

1 Department of Commerce

2

3 Adopted Permanent Rules Relating to Interstate Banking

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5 Rules as Adopted

6 2655.0100 APPLICABILITY AND SCOPE.

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

11 2655.0200 DEFINITIONS.

12 Subpart 1. **Scope.** As used in parts 2655.0100 to
13 2655.0600, the following terms have the meanings given them.

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

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

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

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

26 Subp. 6. **Control.** "Control" means, with respect to a bank
27 holding company, bank, or bank to be organized under Minnesota
28 Statutes, chapters 46, 47, 48, 300, and parts 2655.0100 to
29 2655.0600:

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

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

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

1 controlling influence over management and policies.

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

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

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

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

- 13 A. low and moderate income housing;
- 14 B. operating loans for family farmers;
- 15 C. loans made in distressed areas;
- 16 D. minority- and woman-owned businesses;
- 17 E. alternative energy and energy conservation
18 practices;
- 19 F. community development corporations;
- 20 G. Indian reservations and student education loans;
- 21 and
- 22 H. any other specifically defined class of people,
23 businesses, or projects which meet the standards under Minnesota
24 Statutes, section 645.445, subdivision 5, for socially or
25 economically disadvantaged persons, projects, or businesses.

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

- 29 A. low and moderate income housing;
- 30 B. operating loans for family farmers;
- 31 C. loans made in distressed areas;
- 32 D. minority- and woman-owned businesses;
- 33 E. alternative energy and energy conservation
34 practices;
- 35 F. community development corporations;
- 36 G. Indian reservations and student education loans;

1 and

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

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

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

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

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

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

21 A. regulations promulgated by the Farmers Home
22 Administration; and

23 B. section 8 of the United States Housing Act of
24 1937, and the regulations promulgated under the act.

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

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

30 A. individuals located within a Minnesota zip code;

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

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

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

3 Subp. 19. **Minority-owned business and woman-owned business.**

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

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

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

18 2655.0300 APPLICATION.

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

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

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

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

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

35 E. An organizational chart of the applicant and its

1 subsidiaries.

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

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

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

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

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

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

23 A. The name and address of the applicant.

24 B. The name and address of the acquiree.

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

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

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

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

1 transaction.

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

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

6 I. The number of shares involved in this transaction.

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

9 K. The total consideration for the proposed
10 transaction.

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

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

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

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

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

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

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

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

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

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

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

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

1 schedule of correspondent current total deposits of each.

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

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

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

9 2655.0400 DEVELOPMENTAL LOANS.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

18 2655.0500 NET NEW FUNDS.

19 Subpart 1. Lending, investment, and capital involvement.

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

27 A. the total deposits of the acquiree;

28 B. the total loans of the acquiree;

29 C. the total equity capital of the acquiree;

30 D. the total Minnesota loans;

31 E. the total loan-to-asset ratio;

32 F. the total loan-to-deposit ratio;

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

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

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

- 1 J. the total Minnesota loan-to-equity capital ratio;
2 K. the total Minnesota loan-to-total loan ratio;
3 L. the total loan-to-deposit ratio considering only
4 loans made in the acquiree's community; and
5 M. the total loan-to-deposit ratio considering only
6 loans made outside the acquiree's community.

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

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

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

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

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

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

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

34 A. the total deposits of each bank;

35 B. the total loans of each bank;

36 C. the total equity capital of each bank;

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

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

5 Subp. 4. Additional factors. The commissioner shall also
6 consider:

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

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

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

22 2655.0600 NOTICE.

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

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

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

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

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

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

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

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

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

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

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

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

23 (2) will bring net new funds into Minnesota;

24 G. that the application, subject to any limitations
25 imposed by federal or state statutes, is available to members of
26 the public by contacting the commissioner of the Department of
27 Commerce at 500 Metro Square Building, Saint Paul, Minnesota
28 55101; and

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

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