

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed
Rules Relating to Reciprocal
Interstate Branching by Savings
and Loan Associations

Statement of Need
and Reasonableness

I. INTRODUCTION

The proposed rules establish the procedures and requirements for savings and loan associations operating under state law to acquire ownership or control of associations in states other than Minnesota on a basis equivalent to those applicable to banks under the Reciprocal Interstate Banking Act.

II. STATEMENT OF STATUTORY AUTHORITY

1) The Minnesota Department of Commerce proposes to adopt as permanent rules Minn. Rules Parts 2660.0010 to 2660.0110 under the provisions of Section 51A.58 Minnesota Statutes 1988.

III. STATEMENT OF NEED

2) Minn. Stat. Ch. 14 (1988) requires the Commissioner of Commerce to make an affirmative presentation of facts establishing the need for and reasonableness of the rules being proposed. In general terms, this means that the Commissioner must set forth the reasons for the Department's proposal, and the reasons must not be arbitrary or capricious. However, to the extent that need and reasonableness are separate, need has come to mean that a problem exists which requires administrative attention, and reasonableness means that the solution proposed by the Commissioner is appropriate.

3) Minn. Stat. § 51A.58 requires the Commissioner of Commerce to adopt rules to provide that procedural requirements equivalent to those contained in Minn.

Stat. §§ 48.90 to 48.991 apply to reciprocal interstate branching and acquisitions by savings and loan associations.

4) As a result, these rules are necessary to the implementation of the statutory authority before any savings and loan association in this state or reciprocating state as defined by Minn. Stat. § 48.92, subdivision 7, may make application to seek approval to make interstate acquisitions.

5) Because the enabling law, Section 51A.58, does not in and of itself provide procedures, only the authority and identification of the institutions authorized to participate in such conduct, these rules must detail each of the definitions, the acquisition procedure whether an existing institution or new institution is to be acquired, enforcement of violations, supervisory authority of Commissioner, basis for reporting requirements, public participation in the process and identification of other factors applicable to banks under the Reciprocal Interstate Banking Act.

6) Separate application and approval requirements of the Reciprocal Interstate Banking Act necessitated permanent rule making by the Commissioner of Commerce which has been accomplished and predate these proposed rules. Minn. Rules parts 2655.0100 to 2655.0600, Department of Commerce/Interstate Banking, were adopted to implement the application and approval process for banks only. Therefore, these proposed rules also include equivalent rules as apply to savings and loan associations.

III. STATEMENT OF REASONABLENESS

7) The Commissioner is required by Minn. Stat. Ch. 14 to make an affirmative presentation of the facts establishing the reasonableness of the proposed rules. Reasonableness is the opposite of arbitrariness or capriciousness. It means there is a rational basis for the Department's proposed action. In general,

it is reasonable for the Commissioner in following the statutory mandate to adopt language, requirements and include the full scope of those rules adopted previously for banks under the Interstate Reciprocal Banking Act.

8) In adopting such predecessor and general statutory provisions from Minn. Stat. sections 48.90 to 48.991, it is reasonable to make changes in terminology in these proposed rules consistent with that used in the regulation of savings and loan associations as opposed to banks only.

9) In adopting such predecessor and germane rules, it is reasonable to make changes in terminology in these proposed rules consistent with that used in the regulation of savings and loan associations and recognize the differences that exist between the stock and mutual forms of organization.

10) In adopting such predecessor and germane statutory provisions and rules, it is reasonable to make modifications where operating and structural differences between banks and savings and loan associations is such to make mere reflective language absurd and unworkable.

IV. DEFINITIONS

11) All definitions in this subpart 2660.0020 are derived from Minn. Stat. § 48.92, Minn. Rules 2655.0200 and Minn. Stat. § 51A.58 as they relate to interstate branching or Chapter 51A relating to savings associations. Where terms from Minn. Stat. § 48.92 and Minn. Rules 2655.0200 related to banks, "association," "savings association," "savings and loan association" or "savings bank" were substituted as defined.

V. ACQUISITION PROCEDURE

12) Provisions of these subparts 2660.0030 are derived from Minn. Stat. § 48.93 as they relate to interstate bank acquisition application and approval requirements.

Where terms related to banks, appropriate terms consistent with the operations and regulatory relationships of savings associations were substituted. Subparts 3 and 4 are derived from Minn. Rule 2655.0300, Application, as they relate to attachments and information to be included in savings association applications based on the equivalent procedure in place for banks.

13) Subparts 5 and 6, Disapproval and Appeals, are derived from Minn. Stat. § 48.93, subd. 4 and 5, as they were enacted in 1986 relating to banks.

VI. NEW ASSOCIATIONS

14) The provisions of Minn. Stat. § 48.94 have been restated as Part 2660.0040 without change to similarly authorize acquisition of a newly formed association and limiting such acquisitions on a de novo basis to one based on the equivalent authority and procedure in place for banks.

VII. VIOLATIONS

15) The provisions of Minn. Stat. § 48.95, subd. 1 and 2, have been restated as Part 2660.0050 without change as they were enacted in 1986 relating to banks.

VIII. SUPERVISION

16) The provisions of Minn. Stat. § 48.96 have been restated as part 2660.0060 without change as it was enacted in 1986 relating to banks.

IX. REPORTS

17) Reporting requirements found in Minn. Stat. § 48.97, subdivision 1, have been restated as Part 2660.0070 without substantial change as it relates to bank holding companies and periodic reports made to federal agencies, including the Federal Home Loan Bank and/or Securities and Exchange Commissions.

18) Reporting and ratings required in connection with banks in Minn. Stat. § 48.97, subd. 2, 3 and 4 are not included in these proposed rules. Minn. Rules Parts 2655.0700 to 2655.1300 relating to the reporting and rating of interstate financial institutions have been proposed and adopted to include savings associations and embody the detail and requirements in the statutory language omitted.

X. PUBLIC PARTICIPATION

19) The availability of information and notice requirements for public input into the application procedure included in Minn. Stat. § 48.98 is repeated in these proposed rules as Part 2660.0080 without material change.

XI. DEVELOPMENTAL LOANS

20) The requirements and considerations applicable to banks meeting the regulatory test for an adequate plan to make development loans and investments as it applies to banks has been repeated from Minn. Stat. § 48.991 and Minn. Rules 2655.0400 without material change.

XII. NET NEW FUNDS

21) The requirements and considerations applicable to banks meeting the net new funds regulatory test for an adequate plan for capital or loan to deposit improvement standards as they apply to banks have been repeated from Minn. Stat. § 48.93, subd. 3(8) and Minn. Rule 2655.0500, subparts 1, 2, 3 and 4 without substantial change.

XIII. NOTICE

22) The provisions of Minn. Rules Part 2655.0600 as they relate to public notice of pending application by banks is repeated in these proposed rules as Part 2660.0110 without material change.

XIV. INTERSTATE BRANCHING

23) Commenters on the proposed rules focused on the lack of authority or procedure in the proposed rules for the interstate acquisition of offices to be operated as branches. Minn. Stat. § 51A is entitled "Interstate Branching" and reference is made to the establishment of branches in this state by acquisition, merger, purchase and assumption of some or all of the assets or liabilities or consolidation. While this is evident in the statutory language, an overriding consideration is the statutory instructions to the Commissioner for the promulgation of the rules in Minn. Stat. § 51A.58. Specifically, it states that the rules shall be the procedural equivalent to those for banks. That is, banks and savings associations would have equivalent application, approval and reporting requirements. Based on this level playing field premise, these rules only provide procedures and approval for acquisitions at the holding company level for savings associations. Reinforcement for this determination of rule making authority is found in Minn. Stat. § 48.90, subd. 3, which refers to the overall legislative intent of the enabling act to prohibit the establishment of branches of banks unless the banking subsidiary acquired maintains a principal place of business in Minnesota. Therefore, for purposes of these rules, the interstate branching comments were rejected.