in the locality; and

(2) will bring net new funds into Minnesota;

G. that the application, subject to any limitations imposed by federal or state statutes, is available to members of the public by contacting the commissioner of the Department of Commerce at 500 Metro Square Building, Saint Paul, Minnesota 55101; and

H. any other information that the commissioner deems relevant to a proper disclosure surrounding the facts and circumstances of the acquisition.

Subp. 5. **Format.** The publication required in this part shall by typeset in a format acceptable for the publication of a bank charter application.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
JAN - 7 1987
Joan Anderson Growe
Secretary of State
9:00 AM

APPROVED AS TO FORM AND LEGALITY
1/5 1987
HUBERT H. HUMPHREY, III
ATTORNEY GENERAL
BY _____
ASSISTANT ATTORNEY GENERAL

Department of Commerce

Proposed Permanent Rules Relating to Interstate Banking

Rules as Proposed (all new material)

2655.0100 APPLICABILITY AND SCOPE.

Parts 2655.0100 to 2655.0600 govern applications by a bank holding company, with its principal place of business located in another state, to acquire a Minnesota bank under Minnesota Statutes, sections 48.93 and 48.99.

2655.0200 DEFINITIONS.

Subpart 1. **Scope.** As used in parts 2655.0100 to 2655.0600, the following terms have the meanings given them.

Subp. 2. **Acquiree.** "Acquiree" means the Minnesota bank or bank holding company being acquired by the applicant.

Subp. 3. **Affiliate.** "Affiliate" means a person who directly or indirectly has beneficial ownership of ten percent or more of any class of voting securities.

Subp. 4. **Alternate energy loans and (~~alternate~~ energy) conservation loans.** "Alternate energy loans and (~~alternate~~ energy) conservation loans" means all loans for any purpose under Minnesota Statutes, section 116M.03, subdivision 26.

Subp. 5. **Applicant.** "Applicant" means a bank holding company that has filed an application to acquire a Minnesota bank under the Minnesota Reciprocal Interstate Banking Act.

Subp. 6. **Control.** "Control" means, with respect to a bank holding company, bank, or bank to be organized under Minnesota Statutes, chapters 46, 47, 48, 300, and parts 2655.0100 to 2655.0600:

A. the ownership, directly or indirectly, or acting through one or more other persons, control of or the power to vote 25 percent or more of any class of voting securities;

B. control in any manner over the election of a majority of the directors; or

C. the power to exercise, directly or indirectly, a

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

controlling influence over management and policies.

Subp. 7. **Commissioner.** "Commissioner" means the commissioner of the Department of Commerce.

Subp. 8. **Community.** "Community" means the area the bank has designated for purposes of compliance with the Community Reinvestment Act of 1977 (12 USC 2901-2905), as being the area that it serves.

Subp. 9. **Community development corporation.** "Community development corporation" is as defined in Minnesota Statutes, section 116M.04.

Subp. 10. **Developmental loans.** "Developmental loans" include the following categories:

A. low and moderate income housing;

B. operating loans for family farmers;

C. loans made in distressed areas;

D. minority- and woman-owned businesses;

E. alternative energy and energy conservation loans; (~~practices~~;)

F. community development corporations;

G. Indian reservations and student education loans; and

H. any other specifically defined class of people, businesses, or projects which meet the standards under Minnesota Statutes, section 645.445, subdivision 5, for socially or economically disadvantaged persons, projects, or businesses.

Subp. 11. **Developmental investments.** "Developmental investments" shall include investments for the following purposes:

A. low and moderate income housing;

B. operating loans for family farmers;

C. loans made in distressed areas;

D. minority- and woman-owned businesses;

E. alternative energy and energy conservation loans; (~~practices~~;)

F. community development corporations;

G. Indian reservations and student education loans;

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

and

H. any other specifically defined class of people, businesses, or projects which meet the standards under Minnesota Statutes, section 645.445, subdivision 5, for socially or economically disadvantaged persons, projects, or businesses.

Subp. 12. **Distressed area.** "Distressed area" is defined to include any area designated as a distressed area under Code of Federal Regulations, title 24, section 570.452 (1986) by the United States Department of Housing and Urban Development.

Subp. 13. **Equity capital.** "Equity capital" means the sum of common stock, preferred stock, surplus, and undivided profits.

Subp. 14. **Family farmers.** "Family farmers" means family farms and family farm corporations as defined in Minnesota Statutes, section 500.24.

Subp. 15. **Investments.** "Investments" means funds or capital extended, contributed, or otherwise invested, but not loaned.

Subp. 16. **Low and moderate income housing.** "Low and moderate income housing" means housing defined as such by any of the following:

A. regulations promulgated by the Farmers Home Administration; and

B. section 8 of the United States Housing Act of 1937, and the regulations promulgated under the act.

Subp. 17. **Minnesota loan.** "Minnesota loan" means loans made to Minnesota residents to be used in Minnesota or loans where the bank has been advised by the borrower that the loan proceeds will be used in Minnesota.

Subp. 18. **Minnesota residents.** "Minnesota residents" are:

A. individuals located within a Minnesota zip code;

B. private profit or nonprofit corporations, or subsidiaries or divisions thereof, located and doing business within Minnesota;

C. profit or nonprofit partnerships, trust, or any form of other business enterprise located and doing business within Minnesota; and

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

D. any municipality, agency, or other public authority established and operating under the laws of Minnesota.

Subp. 19. **Minority-owned business and woman-owned business.** "Minority-owned business" and "woman-owned business" means any socially or economically disadvantaged person under Minnesota Statutes, section 645.445, subdivision 5. A minority-owned business or woman-owned business must have at least 50 percent of the ownership interest controlled by such disadvantaged class of persons.

Subp. 20. **Net new funds.** "Net new funds" means a net increase in lending, investment and credit involvement brought to Minnesota on behalf of the acquiree as described in the application filed with the commissioner.

Subp. 21. **Relevant market area.** "Relevant market area" includes the standards established by the Federal Reserve Board for evaluation of concentration of financial institution deposits.

2655.0300 APPLICATION.

Subpart 1. **Attachments.** Each application shall include, but not be limited to, the following attachments:

A. A certified copy of the applicant board's resolution authorizing submission of the application and designating the officers authorized to sign it.

B. A copy of the most recent Report of Bank Holding Company Inspection for the applicant. If the applicant is prohibited from releasing this report, it shall file a copy of a written request to the appropriate federal reserve bank requesting delivery of the report to the commissioner.

C. A copy of all invitations, tenders, or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition.

D. A copy of all acquisition agreements, detailing the terms and conditions of any proposed acquisition.

E. An organizational chart of the applicant and its

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

subsidiaries.

F. A copy of the most recent consolidated report of condition and statement of earnings of the applicant.

G. A pro forma balance sheet of the applicant on a consolidated basis both before and after the acquisition.

H. The names and addresses of the anticipated board of directors of the Minnesota bank being acquired by the applicant. If a bank holding company located in Minnesota is being acquired, provide the names and addresses of the anticipated board of directors of the bank's subsidiary located in Minnesota of the bank holding company. If the anticipated board is not known, an explanation of how the directors will be determined must be included.

I. If a bank holding company located in Minnesota is being acquired, list the names and addresses of all of its subsidiaries.

J. Any other exhibit that the commissioner deems relevant to a determination of whether the acquisition will result in a satisfactory level of developmental loans or net new funds.

Subp. 2. **Information.** The application shall include, but not be limited to, the following:

A. The name and address of the applicant.

B. The name and address of the acquiree.

C. The full name of each shareholder who owns or controls ten percent or more of the stock of the acquiree who is tendering its stock.

D. The total number of shares presently held by each shareholder who owns or controls ten percent or more of the stock of the acquiree who is tendering its stock.

E. The total number of shares to be sold or transferred by each shareholder who owns or controls ten percent or more of the stock of the acquiree.

F. The total number of shares to be held by each shareholder of the acquiree who will hold or control ten percent or more of the stock following completion of the proposed

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

transaction.

G. The total number of voting shares authorized by either the acquiree bank or the acquiree bank holding company.

H. The total number of outstanding voting shares of the acquiree.

I. The number of shares involved in this transaction.

J. The total number of shares of the acquiree currently held by the applicant.

K. The total consideration for the proposed transaction.

L. The identity, personal history, business background, and experience of the applicant. If known to the applicant, or any officer or director of the applicant, the identity, personal history, business background and experience of its affiliates, including any material business activities and affiliations during the past five years.

M. A description of any material pending legal or administrative proceeding in which the applicant is a party, and any criminal indictment or conviction of that person by a state or federal court; and, if known by the applicant or any officer or director of the applicant, similar proceedings involving an affiliate of the applicant must be disclosed.

N. A statement of the assets and liabilities of the applicant, as of the end of the calendar year for each of the five years immediately preceding the date of the application, together with related statements of income, sources, and application of funds for each of the calendar years then concluded, all prepared in accordance with generally accepted accounting principles, consistently applied.

O. An interim statement of assets and liabilities of the applicant, together with related statements of income, source, and application of funds as of a date not more than 90 days before the date of the filing of the application.

P. The source and amount of funds or other consideration, except those funds borrowed, to be used in making the acquisition. The applicant should particularly describe any

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

of its assets that are to be liquidated to finance the acquisition.

Q. If any part of the funds or other consideration are to be borrowed for the purpose of making the acquisition, the applicant must describe the collateral to be pledged and the terms of the transaction, including the name of the lender, interest rates, requirements, guarantors, endorsers, and any other arrangements, agreements, and understandings between and among the parties. The application must include copies of any loan commitments obtained from lenders in connection with the proposed acquisition.

R. If borrowed funds are to be obtained, the applicant must indicate the sources of funds for debt service. Additionally, the applicant shall detail the extent to which the applicant intends to rely on dividends and fees or other funds from the bank being acquired for debt servicing requirements.

S. The applicant must identify any person retained or compensated by the applicant, or by any person on the applicant's behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of any retainer or arrangements for compensation.

T. The applicant must disclose any plans or proposals regarding any partial or full liquidation of the acquiree, of any plans or proposals to sell the acquiree's assets or merge it, or any other major change in the acquiree's business or corporate structure or management.

U. The applicant must describe how the acquisition will bring net new funds, under part 2655.0500, to Minnesota.

V. The application must also disclose how the acquisition will not result in undue concentration of resources or a substantial lessening of competition in Minnesota. The application shall delineate the relevant market area of the bank or banks to be acquired and located in Minnesota. This delineation is to be described by map or drawing showing the other commercial banks and thrift institutions accompanied by a

APPROVED IN THE REVISOR OF STATUTES OFFICE BY:

schedule of ~~(correspondent)~~ current total deposits of each.

W. The applicant shall describe its plan of compliance in providing the developmental loans and investments.

X. The applicant must describe developmental loans or developmental investments as set forth in part 2655.0400.

Y. The commissioner may additionally require other information as may be necessary to determine whether the application should be approved.

2655.0400 DEVELOPMENTAL LOANS.

Subpart 1. **Mandatory factors.** The commissioner shall consider the following factors in determining an acceptable level of developmental loans in the community by an applicant through its acquiree:

A. the level of developmental loans, in terms of number and amount, held by the acquiree at the end of:

(1) its last calendar quarter immediately before the date of the application; and

(2) each of the last two calendar years immediately before the date of application;

B. the projected level of developmental loans, in terms of number and amount, held at the end of each of the next three calendar years from the date of application;

C. any developmental investments for the classifications listed under developmental loans held at the time periods described in items A and B;

D. any developmental loans or developmental investments originated by the acquiree which has or will be participated in or sold to other institutions during the time periods described in items A and B;

E. the acquiree's financial condition at the close of the time periods described in items A and B;

F. the bank's asset quality at the close of the time periods described in items A and B;

G. the economic condition of the community during the time periods described in items A and B;

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

H. the asset mix of the bank and the socioeconomic makeup of the community in terms of socially and economically disadvantaged persons;

I. the extent of loans made by the acquiree in its Community Reinvestment Act territories during the time periods described in items A and B; and

J. the volume of developmental loans made in the community during the time periods described in items A and B.

Subp. 2. Permissive factors. The commissioner may also consider:

A. Any peer group average for developmental loans and investments by similar financial institutions concerning geography, financial condition, asset quality, asset mix, and community reinvestment criteria.

B. Any other material fact or information concerning the appropriate level of developmental loans to be made by the acquiree.

2655.0500 NET NEW FUNDS.

Subpart 1. **Lending, investment, and capital involvement.** In determining whether additional lending, investment, and capital involvement by the acquiree will occur as a result of the application being approved, the commissioner shall consider the following data at the close of each of its last two calendar years, and the close of its most recent calendar quarter before the filing of the application, together with projections of the same data for the close of its next three calendar years:

A. the total deposits of the acquiree;

B. the total loans of the acquiree;

C. the total equity capital of the acquiree;

D. the total Minnesota loans;

E. the total loan-to-asset ratio;

F. the total loan-to-deposit ratio;

G. the total loan-to-equity capital ratio;

H. the total Minnesota loan-to-asset ratio;

I. the total Minnesota loan-to-deposit ratio;

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

J. the total Minnesota loan-to-equity capital ratio;

K. the total Minnesota loan-to-total loan ratio;

L. the total loan-to-deposit ratio considering only loans made in the acquiree's community; and

M. the total loan-to-deposit ratio considering only loans made outside the acquiree's community.

Subp. 2. **Acquiree; community economic factors.** The commissioner shall also consider:

A. the acquiree's financial condition on the dates described in subpart 1;

B. the acquiree's asset quality on the dates described in subpart 1;

C. the economic characteristics of the community served by the acquiree including, but not limited to, population trends, area use for residential, commercial, industrial, and agricultural purposes, the level of socially and economically disadvantaged persons, families of low and moderate income and low and moderate income housing, and location therein of (~~enterprise zones and~~)distressed areas;

D. the extent of loans and investments made by the acquiree in the community served by it on the dates described in subpart 1; and

E. the initial capital investment of the applicant, and with respect to the acquiree, its loan policy, investment policy, dividend policy, and general plan of business, including the full range of consumer and business services which will be offered.

Subp. 3. **Affiliated banks.** In order to determine whether the applicant will actively participate in the community and in Minnesota, the commissioner shall also consider the following data for each bank affiliated with the applicant at the close of its last two calendar years and at the end of its most recent calendar quarter before the filing of the application:

A. the total deposits of each bank;

B. the total loans of each bank;

C. the total equity capital of each bank;

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

D. the total loan-to-deposit ratio considering only loans made in the bank's community; and

E. the total loan-to-deposit ratio considering only loans made outside of the bank's community.

Subp. 4. **Additional factors.** The commissioner shall also consider:

A. any peer group averages of other Minnesota banks for market share, loan-to-deposit ratio, net interest spread, return on average assets, return on average equity, net charge offs, capital, and loans for real estate, consumers, financial institutions, farmers, and commercial property;

B. any other material fact or information brought to the commissioner's attention concerning the appropriate level of net new funds; and

C. a business plan as to any lending, investment, bank service, or grant program administered by the applicant, or any entity directly or indirectly controlled by applicant ~~(or any affiliate of the applicant,)~~ which serves the needs and communities of people, ~~(defined by the development loan categories of these regulations,)~~ accompanied by a statement of how the programs will be applied to the applicant's ~~(or applicant affiliate's programs and)~~ activities in Minnesota.

2655.0600 NOTICE.

Subpart 1. **Publication.** Within 30 days of the filing of an application, the applicant shall publish a notice of the filing of the application in a newspaper of general circulation within the county in which the bank to be acquired or the proposed bank is located. In addition, the applicant shall mail by certified mail, return receipt requested, notice of the filing of the application to all commercial banks within a three mile radius of the bank to be acquired or located.

Subp. 2. **Proof of publication.** The applicant shall submit to the commissioner a certified publisher's affidavit, including a tear sheet of the publication, setting forth the fact that the publication has been made.

Subp. 3. **Proof of mailing.** The applicant shall file with

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

the commissioner the receipts certifying that the notices were sent by first class mail to the commercial banks located within the three mile radius of the bank to be acquired or located.

Subp. 4. **Content of notice.** The application shall disclose the following:

A. the name and address of the applicant or the applicant's attorney;

B. the name and address of the bank to be acquired or chartered;

C. the date that the application was filed with the department;

D. notice that public comment addressed to the name and address of the commissioner will be accepted for a period of not less than 30 days from the date of publication;

E. that the application to acquire or charter a bank by an interstate bank holding company must establish certain statutory criteria for approval under Minnesota Statutes;

F. that the application, before being approved, must demonstrate that the acquisition of the bank:

(1) will not result in undue concentration of resources or substantial lessening of competition in the locality; and

(2) will bring net new funds into Minnesota;

G. that the application, subject to any limitations imposed by federal or state statutes, is available to members of the public by contacting the commissioner of the Department of Commerce at 500 Metro Square Building, Saint Paul, Minnesota 55101; and

H. any other information that the commissioner deems relevant to a proper disclosure surrounding the facts and circumstances of the acquisition.

Subp. 5. **Format.** The publication required in this part shall by typeset in a format acceptable for the publication of a bank charter application.

APPROVED BY THE REVISOR OF STATUTES OFFICE BY:

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
DIVISION OF FINANCIAL EXAMINATIONS

Outside Opinions Sought Concerning Rules Governing Development Loans, Net New Funds, Rating Scale, Publication Notice and Relevant Information Required in the Applications, Reporting and Approval Procedures for Applicants to Acquire and for Financial Institutions Owned by Interstate Bank Holding Companies, Including the Impact of the Rules on Small Business

Notice is hereby given that the Minnesota Department of Commerce is soliciting information and opinions from sources outside the agency in preparing to promulgate new rules relating to the requirement that:

- A financial institution located in this state owned by an interstate bank holding company provide a level of development loans in this state. The adoption of these rules is authorized by Minn. Laws Ch. 339, § 14.
- The application for the acquisition of a bank located in this state to be owned by an interstate bank holding company must show how the acquisition will bring net new funds into Minnesota. The adoption of these rules is authorized by Minn. Laws Ch. 339, § 7, Subd. 3(9).
- The Commissioner may require any additional relevant information in the application form for the acquisition of a bank located in this state by an interstate bank holding company. The adoption of these rules is authorized by 1986 Minn. Laws Ch. 339, § 7, Subd. 3(9).
- The Commissioner shall adopt a five point rating scale to determine the performance of each financial institution located in this state owned by an interstate bank holding company in meeting

the credit needs of the community and in reaching its targeted level of development loans. This includes the information to be required in the annual report by each such financial institution to determine investment and lending categories. The adoption of these rules is authorized by 1986 Minn. Laws Ch. 339, § 11, Subd. 3 and 14.

- The Commissioner shall prescribe the form and procedure for the publication of the notice of application for the acquisition of banks located in this state by interstate bank holding companies.

The Department of Commerce requests information and opinions concerning the subject matter of the rules. Outside opinion is also being solicited as to how these rules will affect small businesses as defined by Minnesota Statutes § 14.115, subdivision 1. Interested persons or groups may submit data or views on the subject matter of concern orally or in writing. Written statements should be addressed to:

James G. Miller, Deputy Commissioner
Division of Financial Examinations
500 Metro Square Building
Seventh and Robert Streets
St. Paul, Minnesota 55101
(612) 296-2135

Oral statements will be received during regular business hours over the telephone at (612) 296-2715 and in person at the above address.

Notice regarding development loans requirements has been previously published June 2, 1986 for comments by July 31, 1986. This is to extend the time and expand upon the scope of the notice pursuant to Chapter 339, 1986 Session Laws.

All statements of information and comment shall be accepted until September 250, 1986. Any written material received by the Department of Commerce shall become part of the rulemaking record to be submitted

to the attorney general or administrative law judge in the event that the rule is adopted.

Michael A. Hatch

Commissioner of Commerce

6-5689 mjc copy

State of Minnesota
Department of Commerce

In the Matter of the Proposed Adoption of Rules Relating to Interstate Banking

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 the Minnesota Administrative Procedures Act, Sections 14.22 to 14.28.

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. If a sufficient number of those who request a hearing withdraw their requests for hearing in writing the hearing will not be held.

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.

Authority for the adoption of these rules is contained in Minnesota Statutes, Sections 45.023, 48.93 & 48.99. Additionally a Statement of Need 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 from the Department. Persons wishing copies should contact Richard G. Gomsrud at the address noted above.

Pursuant to Minnesota Laws 1983, chapter 188 codified as Minnesota Statutes 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, the final Rules as Adopted and all requred supporting documents 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 Building, 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

Department of Commerce

Proposed Permanent Rules Relating to Interstate Banking

Rules as Proposed (all new material)

2655.0100 APPLICABILITY AND SCOPE.

Parts 2655.0100 to 2655.0600 govern applications by a bank holding company, with its principal place of business located in another state, to acquire a Minnesota bank under Minnesota Statutes, sections 48.93 and 48.99.

2655.0200 DEFINITIONS.

Subpart 1. **Scope.** As used in parts 2655.0100 to 2655.0600, the following terms have the meanings given them.

Subp. 2. **Acquiree.** "Acquiree" means the Minnesota bank being acquired by the applicant.

Subp. 3. **Affiliate.** "Affiliate" means a person who directly or indirectly has beneficial ownership of ten percent or more of any class of voting securities.

Subp. 4. **Alternate energy loans and alternate conservation loans.** "Alternate energy loans and alternate conservation loans" means all loans for any purpose under Minnesota Statutes, section 116M.03, subdivision 26.

Subp. 5. **Applicant.** "Applicant" means a bank holding company that has filed an application to acquire a Minnesota bank under the Minnesota Reciprocal Interstate Banking Act.

Subp. 6. **Control.** "Control" means, with respect to a bank holding company, bank, or bank to be organized under Minnesota Statutes, chapters 46, 47, 48, 300, and parts 2655.0100 to 2655.0600:

A. the ownership, directly or indirectly, or acting through one or more other persons, control of or the power to vote 25 percent or more of any class of voting securities;

B. control in any manner over the election of a majority of the directors; or

C. the power to exercise, directly or indirectly, a

controlling influence over management and policies.

Subp. 7. **Commissioner.** "Commissioner" means the commissioner of the Department of Commerce.

Subp. 8. **Community.** "Community" means the area the bank has designated for purposes of compliance with the Community Reinvestment Act of 1977 (12 USC 2901-2905), as being the area that it serves.

Subp. 9. **Community development corporation.** "Community development corporation" is as defined in Minnesota Statutes, section 116M.04.

Subp. 10. **Developmental loans.** "Developmental loans" include the following categories:

A. low and moderate income housing;

B. operating loans for family farmers;

C. loans made in distressed areas;

D. minority- and woman-owned businesses;

E. alternative energy and energy conservation practices;

F. community development corporations;

G. Indian reservations and student education loans; and

H. any other specifically defined class of people, businesses, or projects which meet the standards under Minnesota Statutes, section 645.445, subdivision 5, for socially or economically disadvantaged persons, projects, or businesses.

Subp. 11. **Development investments.** "Development investments" shall include investments in the following categories:

A. low and moderate income housing;

B. operating loans for family farmers;

C. loans made in distressed areas;

D. minority- and woman-owned businesses;

E. alternative energy and energy conservation practices;

F. community development corporations;

G. Indian reservations and student education loans;

and

H. any other specifically defined class of people, businesses, or projects which meet the standards under Minnesota Statutes, section 645.445, subdivision 5, for socially or economically disadvantaged persons, projects, or businesses.

Subp. 12. **Distressed area.** "Distressed area" is defined to include any area designated as a distressed area under Code of Federal Regulations, title 24, section 570.452 (1986) by the United States Department of Housing and Urban Development.

Subp. 13. **Equity capital.** "Equity capital" means the sum of common stock, preferred stock, surplus, and undivided profits.

Subp. 14. **Family farmers.** "Family farmers" means family farms and family farm corporations as defined in Minnesota Statutes, section 500.24.

Subp. 15. **Investments.** "Investments" means funds or capital extended, contributed, or otherwise invested, but not loaned.

Subp. 16. **Low and moderate income housing.** "Low and moderate income housing" means housing defined as such by any of the following:

A. regulations promulgated by the Farmers Home Administration; and

B. section 8 of the United States Housing Act of 1937, and the regulations promulgated under the act.

Subp. 17. **Minnesota loan.** "Minnesota loan" means loans made to Minnesota residents to be used in Minnesota or loans where substantially all of the benefits from the loan will occur in Minnesota.

Subp. 18. **Minnesota residents.** "Minnesota residents" are:

A. individuals located within a Minnesota zip code;

B. private profit or nonprofit corporations, or subsidiaries or divisions thereof, located and doing business within Minnesota;

C. profit or nonprofit partnerships, trust, or any form of other business enterprise located and doing business within Minnesota; and

D. any municipality, agency, or other public authority established and operating under the laws of Minnesota.

Subp. 19. **Minority-owned business and woman-owned business.** "Minority-owned business" and "woman-owned business" means any socially or economically disadvantaged person under Minnesota Statutes, section 645.445, subdivision 5. A minority-owned business or woman-owned business must have at least 50 percent of the ownership interest controlled by such disadvantaged class of persons.

Subp. 20. **Net new funds.** "Net new funds" means a net increase in lending investment and credit involvement brought to Minnesota on behalf of the acquiree as described in the application filed with the commissioner.

Subp. 21. **Relevant market area.** "Relevant market area" includes the standards established by the Federal Reserve Board for evaluation of concentration of financial institution deposits.

2655.0300 APPLICATION.

Subpart 1. **Attachments.** Each application shall include, but not be limited to, the following attachments:

A. A certified copy of the applicant board's resolution authorizing submission of the application and designating the officers authorized to sign it.

B. A copy of the most recent Report of Bank Holding Company Inspection for the applicant. If the applicant is prohibited from releasing this report, it shall file a copy of a written request to the appropriate federal reserve bank requesting delivery of the report to the commissioner.

C. A copy of all invitations, tenders, or advertisements making an offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition.

D. A copy of the acquisition agreement, detailing the terms and conditions of the proposed acquisition.

E. An organizational chart of the applicant and its

subsidiaries.

F. A copy of the most recent consolidated report of condition and statement of earnings of the applicant.

G. A proforma balance sheet of the applicant on a consolidated basis both before and after the acquisition.

H. A list of the anticipated board of directors of the Minnesota bank being acquired by the applicant. If a bank holding company located in Minnesota is being acquired, provide a list of the anticipated board of directors of the bank's subsidiary located in Minnesota of the bank holding company. If the anticipated board is not known, an explanation of how the directors will be determined should be included.

I. If a bank holding company located in Minnesota is being acquired, list the names and addresses of all of its subsidiaries.

J. Any other exhibit that the commissioner deems relevant to a determination of whether the acquisition will result in a satisfactory level of developmental loans or net new funds.

Subp. 2. **Information.** The application shall include, but not be limited to, the following:

A. The name and address of the applicant.

B. The name and address of the acquiree.

C. The full name of each shareholder of ten percent or more of the stock of the acquiree who is tendering its stock.

D. The total number of shares presently held by each shareholder of ten percent or more of the stock of the acquiree who is tendering its stock.

E. The total number of shares to be sold or transferred by each shareholder of ten percent or more of the stock of the acquiree.

F. The total number of shares to be held by each shareholder of the acquiree who will hold ten percent or more of the stock following completion of the proposed transaction.

G. The total number of voting shares authorized by either the acquiree bank or the acquiree bank holding company.

H. The total number of voting shares outstanding by the acquiree.

I. The number of shares involved in this transaction.

J. The total number of shares of the acquiree currently held by the applicant.

K. The total consideration for the proposed transaction.

L. The identity, personal history, business background, and experience of the applicant and its affiliates, including any material business activities and affiliations during the past five years.

M. A description of any material pending legal or administrative proceeding in which the applicant is a party, and any criminal indictment or conviction of that person by a state or federal court; and, if known by the applicant or any officer or director of the applicant, similar proceedings involving an affiliate of the applicant.

N. A statement of the assets and liabilities of the applicant, as of the end of the fiscal year for each of the five years immediately preceding the date of the application, together with related statements of income, sources, and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted accounting principles, consistently applied.

O. An interim statement of assets and liabilities of the applicant, together with related statements of income, source, and application of funds as of a date not more than 90 days before the date of the filing of the application.

P. The source and amount of funds or other consideration, except those funds borrowed, to be used in making the acquisition. The applicant should particularly describe any of its assets that are to be liquidated to finance the acquisition.

Q. If any part of the funds or other consideration are to be borrowed for the purpose of making the acquisition, the applicant must describe the collateral to be pledged and the

terms of the transaction, including the name of the lender, interest rates, requirements, guarantors, endorsers, and any other arrangements, agreements, and understandings between and among the parties. The application must include copies of any loan commitments obtained from lenders in connection with the proposed acquisition.

R. If borrowed funds are to be obtained, the applicant shall indicate the sources of funds for debt service. Additionally, the applicant shall detail the extent to which the applicant intends to rely on dividends and fees or other funds from the bank being acquired for debt servicing requirements.

S. The applicant shall identify any person retained or compensated by the applicant, or by any person on the applicant's behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of any retainer or arrangements for compensation.

T. The applicant shall disclose any plans or proposals regarding any partial or full liquidation of the acquiree, of any plans or proposals to sell the acquiree's assets or merge it, or any other major change in the acquiree's business or corporate structure or management.

U. The applicant must describe how the acquisition will bring net new funds, under part 2655.0500, to Minnesota. In describing net new funds, the applicant shall describe any initial capital investments and, with respect to the acquiree, proposed loan policies, investment policies, dividend policies, and general plan of business, including the full range of consumer and business services that will be offered. The foregoing description of net new funds shall be contained in a plan of business for the acquiree attached as a part of the application. Such a plan of business shall include the projections under part 2655.0500, subpart 1, and shall contain the economic assumptions on which the projections are made.

V. The application must also disclose how the acquisition will not result in undue concentration of resources

or a substantial lessening of competition in Minnesota. The application shall delineate the relevant market area of the bank or banks to be acquired and located in Minnesota. This delineation is to be described by map or drawing showing the other commercial banks and thrift institutions accompanied by a schedule of correspondent current total deposits of each.

W. The applicant shall describe its plan of compliance in providing the developmental loans and investments.

X. The applicant must describe developmental loans.

Y. The commissioner may additionally require other information as may be necessary to determine whether the application should be approved.

2655.0400 DEVELOPMENTAL LOANS.

Subpart 1. **Mandatory factors.** The commissioner shall consider the following factors in determining an acceptable level of developmental loans in the community by an applicant through its acquiree:

A. the level of developmental loans, in terms of number and amount, made by the acquiree at the end of:

(1) its last fiscal quarter immediately before the date of the application; and

(2) each of the last two fiscal years immediately before the date of application;

B. the projected level of developmental loans, in terms of number and amount, at the end of each of the next three fiscal years from the date of application;

C. any developmental investments for the classifications listed under developmental loans during the time periods as described in items A and B;

D. any developmental loans or investments originated by the acquiree which has or will be participated in or sold to other institutions during the time periods described in items A and B;

E. the acquiree's financial condition at the close of the time periods described in items A and B;

F. the bank's asset quality at the close of the time periods described in items A and B;

G. the economic condition of the community during the time periods described in items A and B;

H. the asset mix of the community in terms of socially and economically disadvantaged persons;

I. the extent of loans made by the acquiree in its Community Reinvestment Act territories during the time periods described in items A and B; and

J. the extent of developmental loans made in the community during the time periods described in items A and B.

Subp. 2. **Permissive factors.** The commissioner may also consider:

A. Any peer group average for developmental loans and investments by similar financial institutions concerning geography, financial condition, asset quality, asset mix, and community reinvestment criteria.

B. Any other material fact information concerning the appropriate level of developmental loans to be made by the acquiree.

2655.0500 NET NEW FUNDS.

Subpart 1. ..... In determining whether additional lending, investment, and capital involvement by the acquiree will occur as a result of the application being approved, the commissioner shall consider the following data at the close of each of its last two fiscal years, and the close of its most recent calendar quarter before the filing of the application, together with projections of the same data for the close of its next three fiscal years:

A. the total deposits of the acquiree;

B. the total loans of the acquiree;

C. the total equity capital of the acquiree;

D. the total loans to Minnesota residents;

E. the total loan-to-asset ratio;

F. the total loan-to-deposit ratio;

G. the total loan-to-equity capital ratio;

H. the total Minnesota loan-to-asset ratio;

I. the total Minnesota loan-to-deposit ratio;

J. the total Minnesota loan-to-equity capital ratio;

K. the total Minnesota loan-to-total loan ratio;

L. the total loan-to-deposit ratio considering only loans made in the acquiree's community; and

M. the total loan-to-deposit ratio considering only loans made outside the acquiree's community.

Subp. 2. ..... The commissioner shall also consider:

A. the acquiree's financial condition on the dates described in subpart 1;

B. the acquiree's asset quality on the dates described in subpart 1;

C. the economic characteristics of the community served by the acquiree including, but not limited to, population trends, area use for residential, commercial, industrial, and agricultural purposes, the level of socially and economically disadvantaged persons, families of low and moderate income and low and moderate income housing, and location therein of enterprise zones and distressed areas;

D. the extent of loans and investments made by the acquiree in the community served by it on the dates described in subpart 1; and

E. the initial capital investment of the applicant, and with respect to the acquiree, its loan policy, investment policy, dividend policy, and general plan of business, including the full range of consumer and business services which will be offered.

Subp. 3. ..... In order to determine whether the applicant will actively participate in the community and in Minnesota, the commissioner shall also consider the following data for each bank affiliated with the applicant at the close of its last two fiscal years and at the end of its most recent calendar quarter before the filing of the application:

A. the total deposits of each bank;

B. the total loans of each bank;

C. the total equity capital of each bank;

D. the total loan-to-deposit ratio considering only loans made in the bank's community; and

E. the total loan-to-deposit ratio considering only loans made outside of the bank's community.

Subp. 4. ..... The commissioner shall also consider:

A. any peer group averages of other Minnesota banks for market share, loan-to-deposit ratio, net interest spread, return on average assets, return on average equity, net charge offs, capital, and loans for real estate, consumers, financial institutions, farmers, and commercial property;

B. any other material fact brought to the commissioner's attention concerning the appropriate level of net new funds; and

C. a statement as to any program administered by the applicant, or any affiliated bank of the applicant, which serves the needs and communities of people defined by the development loan categories of these parts.

2655.0600 NOTICE.

Subpart 1. **Publication.** Within 30 days of the filing of an application, the applicant shall publish a notice of the filing of the application in a newspaper of general circulation within the county in which the bank to be acquired or the proposed bank is located. In addition, the applicant shall mail by certified mail, return receipt requested, notice of the filing of the application to all commercial banks within a three mile radius of the bank to be acquired or located.

Subp. 2. **Proof of publication.** The applicant shall submit to the commissioner a certified publisher's affidavit, including a tear sheet of the publication, setting forth the fact that the publication has been made.

Subp. 3. **Proof of mailing.** The applicant shall file with

the commissioner the receipts certifying that the notices were sent by first class mail to the commercial banks located within the three mile radius of the bank to be acquired or located.

Subp. 4. **Content of application.** The application shall disclose the following:

A. the name and address of the applicant;

B. the name and address of the bank to be acquired or chartered;

C. the date that the application was filed with the department;

D. notice that public comment addressed to the name and address of the commissioner will be accepted for a period of not less than 30 days from the date of publication;

E. that the application to acquire or charter a bank by an interstate bank holding company must establish certain statutory criteria for approval under Minnesota Statutes;

F. that the application, before being approved, must demonstrate that the acquisition of the bank:

(1) will not result in undue concentration of resources or substantial lessening of competition in the locality; and

(2) will bring net new funds into Minnesota;

G. that the application is available to members of the public by contacting the commissioner of the Department of Commerce at 500 Metro Square Building, Saint Paul, Minnesota 55101;

H. any other information that the commissioner deems relevant to a proper disclosure surrounding the facts and circumstances of the acquisition; and

I. the name and address of the applicant or the applicant's attorney.

Subp. 5. **Format.** The publication required in this part shall by typeset in a format acceptable for the publication of a bank charter application.

State of Minnesota
Department of Commerce

In the Matter of the Proposed Adoption of Rules Relating to Interstate Banking

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 the Minnesota Administrative Procedures Act, Sections 14.22 to 14.28.

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. If a sufficient number of those who request a hearing withdraw their requests for hearing in writing the hearing will not be held.

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.

Authority for the adoption of these rules is contained in Minnesota Statutes, Sections 45.023, 48.93 & 48.99. Additionally a Statement of Need 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 from the Department. Persons wishing copies should contact Richard G. Gomsrud at the address noted above.

Pursuant to Minnesota Laws 1983, chapter 188 codified as Minnesota Statutes 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, the final Rules as Adopted and all requred supporting documents 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 Building, 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

Department of Commerce

Proposed Permanent Rules Relating to Interstate Banking

Rules as Proposed (all new material)

2655.0100 APPLICABILITY AND SCOPE.

Parts 2655.0100 to 2655.0600 govern applications by a bank holding company, with its principal place of business located in another state, to acquire a Minnesota bank under Minnesota Statutes, sections 48.93 and 48.99.

2655.0200 DEFINITIONS.

Subpart 1. **Scope.** As used in parts 2655.0100 to 2655.0600, the following terms have the meanings given them.

Subp. 2. **Acquiree.** "Acquiree" means the Minnesota bank being acquired by the applicant.

Subp. 3. **Affiliate.** "Affiliate" means a person who directly or indirectly has beneficial ownership of ten percent or more of any class of voting securities.

Subp. 4. **Alternate energy loans and alternate conservation loans.** "Alternate energy loans and alternate conservation loans" means all loans for any purpose under Minnesota Statutes, section 116M.03, subdivision 26.

Subp. 5. **Applicant.** "Applicant" means a bank holding company that has filed an application to acquire a Minnesota bank under the Minnesota Reciprocal Interstate Banking Act.

Subp. 6. **Control.** "Control" means, with respect to a bank holding company, bank, or bank to be organized under Minnesota Statutes, chapters 46, 47, 48, 300, and parts 2655.0100 to 2655.0600:

A. the ownership, directly or indirectly, or acting through one or more other persons, control of or the power to vote 25 percent or more of any class of voting securities;

B. control in any manner over the election of a majority of the directors; or

C. the power to exercise, directly or indirectly, a

controlling influence over management and policies.

Subp. 7. **Commissioner.** "Commissioner" means the commissioner of the Department of Commerce.

Subp. 8. **Community.** "Community" means the area the bank has designated for purposes of compliance with the Community Reinvestment Act of 1977 (12 USC 2901-2905), as being the area that it serves.

Subp. 9. **Community development corporation.** "Community development corporation" is as defined in Minnesota Statutes, section 116M.04.

Subp. 10. **Developmental loans.** "Developmental loans" include the following categories:

A. low and moderate income housing;

B. operating loans for family farmers;

C. loans made in distressed areas;

D. minority- and woman-owned businesses;

E. alternative energy and energy conservation practices;

F. community development corporations;

G. Indian reservations and student education loans; and

H. any other specifically defined class of people, businesses, or projects which meet the standards under Minnesota Statutes, section 645.445, subdivision 5, for socially or economically disadvantaged persons, projects, or businesses.

Subp. 11. **Development investments.** "Development investments" shall include investments in the following categories:

A. low and moderate income housing;

B. operating loans for family farmers;

C. loans made in distressed areas;

D. minority- and woman-owned businesses;

E. alternative energy and energy conservation practices;

F. community development corporations;

G. Indian reservations and student education loans;

and

H. any other specifically defined class of people, businesses, or projects which meet the standards under Minnesota Statutes, section 645.445, subdivision 5, for socially or economically disadvantaged persons, projects, or businesses.

Subp. 12. **Distressed area.** "Distressed area" is defined to include any area designated as a distressed area under Code of Federal Regulations, title 24, section 570.452 (1986) by the United States Department of Housing and Urban Development.

Subp. 13. **Equity capital.** "Equity capital" means the sum of common stock, preferred stock, surplus, and undivided profits.

Subp. 14. **Family farmers.** "Family farmers" means family farms and family farm corporations as defined in Minnesota Statutes, section 500.24.

Subp. 15. **Investments.** "Investments" means funds or capital extended, contributed, or otherwise invested, but not loaned.

Subp. 16. **Low and moderate income housing.** "Low and moderate income housing" means housing defined as such by any of the following:

A. regulations promulgated by the Farmers Home Administration; and

B. section 8 of the United States Housing Act of 1937, and the regulations promulgated under the act.

Subp. 17. **Minnesota loan.** "Minnesota loan" means loans made to Minnesota residents to be used in Minnesota or loans where substantially all of the benefits from the loan will occur in Minnesota.

Subp. 18. **Minnesota residents.** "Minnesota residents" are:

A. individuals located within a Minnesota zip code;

B. private profit or nonprofit corporations, or subsidiaries or divisions thereof, located and doing business within Minnesota;

C. profit or nonprofit partnerships, trust, or any form of other business enterprise located and doing business within Minnesota; and

D. any municipality, agency, or other public authority established and operating under the laws of Minnesota.

Subp. 19. **Minority-owned business and woman-owned business.** "Minority-owned business" and "woman-owned business" means any socially or economically disadvantaged person under Minnesota Statutes, section 645.445, subdivision 5. A minority-owned business or woman-owned business must have at least 50 percent of the ownership interest controlled by such disadvantaged class of persons.

Subp. 20. **Net new funds.** "Net new funds" means a net increase in lending investment and credit involvement brought to Minnesota on behalf of the acquiree as described in the application filed with the commissioner.

Subp. 21. **Relevant market area.** "Relevant market area" includes the standards established by the Federal Reserve Board for evaluation of concentration of financial institution deposits.

2655.0300 APPLICATION.

Subpart 1. **Attachments.** Each application shall include, but not be limited to, the following attachments:

A. A certified copy of the applicant board's resolution authorizing submission of the application and designating the officers authorized to sign it.

B. A copy of the most recent Report of Bank Holding Company Inspection for the applicant. If the applicant is prohibited from releasing this report, it shall file a copy of a written request to the appropriate federal reserve bank requesting delivery of the report to the commissioner.

C. A copy of all invitations, tenders, or advertisements making an offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition.

D. A copy of the acquisition agreement, detailing the terms and conditions of the proposed acquisition.

E. An organizational chart of the applicant and its

subsidiaries.

F. A copy of the most recent consolidated report of condition and statement of earnings of the applicant.

G. A proforma balance sheet of the applicant on a consolidated basis both before and after the acquisition.

H. A list of the anticipated board of directors of the Minnesota bank being acquired by the applicant. If a bank holding company located in Minnesota is being acquired, provide a list of the anticipated board of directors of the bank's subsidiary located in Minnesota of the bank holding company. If the anticipated board is not known, an explanation of how the directors will be determined should be included.

I. If a bank holding company located in Minnesota is being acquired, list the names and addresses of all of its subsidiaries.

J. Any other exhibit that the commissioner deems relevant to a determination of whether the acquisition will result in a satisfactory level of developmental loans or net new funds.

Subp. 2. **Information.** The application shall include, but not be limited to, the following:

A. The name and address of the applicant.

B. The name and address of the acquiree.

C. The full name of each shareholder of ten percent or more of the stock of the acquiree who is tendering its stock.

D. The total number of shares presently held by each shareholder of ten percent or more of the stock of the acquiree who is tendering its stock.

E. The total number of shares to be sold or transferred by each shareholder of ten percent or more of the stock of the acquiree.

F. The total number of shares to be held by each shareholder of the acquiree who will hold ten percent or more of the stock following completion of the proposed transaction.

G. The total number of voting shares authorized by either the acquiree bank or the acquiree bank holding company.

H. The total number of voting shares outstanding by the acquiree.

I. The number of shares involved in this transaction.

J. The total number of shares of the acquiree currently held by the applicant.

K. The total consideration for the proposed transaction.

L. The identity, personal history, business background, and experience of the applicant and its affiliates, including any material business activities and affiliations during the past five years.

M. A description of any material pending legal or administrative proceeding in which the applicant is a party, and any criminal indictment or conviction of that person by a state or federal court; and, if known by the applicant or any officer or director of the applicant, similar proceedings involving an affiliate of the applicant.

N. A statement of the assets and liabilities of the applicant, as of the end of the fiscal year for each of the five years immediately preceding the date of the application, together with related statements of income, sources, and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted accounting principles, consistently applied.

O. An interim statement of assets and liabilities of the applicant, together with related statements of income, source, and application of funds as of a date not more than 90 days before the date of the filing of the application.

P. The source and amount of funds or other consideration, except those funds borrowed, to be used in making the acquisition. The applicant should particularly describe any of its assets that are to be liquidated to finance the acquisition.

Q. If any part of the funds or other consideration are to be borrowed for the purpose of making the acquisition, the applicant must describe the collateral to be pledged and the

terms of the transaction, including the name of the lender, interest rates, requirements, guarantors, endorsers, and any other arrangements, agreements, and understandings between and among the parties. The application must include copies of any loan commitments obtained from lenders in connection with the proposed acquisition.

R. If borrowed funds are to be obtained, the applicant shall indicate the sources of funds for debt service. Additionally, the applicant shall detail the extent to which the applicant intends to rely on dividends and fees or other funds from the bank being acquired for debt servicing requirements.

S. The applicant shall identify any person retained or compensated by the applicant, or by any person on the applicant's behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of any retainer or arrangements for compensation.

T. The applicant shall disclose any plans or proposals regarding any partial or full liquidation of the acquiree, of any plans or proposals to sell the acquiree's assets or merge it, or any other major change in the acquiree's business or corporate structure or management.

U. The applicant must describe how the acquisition will bring net new funds, under part 2655.0500, to Minnesota. In describing net new funds, the applicant shall describe any initial capital investments and, with respect to the acquiree, proposed loan policies, investment policies, dividend policies, and general plan of business, including the full range of consumer and business services that will be offered. The foregoing description of net new funds shall be contained in a plan of business for the acquiree attached as a part of the application. Such a plan of business shall include the projections under part 2655.0500, subpart 1, and shall contain the economic assumptions on which the projections are made.

V. The application must also disclose how the acquisition will not result in undue concentration of resources

or a substantial lessening of competition in Minnesota. The application shall delineate the relevant market area of the bank or banks to be acquired and located in Minnesota. This delineation is to be described by map or drawing showing the other commercial banks and thrift institutions accompanied by a schedule of correspondent current total deposits of each.

W. The applicant shall describe its plan of compliance in providing the developmental loans and investments.

X. The applicant must describe developmental loans.

Y. The commissioner may additionally require other information as may be necessary to determine whether the application should be approved.

2655.0400 DEVELOPMENTAL LOANS.

Subpart 1. **Mandatory factors.** The commissioner shall consider the following factors in determining an acceptable level of developmental loans in the community by an applicant through its acquiree:

A. the level of developmental loans, in terms of number and amount, made by the acquiree at the end of:

(1) its last fiscal quarter immediately before the date of the application; and

(2) each of the last two fiscal years immediately before the date of application;

B. the projected level of developmental loans, in terms of number and amount, at the end of each of the next three fiscal years from the date of application;

C. any developmental investments for the classifications listed under developmental loans during the time periods as described in items A and B;

D. any developmental loans or investments originated by the acquiree which has or will be participated in or sold to other institutions during the time periods described in items A and B;

E. the acquiree's financial condition at the close of the time periods described in items A and B;

F. the bank's asset quality at the close of the time periods described in items A and B;

G. the economic condition of the community during the time periods described in items A and B;

H. the asset mix of the community in terms of socially and economically disadvantaged persons;

I. the extent of loans made by the acquiree in its Community Reinvestment Act territories during the time periods described in items A and B; and

J. the extent of developmental loans made in the community during the time periods described in items A and B.

Subp. 2. **Permissive factors.** The commissioner may also consider:

A. Any peer group average for developmental loans and investments by similar financial institutions concerning geography, financial condition, asset quality, asset mix, and community reinvestment criteria.

B. Any other material fact information concerning the appropriate level of developmental loans to be made by the acquiree.

2655.0500 NET NEW FUNDS.

Subpart 1. ..... In determining whether additional lending, investment, and capital involvement by the acquiree will occur as a result of the application being approved, the commissioner shall consider the following data at the close of each of its last two fiscal years, and the close of its most recent calendar quarter before the filing of the application, together with projections of the same data for the close of its next three fiscal years:

A. the total deposits of the acquiree;

B. the total loans of the acquiree;

C. the total equity capital of the acquiree;

D. the total loans to Minnesota residents;

E. the total loan-to-asset ratio;

F. the total loan-to-deposit ratio;

G. the total loan-to-equity capital ratio;

H. the total Minnesota loan-to-asset ratio;

I. the total Minnesota loan-to-deposit ratio;

J. the total Minnesota loan-to-equity capital ratio;

K. the total Minnesota loan-to-total loan ratio;

L. the total loan-to-deposit ratio considering only loans made in the acquiree's community; and

M. the total loan-to-deposit ratio considering only loans made outside the acquiree's community.

Subp. 2. ..... The commissioner shall also consider:

A. the acquiree's financial condition on the dates described in subpart 1;

B. the acquiree's asset quality on the dates described in subpart 1;

C. the economic characteristics of the community served by the acquiree including, but not limited to, population trends, area use for residential, commercial, industrial, and agricultural purposes, the level of socially and economically disadvantaged persons, families of low and moderate income and low and moderate income housing, and location therein of enterprise zones and distressed areas;

D. the extent of loans and investments made by the acquiree in the community served by it on the dates described in subpart 1; and

E. the initial capital investment of the applicant, and with respect to the acquiree, its loan policy, investment policy, dividend policy, and general plan of business, including the full range of consumer and business services which will be offered.

Subp. 3. ..... In order to determine whether the applicant will actively participate in the community and in Minnesota, the commissioner shall also consider the following data for each bank affiliated with the applicant at the close of its last two fiscal years and at the end of its most recent calendar quarter before the filing of the application:

A. the total deposits of each bank;

B. the total loans of each bank;

C. the total equity capital of each bank;

D. the total loan-to-deposit ratio considering only loans made in the bank's community; and

E. the total loan-to-deposit ratio considering only loans made outside of the bank's community.

Subp. 4. ..... The commissioner shall also consider:

A. any peer group averages of other Minnesota banks for market share, loan-to-deposit ratio, net interest spread, return on average assets, return on average equity, net charge offs, capital, and loans for real estate, consumers, financial institutions, farmers, and commercial property;

B. any other material fact brought to the commissioner's attention concerning the appropriate level of net new funds; and

C. a statement as to any program administered by the applicant, or any affiliated bank of the applicant, which serves the needs and communities of people defined by the development loan categories of these parts.

2655.0600 NOTICE.

Subpart 1. **Publication.** Within 30 days of the filing of an application, the applicant shall publish a notice of the filing of the application in a newspaper of general circulation within the county in which the bank to be acquired or the proposed bank is located. In addition, the applicant shall mail by certified mail, return receipt requested, notice of the filing of the application to all commercial banks within a three mile radius of the bank to be acquired or located.

Subp. 2. **Proof of publication.** The applicant shall submit to the commissioner a certified publisher's affidavit, including a tear sheet of the publication, setting forth the fact that the publication has been made.

Subp. 3. **Proof of mailing.** The applicant shall file with

the commissioner the receipts certifying that the notices were sent by first class mail to the commercial banks located within the three mile radius of the bank to be acquired or located.

Subp. 4. **Content of application.** The application shall disclose the following:

A. the name and address of the applicant;

B. the name and address of the bank to be acquired or chartered;

C. the date that the application was filed with the department;

D. notice that public comment addressed to the name and address of the commissioner will be accepted for a period of not less than 30 days from the date of publication;

E. that the application to acquire or charter a bank by an interstate bank holding company must establish certain statutory criteria for approval under Minnesota Statutes;

F. that the application, before being approved, must demonstrate that the acquisition of the bank:

(1) will not result in undue concentration of resources or substantial lessening of competition in the locality; and

(2) will bring net new funds into Minnesota;

G. that the application is available to members of the public by contacting the commissioner of the Department of Commerce at 500 Metro Square Building, Saint Paul, Minnesota 55101;

H. any other information that the commissioner deems relevant to a proper disclosure surrounding the facts and circumstances of the acquisition; and

I. the name and address of the applicant or the applicant's attorney.

Subp. 5. **Format.** The publication required in this part shall by typeset in a format acceptable for the publication of a bank charter application.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Rules Relating to Interstate Bank Application Rules

Statement of Need and Reasonableness

Background

As a result of the abuses that occurred prior to the stock market crash of 1929 and the Great Depression that followed one of the reforms imposed on the banking system was a prohibition against interstate bank operations. Banks were allowed to operate within their home states, except for the few that had been grandfathered in. Branch banking was also prohibited.

In recent years the branch banking prohibitions have begun to disappear or be watered down, especially with the advent of the computerized remote tellers. Of even more recent origin has been a dramatic change in the entire financial industry. What are known as nonbank banks have been created to circumvent the anti-interstate banking prohibition. Nonbank banks are "banks," which because they did not offer one or more of the services, all of which an institution must offer to meet the statutory criteria of a "bank", are not technically banks and therefore not subject to the prohibition against interstate banking.

Traditional banks for all practical purposes found themselves competing on an interstate basis with these nonbank banks without any legal structure for such competition and without their competitors being subject to the same rules and regulations as they were.

In response to this several states, primarily in New England, initially passed laws allowing a form of interstate banking. This was primarily interstate banking limited to a particular geographical region. Only banks within the region could cross state boundaries into other states that were subject to this agreement and were within the specified region. The constitutionality of such arrangements have been challenged but the concept has been upheld.

Legislation attempting to follow the New England pattern was introduced in several recent legislative sessions in Minnesota. None of the initial legislation was successful. Various groups fought the legislation because of their fears, among others, that it would have adverse effects on small community banks and the communities that they serve. There were other concerns but this was one of the most significant.

Legislation which attempted to address the many concerns of the various groups successfully passed the 1986 Session of the Minnesota Legislature as Chapter 339 of The Laws of Minnesota. That legislation described an application process for those who wished to conduct interstate banking in which the applicant

would have to show that they met certain criteria for approval. Those criteria are primarily specified in Minnesota Statutes 1986 section 48.93, subdivision 3 and are as follows:

Subp 3. CRITERIA FOR APPROVAL. Except as otherwise provided by rule of the department, an application filed pursuant to subdivision 1 must contain the following information:

(1) the identity, personal history, business background, and experience of each person by whom or on whose behalf the acquisition is to be made, including his or her material business activities and affiliations during the past five years, and a description of any material pending legal or administrative proceedings in which he or she is a party and any criminal indictment or conviction of that person by a state or federal court;

(2) a statement of assets and liabilities of each person by whom or on whose behalf the acquisition is to be made, as of the end of the fiscal year for each of the five years immediately preceding the date of the notice, together with related statements of income, sources, and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted accounting principles consistently applied, and an interim statement of the assets and liabilities for each person, together with related statements of income, source, and application of funds as of a date not more than 90 days prior to the date of the filing of the notice;

(3) the terms and conditions of the proposed acquisition and the manner in which the acquisition is to be made;

(4) the identity, source, and amount of the funds or other consideration to be used in making the acquisition and if any part of these funds or other consideration has been or is to be borrowed or otherwise obtained for the purpose of making the acquisition a description of the transaction, the names of the parties, and any arrangements, agreements, or understandings with those persons;

(5) any plans or proposals which an acquiring party making the acquisition may have to liquidate the bank, to sell its assets or merge it, or make any other major change in its business or corporate structure or management;

(6) the identification af any person employed, retained, or to be compensated by the acquiring party, or by any person on his or her behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of the employment, retainer, or arrangement for compensation;

(7) copies of all invitations, tenders, or advertisements making tender offers to stockholders for purchase of their stock to be used in connection with the proposed acquisition;

(8) a statement of how the acquisition will bring "net new funds" to Minnesota. The description of net new funds must be filed with the application and annually thereafter stating the amount of capital funds, including the increase in equity capital that will result from the acquisition or establishment of a bank. The level of total equity capital must exceed

$3,000,000 for a new chartered bank and $1,000,000 for an acquired bank. The description must state the net increase in loanable funds expressed as an increase in the total loan to asset ratio of Minnesota loans and assets. The statement must also include a discussion of initial capital investments, loan policy, investment policy, dividend policy, and the general plan of business, including the full range of consumer and business services which will be offered; and

(9) any additional relevant information in the form the commissioner requires by rule or by specific request in connection with any particular notice.

Criteria for disapproval are set forth in subdivision 4 of the same section and are as follows:

Subp. 4. DISAPPROVAL. The commissioner shall disapprove any proposed acquisition if:

(1) the financial condition of any acquiring person is such as might jeopardize the financial stability of the bank or prejudice the interests of the depositors of the bank;

(2) the competence, experience, integrity of any acquiring person or of any of the proposed management personnel indicates that it would not be in the interest of the depositors of the bank, or in the interest of the public to permit the person to control the bank;

(3) the acquisition will result in undue concentration of resources or substantial lessening of competition in this state;

(4) the application fails to adequately demonstrate that the acquisition proposal would bring net new funds into Minnesota; or

(4) the application is incomplete or any acquiring party neglects, fails, or refuses to furnish the commissioner all the information required by him or her.

The rules proposed by the department specify what is to be contained in the application. They do not prescribe the action that will be taken on the application once it is submitted. An application under this legislation involves concepts such as net new funds and others which are unique to this legislation and require rules to define. The department determined that the contents of the application, to as great a degree as possible, should be known to anyone contemplating such an acquisition so the initial application might possibly contain all the information needed for the Commissioner to make a decision.

These rules notify the applicants what information they must submit. The statute also contemplates specific requests by the department in addition to what is required by the rule and these rules do contemplate that.

Part 2655.0100. APPLICABILITY AND SCOPE. This section merely recites the statutory scope of the law under which such applications will be submitted.

Part 2655.0200 DEFINITIONS. Because this is a very new concept-the acquisition of banks across state lines-and because the Minnesota law in many ways is unique, various terms used in the law and in the rules need to have a common understanding by all parties. Accordingly even though some of the definitions might appear to be extremely obvious they are included to preclude any later misunderstandings.

Subp. 2. ACQUIREE. This particular definition is one that is quite obvious and identifies the bank or bankholding company that is going to be the subject of the application and is going to attempt to be acquired by the bankholding company located outside the state.

Subp. 3. AFFILIATE. Because the term is used in the statute and in the rules and might have a wide variety of definitions it was determined that exactly what an affiliate was needed to be defined. Accordingly the tax laws and other laws were looked to to see what might be a common understanding of someone affiliated with another. The concepts of direct or indirect control or beneficial ownership was found in these areas and 10% was a common factor in determining the threshold for such status. People under that level would not have a significant enough impact on the activities of the entities for which they are affiliated to come within the definition. Those above it might be able to significantly affect the activities of the entity to which they are connected.

Subp. 4. ALTERNATE ENERGY LOAN and ALTERNATE CONSERVATION LOAN. The terms alternate energy loan and alternate conservation loans are used in regard to the applications. Since there is a definition of such types of loans found in Minnesota statutes section 116M.03, subd. 26 and there is no indication whatsoever that anyone had a definition other than that in mind this incorporates by reference that definition.

Subp. 5. APPLICANT. Once again we have an obvious definition included for the purpose of being perfectly clear as to the meaning. An applicant being of course the entity that is actually applying under the Minnesota Reciprocal Interstate Banking Act to acquire a Minnesota bank or bankholding company.

Subp. 6. CONTROL. Control is a significant concept in regard to acquiring anything. At what point does an ownership interest become control to the point of directing the activities of the institution. This concept is found in securities laws and elsewhere both on the State and Federal level. Accordingly it was deemed necessary to make sure there was a common concept of that in regard to this particular set of regulations. As the statute contains a very precise definition it was repeated in this rule. The idea of repeating a statutory definition being that the rules would include all of the items necessary to complete an application and would not require reference back and forth between the statutes and the rules.

Subp. 7. COMMISSIONER. Commissioner once repeats the statutory definition.

Subp. 8. COMMUNITY. The concept that the acquired institution and the impact of the acquisition should be measured or should involve the community in which it serves is part of the statute. Accordingly having a definition of what that community would be was deemed to be prudent. This would avoid any later disputes as to what the area of impact of the acquisition would be.

As there is presently a concept of a service area or community found in Federal law that many of the institutions involved would already be subject to it was deemed appropriate to define "community" in the same manner so that we would not be creating a new and different measuring area that would be a new burden upon the institutions. Also many of these institutions, as a regular matter, keeps statistics and other information pertaining to this existing concept of the area to show compliance with the Federal law. As most institutions would not expect to be acquired and therefore might not be keeping statistics on some other kind of defined area. Statistics would be readily available using the existing concept where the others might not be. Accordingly this is the most useful measuring device the Department has found.

Subp. 9. COMMUNITY DEVELOPMENT CORPORATION. Once again because the concept of community development corporation is found elsewhere in statute, in this case Minnesota statute section 116M.04, and there is no indication that there is need for a new definition or of an intent by the Legislature that a new definition was required that definition was adopted by reference.

Subp. 10. DEVELOPMENTAL LOANS. Developmental loans are used in the statute and this definition as to items A through G, repeats the statutory criteria. Item H is a slight modification on the statutory language in that it references a specific existing statutory means of determining social or economically disadvantaged persons, projects, or businesses which already exists and therefore does not require creating a new and independent system to do exactly the same thing.

Subp. 11. DEVELOPMENTAL INVESTMENTS. Because the developmental investments will be part of what needs to be considered in determining the impact of the acquisition on the state and community a definition was deemed to be necessary. Because developmental investments and developmental loans both would impact upon the same area and have the same conceptual basis it was deemed appropriate to define them in reference to the same groups and categories as developmental loans.

Subp. 12. DISTRESSED AREA. Distressed area is one of the concepts used in regard to any application. Since the concept is already found in Federal law and is commonly used by a variety of people, it was deemed appropriate and more

expeditious to use the criteria specified in the Federal law. In many instances such a designation may already exist for an area under Federal Law. This was deemed more appropriate than creating a new definition and creating the need for an independent determination by the Department of Commerce of what is a distressed area.

Subp. 13. EQUITY CAPITAL. Once again while this may seem to be a very obvious definition the fact that equity capital must be reviewed in regard to the application it was deemed appropriate to specifically define what it is so that everyone would know what is involved. This is a very straight forward and commonly accepted definition of what equity capital would be.

Subp. 14. FAMILY FARMERS. As family farmers are one of the groups that are used in respect to the categories used to define developmental loans and developmental investments and as that concept may have a variety of meanings it was deemed appropriate to follow the definition already found in Minnesota statute section 500.24 rather than creating a new one. The existing definition has been used for some time and appears to work effectively in defining what the Legislature intended as family farms.

Subp. 15. INVESTMENTS. While this may seem to be an obvious definition it was included to be clear that investments are limited to only funds or capital extended, contributed or invested but not loaned. The qualification "but not loaned" is important to make it clear that there is a difference between loans and investments and that they cannot be used interchangeably.

Subp. 16. LOW AND MODERATE INCOME HOUSING. Since loans and investments in this area are criteria that can be used for determining developmental loans and investments it was necessary to define this. Once again existing regulations were looked to for those definitions since they have a common and well known usage and many projects are already defined in regard to them. They require no further definition by the Department.

Subp. 17. MINNESOTA LOAN. One of the concepts found in the statute is the benefit to the State of Minnesota of the acquisition. It is therefore important to determine that the loans that are being made are being made in a manner that would benefit the state. Many different concepts were reviewed and discussions regarding them occurred including the ability to enforce the concepts or to confirm that they were being complied with. As a result it was determined that the most effective way of determining whether the State benefitted was to measure the loans in Minnesota. What a Minnesota loan was needed to be determined. This definition makes it clear that Minnesota loans are loans to Minnesota residents to be used in Minnesota or if that criteria cannot be met that the loan proceeds will be used in Minnesota. This means that the benefit will stay in Minnesota which is the intent of the statute.

Subp. 18. MINNESOTA RESIDENTS. Once the definition of Minnesota loan was determined than who a Minnesota resident was needed to be determined. Accordingly various criteria were established as the acceptable means of identifying exactly who those people were.

Subp. 19. MINORITY OWNED BUSINESSES AND WOMEN OWNED BUSINESSES. Minority owned businesses and women owned businesses are among the groups that are considered in regard to developmental loans and developmental investments. As there is a definition in existence as to who these businesses are it was incorporated by reference with the added clarification that control must be at least 50% by these groups in order to qualify.

Subp. 20. NET NEW FUNDS. Net new funds is a unique concept found throughout the bill and is very significant criteria as to what the commissioner must look for in reviewing the application and approving or disapproving it but is not specifically defined. Accordingly to be clear as to what net new funds are a definition was proposed in the rules. This is a rather straight forward definition and may seem to be a commonly understood concept but it was felt important to be specific and state that net new funds are an increase in lending, investment and credit involvement but not anything further and also that it was clear that all of these items could be used in showing what net new funds are actually involved in the application.

Subp. 21. RELEVANT MARKET AREA. The relevant market area the application will affect must be determined. Again rather than create a new standard a standard which has already been established by the Federal Reserve Board is being used since it is an existing standard that is already commonly understood.

2655.0300. APPLICATION. This section sets forth the contents of application.

Subpart 1. ATTACHMENTS. Various attachments are required some of them may appear to be technical and mundane but are necessary to make sure that the application is as complete as possible and provides adequate information for a proper review. Where possible, documents or information created within the current regulatory structure are used to reduce the cost and difficulty of producing the information. The fullest disclosure necessary for an adequate review of the application is contemplated. While the commissioner needs the informtion for his or her review this informtion is equally useful for the public in their involvement in the application process. Information that may be mundane to the commissioner may be highly informative to the public and inpact on this view of the application. Therefore the fullest discosure practical is contemplated.

Item A requires proof that in fact the application is authorized to be submitted and that the people submitting it have the authority to make the representations found in it. This clearly binds the entity applying to the representations made on its behalf in the application.

Item B. The report of the bankholding company inspection is a document created within the existing regulatory structure that provides a significant amount of pertinent information that will be used in the application review. As it is created independently of the applicant it has a very significant degree of authority and it is an extremely useful document in reviewing the application.

Item C. So that the application is complete as to all matters that have gone on in the representations made in regard to the acquisition of the bank or bankholding company, a complete showing of all invitation, tenders or advertisements are required to make sure that the commissioner is fully informed as to what has been represented and what the expectations of the parties are.

Item D. In the same regard a copy of all the acquisition agreements is pertinent for a full disclosure of what is intended and what undertakings the applicant or acquiree have made in regard to the acquisition that may impact upon the commissioner's approval or disapproval.

Item E. An organizational chart is basic information for the commissioner and others reviewing the application to make sure that there is full understanding of the structure involved.

Items F and G. A copy of the consolidated report and the pro forma balance sheet again are financial documents necessary to evaluate the applicant and the representations being made in the application.

Item H. The names and addresses of the board of directors is necessary as they will be the operators of the institution. Who they are and their abilities are significant factors in evaluating the application. They should be known to the greatest extent possible and their impact on the application assessed by the commissioner when reviewing the application.

Item I. If a bankholding company in Minnesota is being acquired the application should list all of its subsidiaries so that the impact upon the State of Minnesota of the acquisition of these various entities can be considered in reviewing the application. As these subsidiaries are not always known to the Commission the applicant is charged with providing this informtion.

Item J. This item repeats the statutory power of the commissioner as stated in Minnesota statute section 48.93 subd. 3 (9) and elsewhere to either by rule or by specific request

demand additional information. While this particular recitation might appear inappropriate to be included as a rule under the usual rulemaking authority because it gives discretion to the commissioner, the statute has already given the commissioner that discretion and for the purposes stated previously, namely to make sure that all of the criteria for an application are located in the rules whether stated in the statute or generated by the rule, the statutory authorization of the commissioner to act in this manner is repeated here.

Subp. 2. INFORMATION.

Items A-K. Information regarding the applicant and acquiree pre and post acquisition status is required which in many cases seems rather obvious. Such requirements would be the name and address of the applicant, the name and address of the acquiree and then a listing of all of the stockholders who control 10% or more of the stock of the acquiree and the total number of those type of shares either presently held by them or to be in any way affected by this transaction. This information identifies who the parties are and who has effective control of the entities involved. Thus the commissioner can evaluate who will either be in control or who will lose control as a result of this transaction. The character and the expertise of these people may well be a consideration in the approval of the application and should be known. Information such as the total number of shares of voting stock, total number of shares and the consideration for the transaction may seem obvious requirements but are also specified so that as complete a list as possible is provided of the information that the commissioner needs to review. This makes it easier to have all the information provided at the time of initial application avoiding a process of having to request the additional information after the application is filed, with the delays that generates.

Item L. This requires background information on the applicant and its affiliates that would allow the commissioner to evaluate them and their affiliates in respect to the application. The capability of the owners or operators after acquisition may be as important as their financial status.

Item M. This is a further exposition of the type of information on the people that will be involved in the transaction that Item L begins to assemble with particular attention to criminal proceedings.

Item N. Item N requires a basic statement of the assets of the applicant for particular time periods. The financial ability of the applicant is an important factor in the evaluation of the application and this Item specifies some of the most basic information in that area for the last 5 years.

Items O-T. These are financial information requirements that will explain to the commissioner various facts as to source of funds or funds already in place that will be involved in the transaction and other information such as the interest to be

paid and the like that would effect the liability of the institutions involved the transaction. Generally this information will help give a picture of the transaction and the result upon the entities after the acquisition is completed so the viability of the entities after the acquisition can be evaluated.

Item U. This is a general requirement explaining what I have previously identified as a critical factor in the application. That is how the transaction will bring net new funds into Minnesota. The manner in which this is presented is described in this section. This would set the norm for explaining how new new funds are to be demonstrated.

Item V. Decreased competition was a major reason for the opposition of many of the most steadfast opponents of the bill. Accordingly, one of the criteria for disapproval, in addition to unsatisfactory financial conditions, is an undue concentration of resources or lessening of competition. Therefore the application must contain an explanation of how that will not occur.

Item W. As developmental loans and investments are one of the criteria that the applicant needs to show positive aspects in regard to to gain approval, an explanation of how that will be accomplished is required.

Item X. An expansion of W, with the caveat that it actually describes the developmental loans or investments.

Item Y. Once again this is a restatement of the fact that the commissioner, by statute, can require more information even if not specified in the rule.

Part 2655.0400 DEVELOPMENTAL LOANS.

Subpart 1. MANDATORY FACTORS. As developmental loans are one of the criteria to be used in evaluating the application what the commissioner will consider and how they are to be measured is something that was deemed to be so important that they should set forth in the rule, this allows the applicant to structure the information to be provided in the application in such a manner as would be the most useful for the commissioner in the evaluation of the application. Accordingly the periods of time for which the commissioner will be reviewing developmental loans, namely the fiscal quarter immediately prior to the date of application and the two fiscal years applying to the application are set forth so that the information can be provided in that particular form. If this was not specified the commissioner would either have to extrapolate that information from whatever is provided or request it at a later time.

Items B-J set forth a variety of criteria that the commissioner must evaluate. These criteria are a restatement of the various items that are found in the statute that must be

considered by the commissioner for approval or disapproval but restated in a manner that is more specific as to periods of time and to certain groups or categories. General requirements found in the statute are made more specific and are itemized. In some cases they are even slightly expanded upon for the purposes of being more specific but what is required here is basically what is specified in the statute that the commissioner consider.

Subp. 2. PERMISSIVE FACTORS. This subpart is a recognition that all factors that would be important to the consideration may not always be found in what the statute has specifically referenced or that has been determined at this time as necessary criteria to be evaluated. The statutory scheme well recognizes that by giving the commissioner the discretion to request additional information. The factors are just several of the items that during the discussions in regard to the rules various people indicated that they would like to be able to bring to the commissioner's attention as was appropriate. Once again while the statute while the statute through its delegation of discretionary authority already would give the commissioner the power to consider these factors it was felt appropriate to put people on notice that the commissioner would be looking at these particular items and that it was not a limitation on the part of the applicant to just enumerate the mandatory itemsit was felt useful to give examples of additional information that it was thought might be pertinent.

Part 2655.0500
Subpart 1. NET NEW FUNDS. Once again it should be stated that net new funds is a critical concept to the application. How net new funds would be determined and in some cases the establishment of a base period so that the provision of the statute that would allow for the divestiture if the statute is not complied with by the acquiring institution after approval of the aaplication was considered necessary. Accordingly and once again so that everyone would know exactly how this is to be demonstrated and the form the information should be submitted, a list of what information the commissioner would like to have and for the periods of time is specified. The time periods as specified in subpart 1 and the various categories that are to be disclosed are then set forth in items A-M of subpart 1. All of the factors involved such as loan to asset ratios and loan to deposit ratios are matters that are already understood and generally available to the various banking institutions. In many cases they have to be provided for compliance with other regulations, both State and Federal. In this particular instance there is a difference in some of the requirements because they do require a specific Minnesota type of disclosure as differentiated from the institution's general information on the subject which may encompass more than the State of Minnesota. This differentiation is especially important because of the clear statutory intent to allow interstate acquisitions

only if there is a showing that there is a benefit to the State of Minnesota and that it does not result in any kind of a detriment.

Subp. 2. ACQUIREE: COMMUNITY ERRONOUS FUTURE. Additional factors to be considered are set forth. Many of the preceding discussions in regard to the contents of the application and definitions have discussed the need for these items of information. Inquiries as to financial condition on the specified dates is an obvious requirement. This assures that there are both base points for measuring compliance. The also allowance evaluation by the commissioner as to whether or not the acquiring institution is of sufficient quality or whether there would be a need for the acquiree to be acquired because of its deteriorating financial consideration. Other factors than that of course could be indicated by this information but these would be two examples.

The community and the impact upon the community of the acquisition are important considerations in the application. The nature of developmental loans and who they can be made to and how well the bank being acquired is presently serving the community and how well it will serve it after it is acquired are critical factors in the review. Obviously the commissioner needs to know something about the community and the acquiree and they are specified in this subpart Item E is another factor that the commissioner must be aware of in order to evaluate the impact of the acquisition on the state and the community involved. In certain respects it is likely to be a reiteration of information already provided but in a more specific and consolidated manner. It is a broadly drawn requirement which in effect spell out what the projected result of the acquisition will be as to the acquiree and the community.

Subp. 3. AFFILIATED BANK. The purpose for subpart 3 is quite accurately explained in the first paragraph. Namely to determine whether the applicant will actively participate in the community. Therefore the activities of the applicant need to be reviewed. It is presumed that the past actions of applicant are a good indication of what it's future course of action would be. Accordingly information on deposits, loans, equity and how the loans relate to deposits in the banks own community are required That is then contrasted with loans and deposit outside of that community. This would indicate the level of involvment of the acquiring institution in its current communities.

Subp. 4. ADDITIONAL FACTORS. Additional information that the commissioner shall consider in reviewing the application are set forth. All of these items are factors that were brought up in discussions with the various groups involved in the discussion on the rule. These were factors in addition to the criteria already mentioned that could give an indication that the intent of the Legislature would be met by this acquisition. As the intent behind the statute and the various criteria set forth is to get as full a measure as possible of the effect, be it

beneficial or otherwise, on the community and the state as a whole by the possible acquisition, consideration of additional factors is something to be encouraged rather that discouraged. Once again it was thought prudent to mention as many of these things in the rules as possible to at least bring the possibility they could submit those items to the attention of the applicant rather than leaving a generalized statement such as "any other information that may be deemed appropriate" for the applicant to rely on.

Part 2655.0600 NOTICE. The publication requirement is a part of the statute (section 498.98 subd. 2) with certain additional requirements such as the notice to other commercial banks within a 3 mile radius. The intent is to encourage the public participation that the statute so obviously wants. Details such as how publication is to be proved and how the mailing is to be proved are set forth in the rules as well. They are consistent with what similar requirements are in other situations in which such proof must be filed so that community understood practice are followed. Once again the content of the application is spelled out so that the requirements be are easy to comply with merely by following the rule. Failure to set forth the requirements on an application notice might lead to an inadvertant rejection of the application because of a small technical failure in the information to be published. Most of the contents of the application are extrapolated from the language of the statute.

The format specified in subdivision 5 adopts one used in a type of application that everyone in the banking industry is familiar with. It once again attempts to as much as possible use existing structures and not create new and necessary requirements.

It should be noted that the intent of these rules is primarily to define what is in the application, to specify the form in which it is submitted and to direct people as to the factors the commissioner will consider or may consider in reviewing the application so that the application can be presented in the best manner possible and the application considered in the most expeditious manner. This also makes it easier for the public or other concerned parties who would be reviewing the application to have one document and conforming material to review rather than a thick and extensive file generated by continued requests for more information by the Department.

Small Business Consideration

In reviewing these rules it was determined that because of the very criteria for who can be involved in acquisitions none of the parties involved would likely come within the classification of small business. Small businesses of course will be affected by any acquisition of the bank in their community. Accordingly the statute has already provided for their protection in the review process itself to prove that there will be a net benefit

to the community and additionally that there will be adequate notice to everyone that would chose to participate. As the impact will be different on each small business it would at that point be there responsibility to represent to the commissioner how the acquisition would affect them individually. The notice requirement and the review by the commissioner of the statutory requirements were determined to as adequately protect those small businesses as would be involved as would be possible and would not impose an unduly burdensome requirement.

The other factors described in Minnesota Statutes § 14.115, subd. 2 were reviewed as the statute is fairly specific as to the standards to be met and the rules merely describe the contents of the application it was felt that the interests of small businesses, if any are subject to the rules, are already protected to the extent consistent with the statutory requirements.

In the Matter of the Proposed Rules
Relating to Interstate Banking

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

AFFIDAVIT OF
MAILING

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

That on the 31st day of October, 1986 at the City of St. Paul, County of Ramsey, State of Minnesota, the attached Notice of Intent to Adopt Rules Without a 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 Minnnesota 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 18th day of December, 1986

Notary Public

MARILYN J. ROBINSON
NOTARY PUBLIC - MINNESOTA
RAMSEY COUNTY
My Commission Expires June 18, 1987

STATE OF MINNESOTA

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

ATTENTION:

RULE RELATED MATERIAL

FIRST CLASS MAIL

State of Minnesota
Department of Commerce

In the Matter of the Proposed Adoption of Rules Relating to Interstate Banking

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 the Minnesota Administrative Procedures Act, Sections 14.22 to 14.28.

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. If a sufficient number of those who request a hearing withdraw their requests for hearing in writing the hearing will not be held.

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.

Authority for the adoption of these rules is contained in Minnesota Statutes, Sections 45.023, 48.93 & 48.99. Additionally a Statement of Need 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 from the Department. Persons wishing copies should contact Richard G. Gomsrud at the address noted above.

Pursuant to Minnesota Laws 1983, chapter 188 codified as Minnesota Statutes 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, the final Rules as Adopted and all requred supporting documents 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 Building, 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

Department of Commerce

Proposed Permanent Rules Relating to Interstate Banking

Rules as Proposed (all new material)

2655.0100 APPLICABILITY AND SCOPE.

Parts 2655.0100 to 2655.0600 govern applications by a bank holding company, with its principal place of business located in another state, to acquire a Minnesota bank under Minnesota Statutes, sections 48.93 and 48.99.

2655.0200 DEFINITIONS.

Subpart 1. **Scope.** As used in parts 2655.0100 to 2655.0600, the following terms have the meanings given them.

Subp. 2. **Acquiree.** "Acquiree" means the Minnesota bank being acquired by the applicant.

Subp. 3. **Affiliate.** "Affiliate" means a person who directly or indirectly has beneficial ownership of ten percent or more of any class of voting securities.

Subp. 4. **Alternate energy loans and alternate conservation loans.** "Alternate energy loans and alternate conservation loans" means all loans for any purpose under Minnesota Statutes, section 116M.03, subdivision 26.

Subp. 5. **Applicant.** "Applicant" means a bank holding company that has filed an application to acquire a Minnesota bank under the Minnesota Reciprocal Interstate Banking Act.

Subp. 6. **Control.** "Control" means, with respect to a bank holding company, bank, or bank to be organized under Minnesota Statutes, chapters 46, 47, 48, 300, and parts 2655.0100 to 2655.0600:

A. the ownership, directly or indirectly, or acting through one or more other persons, control of or the power to vote 25 percent or more of any class of voting securities;

B. control in any manner over the election of a majority of the directors; or

C. the power to exercise, directly or indirectly, a

controlling influence over management and policies.

Subp. 7. **Commissioner.** "Commissioner" means the commissioner of the Department of Commerce.

Subp. 8. **Community.** "Community" means the area the bank has designated for purposes of compliance with the Community Reinvestment Act of 1977 (12 USC 2901-2905), as being the area that it serves.

Subp. 9. **Community development corporation.** "Community development corporation" is as defined in Minnesota Statutes, section 116M.04.

Subp. 10. **Developmental loans.** "Developmental loans" include the following categories:

A. low and moderate income housing;

B. operating loans for family farmers;

C. loans made in distressed areas;

D. minority- and woman-owned businesses;

E. alternative energy and energy conservation practices;

F. community development corporations;

G. Indian reservations and student education loans; and

H. any other specifically defined class of people, businesses, or projects which meet the standards under Minnesota Statutes, section 645.445, subdivision 5, for socially or economically disadvantaged persons, projects, or businesses.

Subp. 11. **Development investments.** "Development investments" shall include investments in the following categories:

A. low and moderate income housing;

B. operating loans for family farmers;

C. loans made in distressed areas;

D. minority- and woman-owned businesses;

E. alternative energy and energy conservation practices;

F. community development corporations;

G. Indian reservations and student education loans;

and

H. any other specifically defined class of people, businesses, or projects which meet the standards under Minnesota Statutes, section 645.445, subdivision 5, for socially or economically disadvantaged persons, projects, or businesses.

Subp. 12. **Distressed area.** "Distressed area" is defined to include any area designated as a distressed area under Code of Federal Regulations, title 24, section 570.452 (1986) by the United States Department of Housing and Urban Development.

Subp. 13. **Equity capital.** "Equity capital" means the sum of common stock, preferred stock, surplus, and undivided profits.

Subp. 14. **Family farmers.** "Family farmers" means family farms and family farm corporations as defined in Minnesota Statutes, section 500.24.

Subp. 15. **Investments.** "Investments" means funds or capital extended, contributed, or otherwise invested, but not loaned.

Subp. 16. **Low and moderate income housing.** "Low and moderate income housing" means housing defined as such by any of the following:

A. regulations promulgated by the Farmers Home Administration; and

B. section 8 of the United States Housing Act of 1937, and the regulations promulgated under the act.

Subp. 17. **Minnesota loan.** "Minnesota loan" means loans made to Minnesota residents to be used in Minnesota or loans where substantially all of the benefits from the loan will occur in Minnesota.

Subp. 18. **Minnesota residents.** "Minnesota residents" are:

A. individuals located within a Minnesota zip code;

B. private profit or nonprofit corporations, or subsidiaries or divisions thereof, located and doing business within Minnesota;

C. profit or nonprofit partnerships, trust, or any form of other business enterprise located and doing business within Minnesota; and

D. any municipality, agency, or other public authority established and operating under the laws of Minnesota.

Subp. 19. **Minority-owned business and woman-owned business.** "Minority-owned business" and "woman-owned business" means any socially or economically disadvantaged person under Minnesota Statutes, section 645.445, subdivision 5. A minority-owned business or woman-owned business must have at least 50 percent of the ownership interest controlled by such disadvantaged class of persons.

Subp. 20. **Net new funds.** "Net new funds" means a net increase in lending investment and credit involvement brought to Minnesota on behalf of the acquiree as described in the application filed with the commissioner.

Subp. 21. **Relevant market area.** "Relevant market area" includes the standards established by the Federal Reserve Board for evaluation of concentration of financial institution deposits.

2655.0300 APPLICATION.

Subpart 1. **Attachments.** Each application shall include, but not be limited to, the following attachments:

A. A certified copy of the applicant board's resolution authorizing submission of the application and designating the officers authorized to sign it.

B. A copy of the most recent Report of Bank Holding Company Inspection for the applicant. If the applicant is prohibited from releasing this report, it shall file a copy of a written request to the appropriate federal reserve bank requesting delivery of the report to the commissioner.

C. A copy of all invitations, tenders, or advertisements making an offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition.

D. A copy of the acquisition agreement, detailing the terms and conditions of the proposed acquisition.

E. An organizational chart of the applicant and its

subsidiaries.

F. A copy of the most recent consolidated report of condition and statement of earnings of the applicant.

G. A proforma balance sheet of the applicant on a consolidated basis both before and after the acquisition.

H. A list of the anticipated board of directors of the Minnesota bank being acquired by the applicant. If a bank holding company located in Minnesota is being acquired, provide a list of the anticipated board of directors of the bank's subsidiary located in Minnesota of the bank holding company. If the anticipated board is not known, an explanation of how the directors will be determined should be included.

I. If a bank holding company located in Minnesota is being acquired, list the names and addresses of all of its subsidiaries.

J. Any other exhibit that the commissioner deems relevant to a determination of whether the acquisition will result in a satisfactory level of developmental loans or net new funds.

Subp. 2. **Information.** The application shall include, but not be limited to, the following:

A. The name and address of the applicant.

B. The name and address of the acquiree.

C. The full name of each shareholder of ten percent or more of the stock of the acquiree who is tendering its stock.

D. The total number of shares presently held by each shareholder of ten percent or more of the stock of the acquiree who is tendering its stock.

E. The total number of shares to be sold or transferred by each shareholder of ten percent or more of the stock of the acquiree.

F. The total number of shares to be held by each shareholder of the acquiree who will hold ten percent or more of the stock following completion of the proposed transaction.

G. The total number of voting shares authorized by either the acquiree bank or the acquiree bank holding company.

H. The total number of voting shares outstanding by the acquiree.

I. The number of shares involved in this transaction.

J. The total number of shares of the acquiree currently held by the applicant.

K. The total consideration for the proposed transaction.

L. The identity, personal history, business background, and experience of the applicant and its affiliates, including any material business activities and affiliations during the past five years.

M. A description of any material pending legal or administrative proceeding in which the applicant is a party, and any criminal indictment or conviction of that person by a state or federal court; and, if known by the applicant or any officer or director of the applicant, similar proceedings involving an affiliate of the applicant.

N. A statement of the assets and liabilities of the applicant, as of the end of the fiscal year for each of the five years immediately preceding the date of the application, together with related statements of income, sources, and application of funds for each of the fiscal years then concluded, all prepared in accordance with generally accepted accounting principles, consistently applied.

O. An interim statement of assets and liabilities of the applicant, together with related statements of income, source, and application of funds as of a date not more than 90 days before the date of the filing of the application.

P. The source and amount of funds or other consideration, except those funds borrowed, to be used in making the acquisition. The applicant should particularly describe any of its assets that are to be liquidated to finance the acquisition.

Q. If any part of the funds or other consideration are to be borrowed for the purpose of making the acquisition, the applicant must describe the collateral to be pledged and the

terms of the transaction, including the name of the lender, interest rates, requirements, guarantors, endorsers, and any other arrangements, agreements, and understandings between and among the parties. The application must include copies of any loan commitments obtained from lenders in connection with the proposed acquisition.

R. If borrowed funds are to be obtained, the applicant shall indicate the sources of funds for debt service. Additionally, the applicant shall detail the extent to which the applicant intends to rely on dividends and fees or other funds from the bank being acquired for debt servicing requirements.

S. The applicant shall identify any person retained or compensated by the applicant, or by any person on the applicant's behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of any retainer or arrangements for compensation.

T. The applicant shall disclose any plans or proposals regarding any partial or full liquidation of the acquiree, of any plans or proposals to sell the acquiree's assets or merge it, or any other major change in the acquiree's business or corporate structure or management.

U. The applicant must describe how the acquisition will bring net new funds, under part 2655.0500, to Minnesota. In describing net new funds, the applicant shall describe any initial capital investments and, with respect to the acquiree, proposed loan policies, investment policies, dividend policies, and general plan of business, including the full range of consumer and business services that will be offered. The foregoing description of net new funds shall be contained in a plan of business for the acquiree attached as a part of the application. Such a plan of business shall include the projections under part 2655.0500, subpart 1, and shall contain the economic assumptions on which the projections are made.

V. The application must also disclose how the acquisition will not result in undue concentration of resources

or a substantial lessening of competition in Minnesota. The application shall delineate the relevant market area of the bank or banks to be acquired and located in Minnesota. This delineation is to be described by map or drawing showing the other commercial banks and thrift institutions accompanied by a schedule of correspondent current total deposits of each.

W. The applicant shall describe its plan of compliance in providing the developmental loans and investments.

X. The applicant must describe developmental loans.

Y. The commissioner may additionally require other information as may be necessary to determine whether the application should be approved.

2655.0400 DEVELOPMENTAL LOANS.

Subpart 1. **Mandatory factors.** The commissioner shall consider the following factors in determining an acceptable level of developmental loans in the community by an applicant through its acquiree:

A. the level of developmental loans, in terms of number and amount, made by the acquiree at the end of:

(1) its last fiscal quarter immediately before the date of the application; and

(2) each of the last two fiscal years immediately before the date of application;

B. the projected level of developmental loans, in terms of number and amount, at the end of each of the next three fiscal years from the date of application;

C. any developmental investments for the classifications listed under developmental loans during the time periods as described in items A and B;

D. any developmental loans or investments originated by the acquiree which has or will be participated in or sold to other institutions during the time periods described in items A and B;

E. the acquiree's financial condition at the close of the time periods described in items A and B;

F. the bank's asset quality at the close of the time periods described in items A and B;

G. the economic condition of the community during the time periods described in items A and B;

H. the asset mix of the community in terms of socially and economically disadvantaged persons;

I. the extent of loans made by the acquiree in its Community Reinvestment Act territories during the time periods described in items A and B; and

J. the extent of developmental loans made in the community during the time periods described in items A and B.

Subp. 2. **Permissive factors.** The commissioner may also consider:

A. Any peer group average for developmental loans and investments by similar financial institutions concerning geography, financial condition, asset quality, asset mix, and community reinvestment criteria.

B. Any other material fact information concerning the appropriate level of developmental loans to be made by the acquiree.

2655.0500 NET NEW FUNDS.

Subpart 1. ..... In determining whether additional lending, investment, and capital involvement by the acquiree will occur as a result of the application being approved, the commissioner shall consider the following data at the close of each of its last two fiscal years, and the close of its most recent calendar quarter before the filing of the application, together with projections of the same data for the close of its next three fiscal years:

A. the total deposits of the acquiree;

B. the total loans of the acquiree;

C. the total equity capital of the acquiree;

D. the total loans to Minnesota residents;

E. the total loan-to-asset ratio;

F. the total loan-to-deposit ratio;

G. the total loan-to-equity capital ratio;

H. the total Minnesota loan-to-asset ratio;

I. the total Minnesota loan-to-deposit ratio;

J. the total Minnesota loan-to-equity capital ratio;

K. the total Minnesota loan-to-total loan ratio;

L. the total loan-to-deposit ratio considering only loans made in the acquiree's community; and

M. the total loan-to-deposit ratio considering only loans made outside the acquiree's community.

Subp. 2. ..... The commissioner shall also consider:

A. the acquiree's financial condition on the dates described in subpart 1;

B. the acquiree's asset quality on the dates described in subpart 1;

C. the economic characteristics of the community served by the acquiree including, but not limited to, population trends, area use for residential, commercial, industrial, and agricultural purposes, the level of socially and economically disadvantaged persons, families of low and moderate income and low and moderate income housing, and location therein of enterprise zones and distressed areas;

D. the extent of loans and investments made by the acquiree in the community served by it on the dates described in subpart 1; and

E. the initial capital investment of the applicant, and with respect to the acquiree, its loan policy, investment policy, dividend policy, and general plan of business, including the full range of consumer and business services which will be offered.

Subp. 3. ..... In order to determine whether the applicant will actively participate in the community and in Minnesota, the commissioner shall also consider the following data for each bank affiliated with the applicant at the close of its last two fiscal years and at the end of its most recent calendar quarter before the filing of the application:

A. the total deposits of each bank;

B. the total loans of each bank;

C. the total equity capital of each bank;

D. the total loan-to-deposit ratio considering only loans made in the bank's community; and

E. the total loan-to-deposit ratio considering only loans made outside of the bank's community.

Subp. 4. ..... The commissioner shall also consider:

A. any peer group averages of other Minnesota banks for market share, loan-to-deposit ratio, net interest spread, return on average assets, return on average equity, net charge offs, capital, and loans for real estate, consumers, financial institutions, farmers, and commercial property;

B. any other material fact brought to the commissioner's attention concerning the appropriate level of net new funds; and

C. a statement as to any program administered by the applicant, or any affiliated bank of the applicant, which serves the needs and communities of people defined by the development loan categories of these parts.

2655.0600 NOTICE.

Subpart 1. **Publication.** Within 30 days of the filing of an application, the applicant shall publish a notice of the filing of the application in a newspaper of general circulation within the county in which the bank to be acquired or the proposed bank is located. In addition, the applicant shall mail by certified mail, return receipt requested, notice of the filing of the application to all commercial banks within a three mile radius of the bank to be acquired or located.

Subp. 2. **Proof of publication.** The applicant shall submit to the commissioner a certified publisher's affidavit, including a tear sheet of the publication, setting forth the fact that the publication has been made.

Subp. 3. **Proof of mailing.** The applicant shall file with

the commissioner the receipts certifying that the notices were sent by first class mail to the commercial banks located within the three mile radius of the bank to be acquired or located.

Subp. 4. **Content of application.** The application shall disclose the following:

A. the name and address of the applicant;

B. the name and address of the bank to be acquired or chartered;

C. the date that the application was filed with the department;

D. notice that public comment addressed to the name and address of the commissioner will be accepted for a period of not less than 30 days from the date of publication;

E. that the application to acquire or charter a bank by an interstate bank holding company must establish certain statutory criteria for approval under Minnesota Statutes;

F. that the application, before being approved, must demonstrate that the acquisition of the bank:

(1) will not result in undue concentration of resources or substantial lessening of competition in the locality; and

(2) will bring net new funds into Minnesota;

G. that the application is available to members of the public by contacting the commissioner of the Department of Commerce at 500 Metro Square Building, Saint Paul, Minnesota 55101;

H. any other information that the commissioner deems relevant to a proper disclosure surrounding the facts and circumstances of the acquisition; and

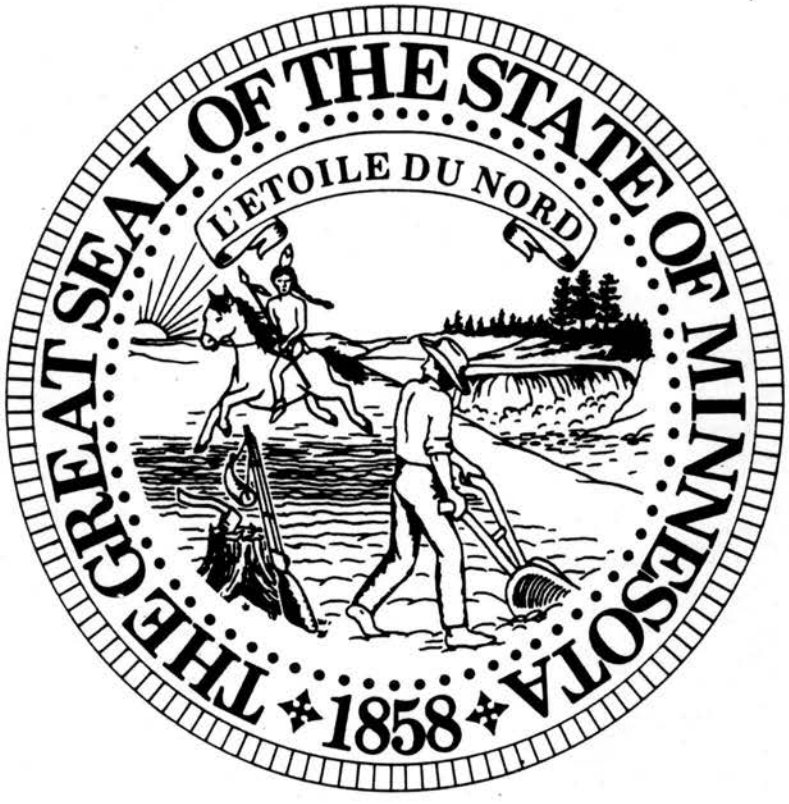
I. the name and address of the applicant or the applicant's attorney.

Subp. 5. **Format.** The publication required in this part shall by typeset in a format acceptable for the publication of a bank charter application.

STATE OF MINNESOTA

STATE REGISTER

DEPARTMENT OF ADMINISTRATION—DOCUMENTS DIVISION



Monday 3 November 1986

VOLUME 11, NUMBER 18

Pages 757-844

CONTENTS

MINNESOTA RULES AMENDMENTS & ADDITIONS

Issues 14-18 inclusve 760

PROPOSED RULES

Commerce Department
Interstate Banking 761

Labor & Industry Department
Fair Labor and Child Labor Standards 768

Optometry Board
Home Study Programs, Emeritus Registration 773

Public Safety Department
Driver's License Revocation 775

ADOPTED RULES

Medical Examiners Board
Fees 777

Public Safety Department
Film Rental Fees 777

OFFICIAL NOTICES

Commerce Department
Activation to Insure Specified Classes of Business, Public Hearing on Permanent Activation and Pre-Hearing Conference 778

Environmental Quality Board
Annual Public Hearing on the Power Plant Siting and Transmission Line Routing Program 780

Finance Department
Maximum Interest Rate for Municipal Obligations in November 780

Health Department
Opinion Sought on Cancer Statistical Research Service 780
Life Support Transportation Service Licensure Application 781

Natural Resources Department
Sale of State Copper, Nickel and Associated Minerals Leases 781

Secretary of State
Vacancies in Multi-Member State Agencies 782
Annual Compilation of State Agencies: Notices of Vacancies (Application and Appointment Procedure) 784

Sentencing Guidelines Commission
Public Hearing to Consider Modifications to the Sentencing Guidelines 837

STATE CONTRACTS

Administration Department: Procurement
Contracts & Requisitions Open for Bid 838

Energy & Economic Development Department
Request for Proposals for Services to Survey Views on the State's Biomass Energy Development Policies 839

Human Services Department
Request for Services of Instructing American Sign Language 840

NON-STATE PUBLIC CONTRACTS

Metropolitan Council
Request for Proposals for Financial Advisor 840

STATE GRANTS

Energy & Economic Development Department
Cycle IX for the Institutional Buildings Grants Program (IBGP) 841

Job Skills Partnership Board
Grant Proposals Sought on Customized Training Programs Designed for Specific Businesses 841

SUPREME COURT DECISIONS

Decisions Filed Friday 24 October 1986 841

ERRATA

Board of Nursing
Correction to Proposed Rules about Fees 842

PUBLIC SAFETY DEPARTMENT
7419.0100; .0200; .0300; .0400; .0500; .0600; .0700; .0800 (adopted) 777
7503.0800 (proposed) 775

PUBLIC UTILITIES COMMISSION
7845.0100-.1000 (Adopted Emergency) 715

ENERGY AND ECONOMIC DEVELOPMENT DEPARTMENT
8300.4101-.4112 (adopted) 669
8300.5000-.5006 (adopted) 713

SOIL & WATER CONSERVATION BOARD
8400.4000-.4080 (adopted) 742

TRANSPORTATION DEPARTMENT
8860.0100; .0200; .0300; .0400; .0500; .0600; .0700; .0800 (adopted) 690

TRANSPORTATION REGULATION BOARD
8900.0100-.1100 (adopted) 691

HUMAN SERVICES DEPARTMENT
9505.0211; .0212 (Emergency extended) 714
9525.1290 (proposed) 709
9549.0050-.0059 (Withdrawn Proposed) 710
9555.5105; .5205; .5305; .5405; .5415; .5505; .5605; .5705; .6105; .6115; .6125; .6145; .6155; .6165; .6167; .6175; .6185; .6195; .6205; .6215; .6225; .6233; .6245; .6255; .6265 (proposed) 650
9555.5100; .5200; .5300; .5400; .6100; .6200; .6300; .6400 (proposed repealer) 650

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 Permanent Rules Relating to Interstate Banking

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 the Minnesota Administrative Procedures Act, Sections 14.22 to 14.28.

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

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.

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. If a sufficient number of those who request a hearing withdraw their requests for hearing in writing the hearing will not be held.

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.

Authority for the adoption of these rules is contained in Minnesota Statutes, Sections 45.023, 48.93 & 48.99. Additionally a Statement of Need 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 from the Department. Persons wishing copies should contact Richard G. Gomsrud at the address noted above.

Pursuant to Minnesota Laws 1983, chapter 188 codified as Minnesota Statutes 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, the final Rules as Adopted and all required supporting documents 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 Building, 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.

Commissioner of Commerce
Michael A. Hatch

Rules as Proposed (all new material)

2655.0100 APPLICABILITY AND SCOPE.

Parts 2655.0100 to 2655.0600 govern applications by a bank holding company, with its principal place of business located in another state, to acquire a Minnesota bank under Minnesota Statutes, sections 48.93 and 48.99.

2655.0200 DEFINITIONS.

Subpart 1. **Scope.** As used in parts 2655.0100 to 2655.0600, the following terms have the meanings given them.

Subp. 2. **Acquiree.** "Acquiree" means the Minnesota bank or bank holding company being acquired by the applicant.

Subp. 3. **Affiliate.** "Affiliate" means a person who directly or indirectly has beneficial ownership of ten percent or more of any class of voting securities.

Subp. 4. **Alternate energy loans and alternate conservation loans.** "Alternate energy loans and alternate conservation loans" means all loans for any purpose under Minnesota Statutes, section 116M.03, subdivision 26.

Subp. 5. **Applicant.** "Applicant" means a bank holding company that has filed an application to acquire a Minnesota bank under the Minnesota Reciprocal Interstate Banking Act.

Subp. 6. **Control.** "Control" means, with respect to a bank holding company, bank, or bank to be organized under Minnesota Statutes, chapters 46, 47, 48, 300, and parts 2655.0100 to 2655.0600:

A. the ownership, directly or indirectly, or acting through one or more other persons, control of or the power to vote 25 percent or more of any class of voting securities;

B. control in any manner over the election of a majority of the directors; or

C. the power to exercise, directly or indirectly, a controlling influence over management and policies.

Subp. 7. **Commissioner.** "Commissioner" means the commissioner of the Department of Commerce.

Subp. 8. **Community.** "Community" means the area the bank has designated for purposes of compliance with the Community Reinvestment Act of 1977 (12 USC 2901-2905), as being the area that it serves.

Subp. 9. **Community development corporation.** "Community development corporation" is as defined in Minnesota Statutes, section 116M.04.

Subp. 10. **Developmental loans.** "Developmental loans" include the following categories:

A. low and moderate income housing;

B. operating loans for family farmers;

C. loans made in distressed areas;

D. minority- and woman-owned businesses;

E. alternative energy and energy conservation practices;

F. community development corporations;

G. Indian reservations and student education loans; and

H. any other specifically defined class of people, businesses, or projects which meet the standards under Minnesota Statutes, section 645.445, subdivision 5, for socially or economically disadvantaged persons, projects, or businesses.

Subp. 11. **Developmental investments.** "Developmental investments" shall include investments for the following purposes:

A. low and moderate income housing;

B. operating loans for family farmers;

C. loans made in distressed areas;

D. minority- and woman-owned businesses;

E. alternative energy and energy conservation practices;

F. community development corporations;

G. Indian reservations and student education loans; and

H. any other specifically defined class of people, businesses, or projects which meet the standards under Minnesota Statutes, section 645.445, subdivision 5, for socially or economically disadvantaged persons, projects, or businesses.

Subp. 12. **Distressed area.** "Distressed area" is defined to include any area designated as a distressed area under Code of Federal Regulations, title 24, section 570.452 (1986) by the United States Department of Housing and Urban Development.

Subp. 13. **Equity capital.** "Equity capital" means the sum of common stock, preferred stock, surplus, and undivided profits.

Subp. 14. **Family farmers.** "Family farmers" means family farms and family farm corporations as defined in Minnesota Statutes, section 500.24.

Subp. 15. **Investments.** "Investments" means funds or capital extended, contributed, or otherwise invested, but not loaned.

Subp. 16. **Low and moderate income housing.** "Low and moderate income housing" means housing defined as such by any of the following:

A. regulations promulgated by the Farmers Home Administration; and

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.

B. section 8 of the United States Housing Act of 1937, and the regulations promulgated under the act.

Subp. 17. **Minnesota loan.** "Minnesota loan" means loans made to Minnesota residents to be used in Minnesota or loans where the bank has been advised by the borrower that the loan proceeds will be used in Minnesota.

Subp. 18. **Minnesota residents.** "Minnesota residents" are:

A. individuals located within a Minnesota zip code;

B. private profit or nonprofit corporations, or subsidiaries or divisions thereof, located and doing business within Minnesota;

C. profit or nonprofit partnerships, trust, or any form of other business enterprise located and doing business within Minnesota; and

D. any municipality, agency, or other public authority established and operating under the laws of Minnesota.

Subp. 19. **Minority-owned business and woman-owned business.** "Minority-owned business" and "woman-owned business" means any socially or economically disadvantaged person under Minnesota Statutes, section 645.445, subdivision 5. A minority-owned business or woman-owned business must have at least 50 percent of the ownership interest controlled by such disadvantaged class of persons.

Subp. 20. **Net new funds.** "Net new funds" means a net increase in lending, investment and credit involvement brought to Minnesota on behalf of the acquiree as described in the application filed with the commissioner.

Subp. 21. **Relevant market area.** "Relevant market area" includes the standards established by the Federal Reserve Board for evaluation of concentration of financial institution deposits.

2655.0300 APPLICATION.

Subpart 1. **Attachments.** Each application shall include, but not be limited to, the following attachments:

A. A certified copy of the applicant board's resolution authorizing submission of the application and designating the officers authorized to sign it.

B. A copy of the most recent Report of Bank Holding Company Inspection for the applicant. If the applicant is prohibited from releasing this report, it shall file a copy of a written request to the appropriate federal reserve bank requesting delivery of the report to the commissioner.

C. A copy of all invitations, tenders, or advertisements making a tender offer to stockholders for purchase of their stock to be used in connection with the proposed acquisition.

D. A copy of all acquisition agreements, detailing the terms and conditions of any proposed acquisition.

E. An organizational chart of the applicant and its subsidiaries.

F. A copy of the most recent consolidated report of condition and statement of earnings of the applicant.

G. A pro forma balance sheet of the applicant on a consolidated basis both before and after the acquisition.

H. The names and addresses of the anticipated board of directors of the Minnesota bank being acquired by the applicant. If a bank holding company located in Minnesota is being acquired, provide the names and addresses of the anticipated board of directors of the bank's subsidiary located in Minnesota of the bank holding company. If the anticipated board is not known, an explanation of how the directors will be determined must be included.

I. If a bank holding company located in Minnesota is being acquired, list the names and addresses of all of its subsidiaries.

J. Any other exhibit that the commissioner deems relevant to a determination of whether the acquisition will result in a satisfactory level of developmental loans or net new funds.

Subp. 2. **Information.** The application shall include, but not be limited to, the following:

A. The name and address of the applicant.

B. The name and address of the acquiree.

C. The full name of each shareholder who owns or controls ten percent or more of the stock of the acquiree who is tendering its stock.

D. The total number of shares presently held by each shareholder who owns or controls ten percent or more of the stock of the acquiree who is tendering its stock.

E. The total number of shares to be sold or transferred by each shareholder who owns or controls ten percent or more of the stock of the acquiree.

F. The total number of shares to be held by each shareholder of the acquiree who will hold or control ten percent or more of the stock following completion of the proposed transaction.

G. The total number of voting shares authorized by either the acquiree bank or the acquiree bank holding company.

H. The total number of outstanding voting shares of the acquiree.

I. The number of shares involved in this transaction.

J. The total number of shares of the acquiree currently held by the applicant.

K. The total consideration for the proposed transaction.

L. The identity, personal history, business background, and experience of the applicant. If known to the applicant, or any officer or director of the applicant, the identity, personal history, business background and experience of its affiliates, including any material business activities and affiliations during the past five years.

M. A description of any material pending legal or administrative proceeding in which the applicant is a party, and any criminal indictment or conviction of that person by a state or federal court; and, if known by the applicant or any officer or director of the applicant, similar proceedings involving an affiliate of the applicant must be disclosed.

N. A statement of the assets and liabilities of the applicant, as of the end of the calendar year for each of the five years immediately preceding the date of the application, together with related statements of income, sources, and application of funds for each of the calendar years then concluded, all prepared in accordance with generally accepted accounting principles, consistently applied.

O. An interim statement of assets and liabilities of the applicant, together with related statements of income, source, and application of funds as of a date not more than 90 days before the date of the filing of the application.

P. The source and amount of funds or other consideration, except those funds borrowed, to be used in making the acquisition. The applicant should particularly describe any of its assets that are to be liquidated to finance the acquisition.

Q. If any part of the funds or other consideration are to be borrowed for the purpose of making the acquisition, the applicant must describe the collateral to be pledged and the terms of the transaction, including the name of the lender, interest rates, requirements, guarantors, endorsers, and any other arrangements, agreements, and understandings between and among the parties. The application must include copies of any loan commitments obtained from lenders in connection with the proposed acquisition.

R. If borrowed funds are to be obtained, the applicant must indicate the sources of funds for debt service. Additionally, the applicant shall detail the extent to which the applicant intends to rely on dividends and fees or other funds from the bank being acquired for debt servicing requirements.

S. The applicant must identify any person retained or compensated by the applicant, or by any person on the applicant's behalf, to make solicitations or recommendations to stockholders for the purpose of assisting in the acquisition, and a brief description of the terms of any retainer or arrangements for compensation.

T. The applicant must disclose any plans or proposals regarding any partial or full liquidation of the acquiree, of any plans or proposals to sell the acquiree's assets or merge it, or any other major change in the acquiree's business or corporate structure or management.

U. The applicant must describe how the acquisition will bring net new funds, under part 2655.0500, to Minnesota.

V. The application must also disclose how the acquisition will not result in undue concentration of resources or a substantial lessening of competition in Minnesota. The application shall delineate the relevant market area of the bank or banks to be acquired and located in Minnesota. This delineation is to be described by map or drawing showing the other commercial banks and thrift institutions accompanied by a schedule of correspondent current total deposits of each.

W. The applicant shall describe its plan of compliance in providing the developmental loans and investments.

X. The applicant must describe developmental loans or developmental investments as set forth in part 2655.0400.

Y. The commissioner may additionally require other information as may be necessary to determine whether the application should be approved.

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.

2655.0400 DEVELOPMENTAL LOANS.

Subpart 1. **Mandatory factors.** The commissioner shall consider the following factors in determining an acceptable level of developmental loans in the community by an applicant through its acquiree:

A. the level of developmental loans, in terms of number and amount, held by the acquiree at the end of:

(1) its last calendar quarter immediately before the date of the application; and

(2) each of the last two calendar years immediately before the date of application;

B. the projected level of developmental loans, in terms of number and amount, held at the end of each of the next three calendar years from the date of application;

C. any developmental investments for the classifications listed under developmental loans held at the time periods described in items A and B;

D. any developmental loans or developmental investments originated by the acquiree which has or will be participated in or sold to other institutions during the time periods described in items A and B;

E. the acquiree's financial condition at the close of the time periods described in items A and B;

F. the bank's asset quality at the close of the time periods described in items A and B;

G. the economic condition of the community during the time periods described in items A and B;

H. the asset mix of the bank and the socioeconomic makeup of the community in terms of socially and economically disadvantaged persons;

I. the extent of loans made by the acquiree in its Community Reinvestment Act territories during the time periods described in items A and B; and

J. the volume of developmental loans made in the community during the time periods described in items A and B.

Subp. 2. **Permissive factors.** The commissioner may also consider:

A. Any peer group average for developmental loans and investments by similar financial institutions concerning geography, financial condition, asset quality, asset mix, and community reinvestment criteria.

B. Any other material fact or information concerning the appropriate level of developmental loans to be made by the acquiree.

2655.0500 NET NEW FUNDS.

Subpart 1. **Lending, investment, and capital involvement.** In determining whether additional lending, investment, and capital involvement by the acquiree will occur as a result of the application being approved, the commissioner shall consider the following data at the close of each of its last two calendar years, and the close of its most recent calendar quarter before the filing of the application, together with projections of the same data for the close of its next three calendar years:

A. the total deposits of the acquiree;

B. the total loans of the acquiree;

C. the total equity capital of the acquiree;

D. the total Minnesota loans;

E. the total loan-to-asset ratio;

F. the total loan-to-deposit ratio;

G. the total loan-to-equity capital ratio;

H. the total Minnesota loan-to-asset ratio;

I. the total Minnesota loan-to-deposit ratio;

J. the total Minnesota loan-to-equity capital ratio;

K. the total Minnesota loan-to-total loan ratio;

L. the total loan-to-deposit ratio considering only loans made in the acquiree's community; and

M. the total loan-to-deposit ratio considering only loans made outside the acquiree's community.

Subp. 2. **Acquiree; community economic factors.** The commissioner shall also consider:

A. the acquiree's financial condition on the dates described in subpart 1;

B. the acquiree's asset quality on the dates described in subpart 1;

C. the economic characteristics of the community served by the acquiree including, but not limited to, population trends, area use for residential, commercial, industrial, and agricultural purposes, the level of socially and economically disadvantaged persons, families of low and moderate income and low and moderate income housing, and location therein of enterprise zones and distressed areas;

D. the extent of loans and investments made by the acquiree in the community served by it on the dates described in subpart 1; and

E. the initial capital investment of the applicant, and with respect to the acquiree, its loan policy, investment policy, dividend policy, and general plan of business, including the full range of consumer and business services which will be offered.

Subp. 3. **Affiliated banks.** In order to determine whether the applicant will actively participate in the community and in Minnesota, the commissioner shall also consider the following data for each bank affiliated with the applicant at the close of its last two calendar years and at the end of its most recent calendar quarter before the filing of the application:

A. the total deposits of each bank;

B. the total loans of each bank;

C. the total equity capital of each bank;

D. the total loan-to-deposit ratio considering only loans made in the bank's community; and

E. the total loan-to-deposit ratio considering only loans made outside of the bank's community.

Subp. 4. **Additional factors.** The commissioner shall also consider:

A. any peer group averages of other Minnesota banks for market share, loan-to-deposit ratio, net interest spread, return on average assets, return on average equity, net charge offs, capital, and loans for real estate, consumers, financial institutions, farmers, and commercial property;

B. any other material fact or information brought to the commissioner's attention concerning the appropriate level of net new funds; and

C. a business plan as to any lending, investment, bank service, or grant program administered by the applicant, or any affiliate of the applicant, which serves the needs and communities of people defined by the development loan categories of these regulations, accompanied by a statement of how the programs will be applied to the applicant's or applicant affiliate's programs and activities in Minnesota.

2655.0600 NOTICE.

Subpart 1. **Publication.** Within 30 days of the filing of an application, the applicant shall publish a notice of the filing of the application in a newspaper of general circulation within the county in which the bank to be acquired or the proposed bank is located. In addition, the applicant shall mail by certified mail, return receipt requested, notice of the filing of the application to all commercial banks within a three mile radius of the bank to be acquired or located.

Subp. 2. **Proof of publication.** The applicant shall submit to the commissioner a certified publisher's affidavit, including a tear sheet of the publication, setting forth the fact that the publication has been made.

Subp. 3. **Proof of mailing.** The applicant shall file with the commissioner the receipts certifying that the notices were sent by first class mail to the commercial banks located within the three mile radius of the bank to be acquired or located.

Subp. 4. **Content of notice.** The application shall disclose the following:

A. the name and address of the applicant or the applicant's attorney;

B. the name and address of the bank to be acquired or chartered;

C. the date that the application was filed with the department;

D. notice that public comment addressed to the name and address of the commissioner will be accepted for a period of not less than 30 days from the date of publication;

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.

E. that the application to acquire or charter a bank by an interstate bank holding company must establish certain statutory criteria for approval under Minnesota Statutes;

F. that the application, before being approved, must demonstrate that the acquisition of the bank:

(1) will not result in undue concentration of resources or substantial lessening of competition in the locality; and

(2) will bring net new funds into Minnesota;

G. that the application, subject to any limitations imposed by federal or state statutes, is available to members of the public by contacting the commissioner of the Department of Commerce at 500 Metro Square Building, Saint Paul, Minnesota 55101; and

H. any other information that the commissioner deems relevant to a proper disclosure surrounding the facts and circumstances of the acquisition.

Subp. 5. **Format.** The publication required in this part shall by typeset in a format acceptable for the publication of a bank charter application.

Department of Labor and Industry

Proposed Permanent Rules Relating to Fair Labor and Child Labor Standards

Notice of Intent to Adopt Rules without a Public Hearing

Notice is hereby given that the Department of Labor and Industry, Labor Standards Division, proposes to adopt the above-captioned amendments to Minn. Rules, parts 5200.0010-5200.0250 and 5200.0970 without a public hearing. The Department has determined that the proposed adoption of these amendments will be noncontroversial in nature and has elected to follow the procedures set forth in Minn. Stat. Section 14.21-14.28 (1984).

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

A public hearing will be held if 25 or more persons submit written requests for a public hearing on the proposed amendments within the 30-day comment period. If a public hearing is required, the Department will proceed according to the provisions of Minn. Stat. Section 14.131-14.20 (1984). Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed amendments addressed, the reason for the request, and any change proposed.

Comments or written requests for a public hearing should be submitted to:

Steve Keefe
Commissioner, Department of Labor and Industry
5th Floor, Space Center Building
444 Lafayette Road
St. Paul, Minnesota 55101
(612) 296-2342

Authority for the adoption of these amendments is contained in Minn. Stat. Section 177.28 and 181A.12 respectively. A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed amendments, identifies the data and information relied upon to support the proposed amendments and assesses the impact of the proposed amendments on small business and on local public bodies has been prepared and is available from the Commissioner upon request at the above address.

The qualitative, quantitative impact on small business after the adoption of these rules will have no greater effect on small business than already placed on small business by the Legislature in the Minnesota Fair Labor Standards Act and Child Labor Standards Act.

Upon adoption of the final amendments without a public hearing, all jurisdictional documents, the Statement of Need and Reasonableness, all written amendments and requests for hearing received, and the final amendments as adopted, will be delivered to the Attorney General. The amendments will then be reviewed by the Attorney General as to legality and form as it relates to legality, including the issues of substantial change, the agency's authority to adopt the amendments and the existence of a rational basis for the need for and reasonableness of the proposed amendments. Persons who wish to be notified of the submission of this material to the Attorney General, including modifications to the amendments as originally proposed, or who wish to receive a free copy of the final amendments as adopted, should submit a written request to the Commissioner at the above address.

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE

In the Matter of the Rules Relating to Interstate Banking

FINDINGS OF FACT, CONCLUSIONS AND ORDER ADOPTING RULES WITHOUT PUBLIC HEARING

Notice of the Commissioner's Intent to Adopt the above rule was published in the State Register on November 3, 1986 and sent by United States mail to all persons on the list maintained by the Department pursuant to Minnesota statutes, section 14.14, subd. 1a and 14.22 on October 31, 1986. A Statement of Need and Reasonableness was prepared before the Notice of Intent to Adopt Rules Without a Public Hearing was mailed to all persons on the rulemaking list and published in the State Register and was available to the public.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of the proposed rulemaking. No requests for public hearing on the rule were received by the Department. No request for submission to the Attorney General was received by the Department. Based upon the comments and evidence in the record before the Department, I find the following:

That the rule as published is appropriate and requires no modification; and

The above captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as the Interstate Banking Rules is adopted this 19th day of December 1986 pursuant to to the authority vested in me by Minnesota Statutes sections 45.023, 48.93 and 48.99.

MICHAEL A. HATCH
Commissioner of Commerce

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE

In the Matter of the Rules Relating to Interstate Banking

FINDINGS OF FACT, CONCLUSIONS AND ORDER ADOPTING RULES WITHOUT PUBLIC HEARING

Notice of the Commissioner's Intent to Adopt the above rule was published in the State Register on November 3, 1986 and sent by United States mail to all persons on the list maintained by the Department pursuant to Minnesota statutes, section 14.14, subd. 1a and 14.22 on October 31, 1986. A Statement of Need and Reasonableness was prepared before the Notice of Intent to Adopt Rules Without a Public Hearing was mailed to all persons on the rulemaking list and published in the State Register and was available to the public.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of the proposed rulemaking. No requests for public hearing on the rule were received by the Department. No request for submission to the Attorney General was received by the Department. Based upon the comments and evidence in the record before the Department, I find the following:

That the rule as published is appropriate and requires no modification; and

The above captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as the Interstate Banking Rules is adopted this 19th day of December 1986 pursuant to to the authority vested in me by Minnesota Statutes sections 45.023, 48.93 and 48.99.

MICHAEL A. HATCH
Commissioner of Commerce

LAW OFFICES
HESSIAN, McKASY & SODERBERG
PROFESSIONAL ASSOCIATION
4700 IDS CENTER
MINNEAPOLIS, MINNESOTA 55402
(612) 330-3000
TELECOPIER: (612) 330-3060

HAROLD J. SODERBERG
ROLLIN F. WEST
ROLAND D. GRAHAM
ALBERT F. KOSEK
THOMAS E. HARMS
GERALD E. RUTMAN
JAMES A. STEIN
MARK R. MILLER
WILLIAM S. BORCHERS
JEROME M. SODERBERG
DAVID G. RONALD
KEITH D. SIMMONS
SALLY R. V. OLSEN

COUNSEL:
JOSEPH E. OLSON

MAURICE A. HESSIAN, SR. (1888-1956)
MAURICE A. HESSIAN, JR. (1920-1971)

SAINT PAUL OFFICE
730 AMHOIST TOWER
SAINT PAUL, MINNESOTA 55102
(612) 224-4911

WASHINGTON, D. C. OFFICE
SUITE 900, 1275 K STREET N. W.
WASHINGTON, D. C. 20005
(202) 842-3000

330-3003
WRITER'S DIRECT LINE

November 12, 1986

Mr. Michael A. Hatch
Commissioner
Minnesota Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

Dear Commissioner Hatch:

This letter addresses certain issues relating to applications filed by a reciprocating state bank holding company ("interstate applicant") to acquire a Minnesota domiciled bank ("Minnesota bank") under the Reciprocal Interstate Banking Act of 1986; Chapter 339, 1986 Laws of Minnesota ("Act"). These issues include authority of the Commissioner to accept and approve applications during the pendency of rule making for rules governing acquisition procedures under Section 7 of the Act (M.S.A. § 48.93), as well as the timing for publication of a notice by an interstate applicant. The undersigned represents The Marine Corporation, Milwaukee, Wisconsin ("Marine"). Marine is filing an application under the Act to acquire direct control of Community State Agency, Inc. and thus indirect control of Bloomington State Bank of Bloomington, Bloomington, Minnesota.

Rules proposed by the Minnesota Department of Commerce ("Department") to implement Section 7 of the Act were submitted by the Department and published in the State Register on November 3, 1986. These rules were submitted under the Minnesota Administrative Procedures Act ("APA") as rules adopted without public hearing. Rule making without a public hearing is governed by Sections 14.22 to 14.28 of Minnesota Statutes, ("M.S.A.") together with separate procedural rules adopted by those agencies that carry out rule making responsibilities under the above Sections. With respect to Section 7 rules, the agencies include the Department, the Minnesota Attorney General's office, and the Minnesota Revisor of Statutes.

Under M.S.A. § 14.23, the Department must, for at least 30 days following State Register publication, afford all interested persons an opportunity to request a public hearing and to submit

data and views on the proposed rule. With respect to the Section 7 proposed rules, this minimum period expires on or about December 3, 1986. Assuming that 25 or more persons shall not submit to the Department a written request for a public hearing so as to invoke the hearing requirements under M.S.A. §§ 14.14 to 14.20, we assume the Department will promptly submit the proposed rules to the Attorney General for review pursuant to M.S.A. § 14.26. Among other things, the statutory responsibility of the Attorney General is to

> "... approve or disapprove the rule as to its legality and its form to the extent the form relates to legality, including the issue of substantial change, and determine whether the agency has the authority to adopt the rule and whether the record demonstrates a rational basis for the need for and reasonableness of the proposed rule within 14 days." M.S.A. § 14.26.

If the rule is thus approved, the Attorney General shall "promptly" file two copies with the Minnesota Secretary of State who shall then forward one copy to the Revisor of Statutes.

Section 2000.0700 of Chapter 2000 of Minnesota Rules establishes the time period for rule review by the Attorney General. Under Section 2000.0700, subp. 2, the Attorney General cannot approve a rule adopted under M.S.A. §§ 14.22 to 14.28 unless a period of 8 calendar days shall have expired after receipt. This permits time for the Attorney General to receive comments. Assuming the Attorney General approves both the legality and form of the rule within this time frame, there need be only an additional 8 calendars to cover this rule making step rather than the 14 days referenced in M.S.A. § 14.26.

Section 2000.0800 of Minnesota Rules, sets forth standards for review by the Attorney General. Section 2000.0800 sets forth criteria for disapproval; if those criteria are not breached, the rule is approved "as to legality and its form to the extent the form relates to legality" for purposes of rule making under the Minnesota APA. The criteria for disapproval are as follows:

A. The rule has not been promulgated in compliance with the Minnesota APA or other requirements governing promulgation of rules;

B. The rule exceeds the statutory authority conferred or specifically required conditions under an authorizing statute have not been met;

C. The rule conflicts with the governing statute or other relevant law;

D. The rule has no reasonable relationship to statutory purpose; or

E. The rule is unconstitutional or unreasonable.

The final rule making step is governed by M.S.A. §§ 14.27, 14.18, and 14.28. Under M.S.A. § 14.18, the rule is deemed effective 5 working days after notice of adoption in the State Register. Under M.S.A. § 14.28, the rule cannot be published unless the Revisor has certified that the rule is approved "as to form". However, under M.S.A. § 14.08(a), the Attorney General is directed to send a copy of the rule to the Revisor the same day as submitted by the Department to the Attorney General. The Revisor then has five (5) business days to certify the rule or disapprove it. This review period given the Revisor runs concurrent with the 8 calendar day minimum review period given the Attorney General.

Under M.S.A. § 14.07, the scope of the Revisor's review is limited to style and form, whereas the Attorney General, under M.S.A. § 14.26 approves or disapproves the "form to the extent the form relates to legality". In any event, assuming approval by both the Attorney General and Revisor during this concurrent period of review by both, it is clear that the substance, style and form of the rules shall have been approved during that time. The only period remaining is that to accommodate a schedule for publishing in the State Register; no changes should be made to the rule during that final period since all agency approvals have been given as to substance, style and form.

In the context of the foregoing, we offer the following opinion as it relates to the application of Marine to acquire the Community State Agency, Inc. and Community State Bank of Bloomington, Bloomington, Minnesota.

First, that Marine may file a Section 7 application with the Commissioner to acquire the Community State Bank during the pendency of final rule making by the Department to implement Section 7. Moveover, the Commissioner may receive such application for review and processing during this period. There is nothing in the Act, the APA, nor the proposed rules to preclude application filing prior to the final adoption of rules. The proposed rules are procedural rather than legislative in nature; they have been published in proposed form to implement Section 7 application filing, (M.S.A. § 48.93) designated by the Legislature as containing the "Acquisition Procedure" for applications by interstate applicants. Unless changed as the result of

(1) subsequent review by the Attorney General, (2) agency revisions due to comments, or (3) hearing required by request of 25 or more persons, the rules substantively should remain as proposed. Even if such subsequent changes may be in the offing during processing by the Department, the proposed rules address those major procedural areas that must be covered by rules governing applications; namely, the manner of filing, information needs and publication and notice requirements. If any subsequent revisions to the rules require application changes, this can be handled by amendments to the application during the processing period in order to comply with such revisions.

In this regard, the Commissioner has under Section 7, considerable latitude to require additional information. First, he can extend the comment period for an additional 30 days if "in his or her judgment any material information submitted is substantially inaccurate or the acquiring party has not furnished all the information required by subdivision 3 or the commissioner." Second, Section 7 (Subd. 4(5)) provides a basis for disapproval where an application

> "... is incomplete or any acquiring party neglects, fails, or refuses to furnish the Commissioner all the information required by him or her."

All the above, in our view, grants the Commissioner considerable statutory latitude to accommodate any changes to applications necessary as the result of subsequent rulemaking revisions and thus permits the receipt of an application during the pendency of rulemaking. No rights of the applicant or the public is impaired if the Department were to exercise its discretion in this regard.

Second, an interstate applicant has the right to publish notice pursuant to Section 12 (Subd. 2) of the Act (M.S.A. §48.98(2)) concurrent with filing of an application. This publication need not be delayed pending acknowledgment by the Commissioner that the application is informationally complete under Section 7 and the rules implementing that Section.

Section 12, (Subd. 2) provides that:

"(NOTICE) Upon filing of an application (emphasis supplied):
(1) An applicant shall publish in a newspaper of general circulation notice of the proposed acquisition as prescribed by the commissioner by rule;"

The 30 day period for public comment provided under paragraph (3) of Subd. 2, is triggered by either publication made by an

interstate applicant under paragraph (1) or an update by the Commissioner in a departmental bulletin as provided in paragraph (2), whichever event is later.

Although the "bulletin listing" under paragraph (2) is a separate event, it may be assumed the Legislature contemplated this ministerial act to be accomplished almost concurrently with the filing of an application. Otherwise, the rights of an interstate applicant to have the comment period triggered by publication could be unreasonably impaired by the failure of the Department to perform a mechanical act that if carried out expeditiously, does not otherwise impact the substantive authority of the Commissioner to either approve or disapprove an application.

In summary, the Act clearly permits an applicant to publish notice of an application "upon filing". This triggers the comment period together with an internal listing by the Department of application filing.[1] The Legislature provided the Commissioner ample latitude to require informationally sufficient applications and needed processing time despite the right of an applicant to immediately publish "upon filing" and trigger the notice period. This latitude results from the Commissioner's discretion, as noted above, to (1) extend the notice period for an additional 30 days, and (2) to disapprove where an applicant neglects, fails or refuses to furnish sufficient information.

Third, the Commissioner may well have discretion to approve Marine's application after the Attorney General and Revisor review and approve the rules, notwithstanding that State Register publication of the final rules has not yet occurred.[2]

As noted above, under M.S.A. § 14.26, Attorney General approval encompasses full substantive review of the proposed rules under the APA. This includes (1) legality (2) form to the extent it relates to legality (3) the issue of substantial change, (4) determination of agency authority to adopt the rules, and (5) rational basis for need and reasonableness of the rule. Moveover, under his own rules, the Attorney General addresses whether:

---

[1] Proposed rules 2655.0600 of the Deparment does not preclude that right; rather it merely requires publication "within 30 days of filing".

[2] Given current timetables under the A.P.A. based on the November 3, 1986 publication of the proposed rules, it would seem the final rules could be published in the State Register in time to permit the statutory effective date prior to the end of 1986. Nevertheless, we offer the above opinion in the event such effective date does not occur prior to that time because of a delay in final rule publication.

(1) procedural compliance governing rule promulgation has been met, (2) statutory authority has been exceeded or complied with, (3) the rule conflicts with the Act or other relevant law, (4) there is reasonable relationship to statutory purpose, or (5) the rule is unconstitutional or unreasonable.

Assuming Attorney General approval, there can be no further basis upon which substantive change to the rules can be made; rules are in place which govern the determination of whether an application is properly filed, legally sufficient, and publication is appropriate.

The public has been informed through the prescribed notice procedures and the opportunity to comment has been afforded in accordance with the Act. Moreover, the style and form of the rules have been approved by the Revisor to meet the statutory requirements of M.S.A. § 14.28. The only step remaining is the mechanical act of publishing the final rules; the rules cannot be changed during this period to final publication after the foregoing approvals have been given. Rules have been established against which an approval can be given.

The foregoing is against a background that substantive rights have been granted by the Legislature for Minnesota banks to be acquired by an interstate applicant during this period. To delay those rights by a lag in publishing final rules under the A.P.A. where the substantive rules are in fact in place, is not required. With that backdrop, it seems clear that discretion rests with the Commissioner to approve the Marine application once Attorney General and Revisor approvals have been given since the substantive and procedural bases to support an approval, both in the Act and in the rules, have been firmly established. As stated by the Minnesota Supreme Court in Bunge v. Commissioner of Revenue, 305 N.W.2d 779 (1981):

> "Administrative policy may be formulated by promulating rules or on a case-by-case determination. An agency has discretion to decide what method is appropriate in a particular situation."

Very truly yours,

Roland D. Graham

Roland D. Graham

RDG:scg

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Rules Relating to Interstate Banking

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
19th day of December 1986.

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

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Rules
Relating to Interstate Banking

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 10th day of November 1986.

Jane Schaub

Regulation Analyst
Alliance of American Insurers
1501 W[redacted]field Rd., Suite 400 West
Schaum[redacted]g, IL 60195-4980

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

Frederick P. McGarvey
American Insurance Association
230 W. Monroe St.
Chicago, IL 60606

Daniel D. Foth
Associated Builders & Contractors
6989 Washington Ave. So., Suite 200
Edina, MN 55435

Morris J. Anderson, Exec. Dir.
Association of Minnesota Counties
555 Park Street, Suite 300
St. Paul, MN 55103

Gerald G. Dederick, P.A.

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

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

Conrad M. Fredin

811 Norwest Center
Duluth, MN 55802

Rosalie Beck Detmer, Counsel
Central Life Assurance Company
P.O. Box 5099
Madison, WI 53705

Susan J. Ladwig
North Star Policy Associates
114 Metro Square Bldg. 7 & Robert St.
St. Paul, MN 55101

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

Ron Marien

9604 13th Ave. S.
Bloomington, MN 55420

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

Randy Nornes

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

Barbara Weisenbach
Continental American Life Ins Company
P.O. Box 15750
Wilmington, Delaware 19850

Kris Novak

4537 Ridgeview Dr.
Eagen, MN 55123

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

Archibald Spencer

3500 IDS Center
Minneapolis, MN 55402-2213

Norman E. Nelson
Manager, Govt. Affairs Dept.
Crum & Forster Corporation
305 Madison Avenue CN 1932
Morristown, NJ 07960

Reinsurance Association of America
1025 Connecticut Ave., NW,
Washington, D.C. 20036

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

Ford M. Robbins
Robbins & Rashke
5200 Willson Road, Suite 407
Minneapolis, MN 55424

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

Gerard J. Quinn, Asst. Gen'l Coun.
Securities Industry Association
120 Broadway
New York, NY 10271

Ted Burton
Security 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

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, President
State Capitol Credit Union
95 Sherburne
St. Paul, MN 55103

Randall Young
State Planning Agency
101 Capitol Square Building
St. Paul, MN 55101

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

Paul Dwyer, Gen'l Counsel's Office
Title Insurance Company of MN
400 Second Avenue South
Minneapolis, MN 55401

John M. Marshall, V.P. & Chief Coun.
Union Fidelity Life Insurance Co.
4850 Street Road
Trevose, PA 19049

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

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

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

Workers Comp. Reinsurance Assoc.
900 Minnesota Mutual Life Center
400 North Robert Street
St. Paul, MN 55101-2092

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

Jean Dawson
Minn. Government Report
B-12 Pr[redacted] Room, State Capitol
St. Paul, MN 55155

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

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

NIARS Corporation
Three Eighteen West Franklin
Minneapolis, MN 55404

John G. Horner
Minnesota Multi Housing Assn.
4740 Park Glen Road
Minneapolis, MN 55416

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

Minn. Petroleum Council
386 N. Wabasha, Suite 1025
St. Paul, MN 55102

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

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

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

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

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

Mary Miranowski, Exec. Dir.
Minn. State Builders Assoc.
1410 Energy Park Dr. #6
St. Paul, MN 55108-5296

Lois A. Hout, Asst Gen'l Coun & VP
Orion Group - Law Division
9 Farm Springs Dr.
Farmington, CT 06032

Abe Rosenthal, Pres.
Minn. Transport Services Assn.
1821 University Ave. (Suite N310)
St. Paul, MN 55104

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

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

Peter S. Popovich

1300 Amhoist Tower
St. Paul, MN 55102

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

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

Robert L. Z[redacted]eman, Asst. Couns.
Natl. Assoc. of Ind. Insurers
2600 River Road
Des Plaines, IL 60018-3286

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

William R. Anderson, Counsel
Natl. Assoc. of Life Underwriters
1922 F Street, NW
Washington, D.C. 20006-4387

Karen Koast
Dean Witter Reynol[redacted] Inc.
Compliance Dept.
5 World Trade Center, 4th Floor
New York, NY 10048

C. Warren Coulter, Asst. Dir.
Dept. of Land Registration
P.O. Box 569
Bentonville, AR 72712

Jeffrey A. Redmon
Doherty, Rumble & Butler
Professional Association
East 1500 First Nat'l Bank Bldg.
St. Paul, MN 55101

Dominic J. Sposeto
Dominic Sposeto & Associates
2824 Irving Avenue S.
Minneapolis, MN 55408

Robert Aich
Equity Adjustment Co.
236 West Larpenteur Avenue
St. Paul, MN 55113

Fireman's Fund Emp. Ins. Co.
Contracts Department
Green Bay, WI 54344

Joyce Bulleri
Frank B. Hall & Co. of CA
1550 W. Fremont, P.O. Box C
Stockton, California 95201-3003

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

Peggy Jacobs
IDS Financial Serv., Inc. - Unit 53
IDS Tower
Minneapolis, MN 55474

Norbert A. McCrady
Independent Bankers of Minn.
7850 Metro Pkway., Suite 211
Bloomington, MN 55420

Rudy D. Broyles, CPCU
Insurance Services Office, Inc.
111 North Canal Street
Chicago, IL 60606

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

Susan Burgess
Invest[redacted] Company Institute
1600 M[redacted]eet NW
Washington, DC 20036

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

Maryanne Hruby, Exec. Director
LCRAR
Rm. 55, State Office Building
St. Paul, MN 55155

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

Kathleen M. Kellerman
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

Gary K. Thaden
MN Asbestos Abatement Contract Assn
766 Transfer Road
St. Paul, MN 55114

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

Thomas Houser, Managing Sec'y.
Minnesota Insurance Guaranty Association
4640 West 77th Street Suite 342
Edina, MN 55435

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

MN Motor Transport &
Permit Carriers Assn.
1821 University Ave., Room 134N
St. Paul, MN 55104

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Rules Relating to Interstate Banking

ORDER FOR NOTICE OF INTENT TO ADOPT RULES WITHOUT PUBLIC HEARING

IT IS ORDERED this 24th day of October 1986 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

LAW OFFICES
HESSIAN, McKASY & SODERBERG
PROFESSIONAL ASSOCIATION
4700 IDS CENTER
MINNEAPOLIS, MINNESOTA 55402
(612) 330-3000
TELECOPIER: (612) 330-3060

HAROLD J. SODERBERG
ROLLIN F. WEST
ROLAND D. GRAHAM
ALBERT F. KOSEK
THOMAS E. HARMS
GERALD E. RUTMAN
JAMES A. STEIN
MARK R. MILLER
WILLIAM S. BORCHERS
JEROME M. SODERBERG
DAVID G. RONALD
KEITH D. SIMMONS
SALLY R. V. OLSEN

COUNSEL:
JOSEPH E. OLSON

MAURICE A. HESSIAN, SR. (1888-1956)
MAURICE A. HESSIAN, JR. (1920-1971)

SAINT PAUL OFFICE
730 AMHOIST TOWER
SAINT PAUL, MINNESOTA 55102
(612) 224-4911

WASHINGTON, D. C. OFFICE
SUITE 900, 1275 K STREET N. W.
WASHINGTON, D. C. 20005
(202) 842-3000

330-3003
WRITER'S DIRECT LINE

October 30, 1986

Richard G. Gomsrud
Department Counsel
State of Minnesota
Department of Commerce
500 Metro Square Bldg.
St. Paul, Minnesota 55101

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
OCT 31 1986

Dear Mr. Gomsrud:

This refers to our recent conversation regarding the October 21, 1986 draft of the Interstate Banking Rules scheduled for publication in the State Register on November 3, 1986. As I indicated, there appears to be certain editorial corrections that can be made to make the rules consistent with the intent expressed at the October 17, 1986 meeting in Commissioner Hatch's office. These suggested changes, which are inserted on the enclosed copy of the October 21, 1986 draft, are as follows:

1. Section 2655.0200; Subp. 4 - The phrase "...(alternate) conservation loans..." should be changed to read "...<u>energy</u> conservation loans...". This is consistent with the definition contained in Section 14 of Chapter 339. Additionally, Subp. 10E and 11E of Section 2655.0200 should contain parallel language.

2. Section 2655.0300; Subp. 1, V - The word "correspondent" appearing before "current total deposits" should either be deleted, or changed to read "corresponding". Otherwise, this might be interpreted to mean "correspondent" interbank balances as ordinarily understood in the industry rather than a schedule of the relative deposits of other commercial banks and thrifts in the relevant market area.

3. Section 2655.0500 Net New Funds, Subp. 2.C. - The paragraph still contains a reference to "enterprise zones". However, there is no definition of enterprise zones in the rules; the definition in earlier drafts was deleted.

4. Section 2655.0500 Net New Funds, Subp. 4.C. - With reference to a business plan of applicant "or any affiliate of applicant", the reference to "affiliate" is misleading. Although intended to cover any lending, investment, bank service or grant program by another subsidiary or affiliated entity of an applicant, the word "affiliate" under the rules is defined rather to only mean a 10% or more shareholder. Therefore the sentence now is misleading and inconsistent with the intent. In this regard, we suggest that (1) the phrase "or any affiliate of applicant" be revised to read "or any entity directly or indirectly controlled by applicant" and (2) the phrase "or appliance affiliate's programs and" be deleted.

   Moveover, we note that this paragraph, although in the net new funds section, is limited to "developmental loan categories". It was our understanding that any such business plan was meant to include all credit activities of applicant in Minnesota whether or not in the developmental loan categories. Therefore, we suggest that the phrase "defined by the developmental loan categories of these regulations" be deleted.

Your consideration would be most appreciated.

Very truly yours,

Roland D. Graham

RDG/scg

cc: James G. Miller
Thomas Boyer
Samuel Chase

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of Rules Relating to Interstate Banking	CERTIFICATE OF COMPLIANCE WITH RULEMAKING PROCEDURES

I, do hereby declare that I have examined the 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. Any exceptions are noted below.

_____
Special Assistant Attorney General

Dated:

Signed original coming from Charlie Wheelins separately

Notice of Intent

Missing: "no comment encouraged" sentance

"no withdraw request" comment

Marty made a comment "de minimus"

I do not know what it means.

Authority

45.023 ~~in~~ in accordance w/ Ch 14 ok

48.93 no such statute

48.99 " " "

Minn laws 339 § 14, § 7 Subd 3(9)

Rule

p8 Line 6-8

"The ~~Commissioner~~ Commissioner may additionally require other information as may be necessary to determine..."

p9 Line 9 the Com. may also Consider

p12 Line 29 "any other information the Commissioner deems relevant"

Declaration of Betty - a signed one is coming from Charles Wilkins.

LAW OFFICES
HESSIAN, McKASY & SODERBERG
PROFESSIONAL ASSOCIATION
4700 IDS CENTER
MINNEAPOLIS, MINNESOTA 55402
(612) 330-3000
TELECOPIER: (612) 330-3060

HAROLD J. SODERBERG
ROLLIN F. WEST
ROLAND D. GRAHAM
ALBERT F. KOSEK
THOMAS E. HARMS
GERALD E. RUTMAN
JAMES A. STEIN
MARK R. MILLER
WILLIAM S. BORCHERS
JEROME M. SODERBERG
DAVID G. RONALD
KEITH D. SIMMONS
SALLY R. V. OLSEN

COUNSEL:
JOSEPH E. OLSON

MAURICE A. HESSIAN, SR. (1888-1956)
MAURICE A. HESSIAN, JR. (1920-1971)

SAINT PAUL OFFICE
730 AMHOIST TOWER
SAINT PAUL, MINNESOTA 55102
(612) 224-4911

WASHINGTON, D. C. OFFICE
SUITE 900, 1275 K STREET N. W.
WASHINGTON, D. C. 20005
(202) 842-3000

330-3003
WRITER'S DIRECT LINE

October 15, 1986

Michael A. Hatch
Commissioner of Commerce
Department of Commerce
State of Minnesota
500 Metro Square Building
St. Paul, Minnesota 55101

State of Minnesota
OCT 15 1986
Department of Commerce

Dear Commissioner Hatch:

The undersigned and representatives of The Marine Corporation, Milwaukee, Wisconsin, have reviewed the third draft of the proposed Interstate Banking Rules sent with your letter of October 10, 1986. We offer the following comments and proposed revisions for consideration at the October 17, 1986 meeting scheduled for 9:00 a.m.

We again point out our position that information pertaining to developmental loan categories should not appropriately be a part of application requirements under Section 7 of the Reciprocal Interstate Banking Act (Act). The views set forth in my September 5, 1986 letter, and Mr. Gannon's September 11, 1986, letter are reaffirmed in this letter. Therefore, our comments concerning "developmental loan" information requirements, relate only to the annual reporting and rating requirements of Section 11 of the Act, and the criteria for approving new state bank charters under Section 1.

With respect to specific sections contained in the third draft, we offer the following comments:

II. Definitions:

A. As used in this rule:

16. "Minnesota Loan". We believe an Applicant will often have difficulty in confirming when loan proceeds will be used in Minnesota, or where substantially all the benefits from the loan will

"occur" in Minnesota. We suggest that if a loan is made to a Minnesota Resident, it can be readily assumed its main purpose is for the primary benefit of the Minnesota borrower, whether an individual or a business enterprise. Therefore, we would recommend striking all language after "Minnesota residents."

III. Application:

A. Attachments:

3. We recommend the requirements be limited to the making of "tender offers" - this will parallel the statutory language in Section 7, subd. 3(7) of the Act.

10. The reference to "developmental loans" should be stricken.

B. Information:

12. We believe that the reference to "affiliates" in the current text should be stricken. The following additional sentence could be added:

"Similar information involving an affiliate of the Applicant must be disclosed where known by the Applicant or any officer due to public disclosure under any Federal or State law."

13. We would suggest the last sentence be revised in the form suggested for paragraph 12, above.

21. We strongly urge that the following language, contained in the September 25, 1986 draft, be reinserted:

"'Loanable funds' and 'loan' or 'loans' shall include (1) all loans to, or investments with Minnesota Residents originated by Acquiree, whether held, sold in the secondary market, or which Acquiree has sold participations, (2) all loans to, or investments with, Minnesota Residents guaranteed by agencies or instrumentalities of the United States or the State of Minnesota, and (3) all loans to, or investments with, Minnesota Residents directly held or originated by subsidiaries in which

Applicant holds direct or indirect control and which is located or does business within the State of Minnesota."

It is our understanding at the last meeting, that this was acceptable as it relates to a description of net new funds in Section 7 application rules.

23,24. We believe paragraphs 23 and 24 should be stricken since they relate solely to "developmental loan" data not appropriate in Section 7 application rules.

IV. Developmental Loans: As it may relate to rules developed for annual reporting and rating requirements under Section 11 of the Act, we recommend that the following language be substituted in paragraph A.4.

A. Mandatory Factors:

4. "For purposes of the foregoing, developmental loans and developmental investments shall include (1) all loans to and investments with Minnesota Residents originated by such bank whether held, sold in the Secondary Market, or in which the bank has sold participations, (2) all loans to and investments with Minnesota Residents guaranteed by agencies or instrumentalities of the United States or the State of Minnesota, and (3) all loans to and investments with Minnesota Residents held by or originated through a subsidiary in which an interstate bank holding company has direct or indirect control and is located or does business in the state of Minnesota."

V. Net New Funds:

A. In paragraph A we suggest the following language for the introductory paragraph:

"In determining whether the acquisition proposal will describe the availability of net new funds to Minnesota under Paragraph B.21 of Section III, the Commissioner shall consider the following data as set forth at the close of each of its last two fiscal years, and the close of its most recent calendar quarter prior to the filing of the application, together with estimated projections of the same data for the close of its next three fiscal years prepared under the economic assumptions set forth in the plan of business submitted by Applicant under said Paragraph B.21."

We firmly believe that requiring data with respect to acquiree loans categorized by its CRA territory is beyond the requirements of the Act and will add an informational burden not relevant to approval criteria contained in Section 7, Subd. 4. Section 7 of the Act focuses on the availability of "net new funds" to the State of Minnesota as a result of an interstate acquisition; there is no statutory reference to CRA territories. Therefore, we recommend that subparagraphs 12 and 13 of Section V.A. be deleted since they require a breakdown of loan data by an acquiree's CRA area.

We do understand the concern that you have some basis upon which to evaluate past and future performance of an acquiree in its own community, as well as Minnesota as a whole. CRA performance by an acquiree is assessed by Federal Banking agencies under the Community Reinvestment Act of 1977, and such record should be available to the Commissioner as a result of the CRA assessment by such agencies. This assessment, including ratings established under the Federal 5 category CRA uniform rating system for Federal agencies, should provide a sound basis upon which such an evaluation can be made without the need to superimpose additional state evaluation systems on an applicant and the acquiree. This can be combined with information provided by an applicant in its plan of business as to the financial services to be provided in meeting the convenience and needs of the acquiree's community.

Consequently, we suggest the following language for subparagraph V.B.4 in substitution of the current proposed language:

B. The Commissioner shall also consider:

4. The record of acquiree's performance in its Community as evaluated by the appropriate Federal Banking agency under the Community Reinvestment Act of 1977, together with those services applicant and acquiree will offer in the community under the plan of business submitted by applicant pursuant to paragraph III.B.21.

C. We believe that Paragraph C of Section V, which requires applicants to provide data with regard to assets, loans and capital of existing subsidiary banks -- regardless of location -- for various dates, should be eliminated. It requires

information that is of doubtful relevance, may be very costly to collect, and would, in some cases, impose a substantial analytical burden on the staff of the Commission.

Although some data required in Paragraph C are readily available from bank call reports, the figures relating to loans in the CRA territories of subsidiary banks are not. The Community Reinvestment Act does not require banks to gather or report such information. Submission of data required by items 4 and 5 of Paragraph C would generally require an applicant to generate new information. In the case of the Marine Corporation the cost of meeting this requirement -- even with approximate numbers -- would be very substantial. Marine banks have more than 145,000 loans. A rough estimate indicates that some 2,000 worker-hours would be required simply to gather the basic data necessary to prepare the requisite estimates for Marine's banking subsidiaries. This does not count time spent designing the research, overseeing it, or providing computer support. Given the magnitude of the effort, there would be a significant delay in filing an application.

The burdens on the staff of the Commission would not be light. In the case of Marine, which has 22 banking subsidiaries, a complete response to Paragraph C would consist of 190 separate data items. One illustration of the potential difficulties of interpreting such data is given by considering the fact that most of Marine's banks located in larger urban areas and some banks in rural areas as well, have merged with other banks since the end of 1984, the first date for which figures would be required. for each of these banks the data would somehow have to be adjusted to take into account the mergers. In addition, economic and demographic developments in each of the 22 banks' trade areas would need to be factored into any meaningful analysis of these data.

Other parts of Section V require much more relevant information concerning net new funds for Minnesota. Both the preparation of responses to these requirement requests by applicants, and the analysis of these responses, will themselves require substantial commitments of resources, and should not

be diluted by a diversion of resources into collecting, presenting and analyzing categories of information relevant to a reciprocating State (in this case Wisconsin) and of very questionable relevance to the Minnesota application process. Moreover, it is not required or otherwise referenced as a part of Section 7 or any other part of the Act.

VI. Notice:

D. We believe the word "Notice" should be substituted for "Application" in the heading.

We hope the foregoing comments are helpful toward the development of a final draft prior to publication of the rules.

Very truly yours,

Roland D. Graham

Roland D. Graham

RDG:scg

cc: Richard G. Gomsrud
Department of Commerce

DEPARTMENT : of Commerce

PHONE : 296-5689

STATE OF MINNESOTA

Office Memorandum

DATE :

TO : Martha Carnely
Special Assistant Attorney General

FROM : Richard G. Gomsrud
Department Counsel

SUBJECT : Interstate Banking Rules

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

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

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

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

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

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

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

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

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

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

(10.) Findings of Fact (if applicable) (2000.0400 subpart 1 F) See #14

~~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).

Please call when review is concluded.
I'd like to expedite as much as possible