

**STATE OF MINNESOTA
Department of Commerce**

**In the Matter of the Proposed
Rule Relating to the Regulation
of Securities and Financial Planners**

**STATEMENT OF NEED
AND REASONABLENESS**

STATEMENT OF AUTHORITY

Minnesota Statute §80A.25, subdivision 1, gives the Commissioner of Commerce (hereinafter "Commissioner") authority to "from time to time make, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of Minnesota Statute §80A.01 - 80A.31..." These rules are proposed pursuant to that authority and the authority granted to the Commissioner under Minnesota Statute §45.023 "to adopt, amend, suspend, or repeal rules...whenever necessary or proper in discharging the Commissioner's official responsibilities."

The Commissioner finds the proposed amendments necessary and appropriate in the public interest and consistent with the purposes fairly intended by the policies and provisions of chapters 45 and 80A.

HISTORY

In 1985, rules regulating the business of financial planning were adopted in Minnesota. The rules were intended to provide consumers with information concerning the background of "financial planners" to the extent that such persons were regulated by the Department of Commerce in the insurance, real estate or securities areas. The original rules set forth disclosure requirements for financial planners to reduce or eliminate potential bias that could exist when a planner counsels others as to the advisability of purchasing a product for which the planner will earn a commission. The purpose of the rules was to give the client sufficient information to make an informed decision about the advice rendered by the planner.

Over the years, the Commissioner has been advised of problems experienced by persons working in the securities areas in trying to comply with certain provisions of Minnesota Rules Part 2875.1051. In response to this information, the department published a Notice of Solicitation of Outside Opinion for the consideration of amendments to the rule. This notice appeared in the State Register on Tuesday, July 6, 1993. After reviewing all comments as to the effect of Part 2875.1051 on the day-to-day operations of persons licensed under Minnesota Statutes chapter 80A, the Commissioner authorized the proposed amendments to Minnesota Rules Part 2875.1051. The Notice of Intent to Publish Rules Without a Hearing will appear in the State Register on August 9, 1993.

FACTS ESTABLISHING NEED AND REASONABLENESS

The proposed amendments to the financial planner rule relate to the Department of Commerce's regulation of securities broker dealers, agents, investment advisors and investment advisor representatives. The amendments are not intended to change the information to be

received by the client of a financial planner. Rather, the changes reflect recognition that the way in which the disclosure process is structured under the current rules does not work effectively with the business practices of persons in the securities area.

Part 2875.1051 subpart 2 has been changed to alleviate the need for a broker/dealer or its agent, investment advisor or representative to obtain a signature on the disclosure document. The main purpose of the rules as originally adopted was to ensure that a client received the disclosure of pertinent information about the financial planner. One way to prove that the disclosure was made is to have the client sign the document. In other regulated industries, it is customary to have in-person meetings to discuss and conclude the transactions. Obtaining a client's signature on the disclosure document in these transactions is relatively easy. However, with respect to securities transactions, evidence was presented to the department that a significant number of transactions take place by phone or in ways other than across the table. This can make obtaining signatures on disclosures a burdensome task.

Although the proposed amendment to the rules eliminates the client signature requirement, the rule under subpart 2 would now require that a record of the disclosure be maintained for three years. The broker-dealer, as the party with ultimate responsibility over the agent, will need to implement some procedures to show compliance with the rules to take the place of the client's signature. This change accommodates the business practices of the securities financial planner, while continuing to protect the consumer in accordance with the original intent of Part 2875.1051. Of course, the financial planner could continue to have the client sign the disclosure document, if he or she so chooses. The requirement to maintain the record for three years establishes a clear statement of what is already required under Minnesota Statutes §80A.23.

Subpart 2 under the proposed amendments would require a copy of the disclosure to be mailed or delivered to the client "when an account is opened." Since broker-dealers and agents do not always meet personally with clients, it was difficult to "leave a copy with the client" and thus comply with the rules as currently written. The change to this provision establishes a more precise time for delivery of the disclosure document. This will benefit the broker-dealer and the client, as they will have a clearer idea of what the rule requires.

Subpart 2 has also been amended to allow a licensed broker-dealer to mail the disclosure document to the client on behalf of its agent. Both federal law and Minnesota statutes establish high levels of responsibility for the broker-dealer in supervising the activities of its agents, investment advisors and their representatives. This unique relationship creates a significant interest on the part of the broker-dealer to make sure that its agents, advisors and representatives are complying with the law. In view of the business practices by which securities transactions are frequently made by telephone, it would be more difficult for the broker-dealer to ensure that proper disclosures are being made to clients of its agents and advisors. Consequently, the public policy of adequate disclosure to clients would be advanced by allowing broker-dealers to provide the required disclosure document to the clients.

Clause B under subpart 2, Part 2875.1051 has been amended to more accurately describe the relationship between the financial planner and the sources of the products or services being offered. There is no substantial change in the information that is being disclosed to the client. The amendments to Clause B clarify that the disclosure must identify company names and the names of affiliate companies. This will encourage the planner to be more specific about the entity that issues the products or services being offered by the financial planner. In doing so, these client will be in a position to see the interest of the planner in promoting products of the

companies he or she represents.

Clause C of subpart 2, Part 2875.1051 has been changed for practical reasons. Since the disclosure statement might now come from the broker-dealer on behalf of the financial planner, the term "I" is not appropriate. The language added to Clause C identifies more specifically the title used by the financial planner and that he or she is the one assigned to that client's account. The amendment is not a substantial change in the disclosure to the client.

Subpart 3 of Part 2875.1051 establishes an exemption that is consistent with other exemptions found in federal and state securities laws. Subpart 3 would eliminate the requirement for a financial planner to deliver the disclosure document to an institutional investor, as defined under Minnesota Statutes §80A.15 subdivision 2(g). It is commonly recognized that such investors are sophisticated enough and participate in enough securities transactions to understand the role of the financial planner and the process by which the planner is compensated (i.e., by commission.) The application of the disclosure requirement to such investors is of no value, and only results in burdensome and unnecessary work for the financial planner and/or its broker-dealer. Consequently, the exemption is needed and reasonable.

The purpose of the rules in their entirety is to give the client sufficient information to evaluate the advice being given by the financial planner. The amendments being proposed do not change the information that will be received by the client. The amendments are intended to make it easier for the financial planner to comply with the disclosure requirements, thus affording greater protection to consumers.

SMALL BUSINESS CONSIDERATIONS

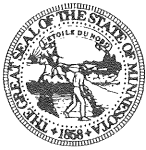
The department believes that some financial planners will fall within the definition of a small business. Accordingly, in regard to compliance with Minnesota Statutes §14.115, the impact on small businesses was considered at each and every stage, and in regard to every requirement.

Proposed amendments to the rule were discussed and approved by industry representatives. The changes were initiated based upon industry representatives identifying certain procedures associated with the rules as burdensome to the business activities. The establishment of any less restrictive performance standards or schedules for small businesses, as identified under clauses (a) through (e) of Minnesota Statutes §14.115 subdivision 2 would be contrary to the public policy underlying the rules--to provide adequate disclosure to clients. The amendments being proposed will reduce burdens on small businesses and will be less restrictive than current rules.

Date: 7/30/93



Bert J. McKasy
Commissioner of Commerce



OFFICE OF THE COMMISSIONER

STATE OF MINNESOTA

DEPARTMENT OF COMMERCE

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August 3, 1993

Legislative Commission to Review Administrative Rules
55 State Office Building
100 Constitution Avenue
St. Paul, MN 55155
ATTN: Michelle

Re: Proposed Rules Relating to Financial Planners

Dear Michelle:

Pursuant to Minnesota Statutes Section §14.23 we enclose a copy of the Statement of Need and Reasonableness for the proposed rules relating to Financial Planners.

Should you have any questions about these rules, please call me at 297-1118.

Sincerely,

BERT J. McKASY
Commissioner of Commerce

By:

Donna M. Watz
Staff Attorney

DMW:joc

The Legislative Commission to
Review Administrative Rules

AUG 5 1993

