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January 16, 2009

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Dear Librarian:

I am writing to notify you that the Department of Commerce intends to adopt rules related to securities regulation. The *Notice of Intent to Adopt Rules Without a Public Hearing* will be published in the STATE REGISTER on January 20, 2009. To comply with MINN. STAT. § 14.23 (2008), I have enclosed along with this letter a copy of the associated statement of need and reasonableness.

I encourage you to contact me directly if you have any comments or inquiries related to these proposed rules.

Sincerely,

A handwritten signature in black ink that reads 'Brett L. Bordelon'. The signature is written in a cursive, flowing style.

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enclosure: statement of need and reasonableness

MINNESOTA DEPARTMENT OF COMMERCE

Statement of Need and Reasonableness

Chapter 2876—Securities Rules

INTRODUCTION

Before the federal government's enactment of the Securities Act of 1933 and the Securities Exchange Act of 1934 ("1933 Act" and "1934 Act," respectively), persons investing in securities were protected only by the states' so-called Blue Sky laws. In fact, some states' Blue Sky laws predated the 1933 and 1934 Acts by a decade or two. Minnesota, for example, adopted its first Blue Sky laws in 1917. However, the perceived need for securities laws that would be more consistent from state to state led to the drafting of the Uniform Securities Act of 1956 ("1956 Act") by members of the National Conference of Commissioners on Uniform State Laws ("NCCUSL"). In 1973, Minnesota adopted a modified version of the 1956 Act. Eventually, thirty-seven states enacted some version of the 1956 Act.

However, the National Securities Markets Improvement Act of 1996 ("NSMIA") and the Securities Litigation Uniform Standards Act of 1998 ("SLUSA") partly preempted the 1956 Act and, therefore, Minnesota's securities laws. Largely because of NSMIA and SLUSA, members of NCCUSL drafted the Uniform Securities Act of 2002 ("2002 Act"), which updated and revised the 1956 Act. In 2006, the Minnesota State Legislature repealed the existing securities laws in *Minnesota Statutes* §§ 80A.01-31 ("predecessor act") and replaced them with a modified version of the 2002 Act, which is now codified at *Minnesota Statutes* §§ 80A.40-90 ("Minnesota Securities Act"). It became effective on August 1, 2007. Administration of the Minnesota Securities Act is—just as administration of the predecessor act was—part of the duties and responsibilities entrusted to the Commissioner of Commerce ("Commissioner").

NSMIA and SLUSA also preempted many of the rules promulgated pursuant to the predecessor act. In addition, the Minnesota Securities Act set securities regulation in Minnesota on a new course. Before it, the Minnesota Department of Commerce ("Commerce") performed a so-called merit review of any securities offering required to be registered here in Minnesota. After it, Commerce's scope of review of such offerings became narrower. Many rules became obsolete as a result of this transition from merit review to so-called disclosure review. Thus, an important objective of this rulemaking effort has been identifying all of the preempted and obsolete rules promulgated pursuant to the predecessor act and deciding whether and how to update them.

On the other hand, another important objective of this rulemaking effort has been maintaining regulatory consistency. Thus, some of these proposed rules are nearly verbatim versions of the rules promulgated pursuant to the predecessor act.

Finally, Commerce also tried to balance the importance of regulatory consistency over time within Minnesota with the goal of uniformity in state and federal regulatory standards. Thus, for example, the proposed rules governing investment advisers that are not subject to federal regulation are based on the model rules adopted by the North American Securities Administrators Association ("NASAA") whose United States members are state securities

administrators. In contrast, the proposed rules governing broker-dealers subject to state and federal regulation are based on rules and regulations adopted by the Securities and Exchange Commission (“SEC”) and the Financial Industry Regulatory Authority (“FINRA”), a national securities association registered pursuant to the 1934 Act.

To conclude this introductory section, Commerce believes the following table will aid the public by (a) identifying each law in the Minnesota Securities Act requiring a rule to implement or make specific that law; (b) providing a brief summary of the matter(s) to be addressed by the rule; and (c) identifying the proposed rule(s), if any, implementing or making specific the law so identified. The proposed rules that are not associated with a law requiring a rule to implement it or make it specific will provide the general rulemaking provision’s citations in the first column, § 80A.82(a) for the Minnesota Securities Act and § 605 for the 2002 Act.

Section (Minnesota Securities Act; 2002 Act)	Purpose of Rule	Proposed Rule
Section 80A.41—DEFINITIONS		
80A.41(3); 102	individuals excluded from definition of “agent”	
80A.41(5)(C); 102	exclusion from definition of broker-dealer for depository institutions that engage only in certain specified activities	2876.1020
80A.41(5)(E); 102	persons excluded from definition of “broker-dealer”	
80A.41(12)(P); 102	additional persons included in definition of “institutional investor”	
80A.41(16)(H); 102	additional persons excluded from definition of “investment adviser”	
80A.41(17)(D); 102	additional persons excluded from definition of “investment adviser representative”	
80A.82(a); 605	provide citation for Regulation D	2876.1021
Section 80A.42—REFERENCES TO FEDERAL STATUTES		
80A.82(a); 605	specify effective date applicable to federal and state authorities incorporated by reference in proposed rules	2876.1030
Section 80A.44—ELECTRONIC RECORDS AND SIGNATURES		
80A.44; 105	authorize the filing of records and signatures in manner consistent with ESGNCA	

Section (Minnesota Securities Act; 2002 Act)	Purpose of Rule	Proposed Rule
Section 80A.45—EXEMPT SECURITIES		
80A.45(3)(C); 201	specify when to deny, suspend application of, condition, limit, or revoke this exemption for securities issued or guaranteed by certain depository institutions	
80A.45(6); 201	specify securities markets such that securities listed or approved for listing on those markets are exempt securities	
Section 80A.46—EXEMPT TRANSACTIONS		
80A.46(2)(D); 202	provide transactional exemption for a nonissuer transaction involving securities held for at least 90 days beforehand as long as specified information about the issuer of the securities sold in the transaction is contained in certain designated nationally recognized securities manuals	2876.2020
80A.46(13)(D); 202	specify persons to whom offer or sale of securities is exempt transaction	
80A.46(17)(B); 202	requirements for solicitation of interest to preserve exemption for offer to sell security in registration under Minnesota Securities Act	
80A.46(23); 202	designate for exemption reporting issuer in a foreign jurisdiction whose securities are being sold in nonissuer transaction	
80A.46(23); 202	designate for exemption foreign jurisdiction's securities exchange on which foreign reporting issuer's security is listed	
80A.46(23); 202	revoke designation of foreign jurisdiction's securities exchange (see next preceding row)	
80A.46(25)(A); 202	require information from cooperative organized under the laws of another state	
80A.46(25)(B); 202	define "patron membership"	
80A.46(25)(B)(ii); 202	require information from 308B cooperative to preserve exemption for sale of securities other than those issued as patronage dividends	

Section (Minnesota Securities Act; 2002 Act)	Purpose of Rule	Proposed Rule
80A.82(a); 605	specify factors to be considered in determining what constitutes a “single issue” under the § 80A.46(14) transactional exemption	2876.2021
Section 80A.47—ADDITIONAL EXEMPTIONS AND WAIVERS		
80A.47; 203	exempt other securities, transactions, or offers	
Section 80A.50—FEDERAL COVERED SECURITIES; SCOR		
80A.50(a)(1); 302	specify records required to satisfy notice filing requirements for offering of § 18(b)(2) federal covered securities	2876.3020
80A.50(a)(2); 302	specify records required to renew notice filing	2876.3020
80A.50(a)(3); 302	specify records required to satisfy notice filing requirements for offerings involving § 18(b)(2) and § 18(b)(4) federal covered securities	2876.3020
80A.50(b)(4); 302	designate when SCOR registration becomes effective	
80A.50(b)(5); 302	specify filings required for small corporate offerings	2876.3021
Section 80A.51—SECURITIES REGISTERED BY COORDINATION		
80A.51(b)(2); 303	require specimen, copy, or description of the security	
80A.51(c)(2); 303	designate period for registration statement to be on file	
Section 80A.52—SECURITIES REGISTERED BY QUALIFICATION		
80A.52(b); 304	require certain information and records listed in § 80A.52(b)(1)-(17) to be contained in a registration statement	2876.3040
80A.52(b)(18); 304	require any additional information and/or records for registration (required language in registration statement for intrastate offerings)	2876.3041
80A.52(c); 304	specify when registration becomes effective	

Section (Minnesota Securities Act; 2002 Act)	Purpose of Rule	Proposed Rule
80A.52(e); 304	require prospectus with specified content to be sent or given to each person to whom an offer is made	2876.3042
Section 80A.53—SECURITIES REGISTRATION FILINGS		
80A.53(e); 305	require certain securities (like cheap stock) to be deposited in escrow	
80A.53(e); 305	specify conditions of escrow (see next preceding row)	
80A.53(f); 305	specify form of subscription or sale contract as condition of registration	
80A.53(f); 305	specify period to preserve signed or conformed copy of contract (see next preceding row)	
80A.53(h); 305	require the person that filed the registration statement to file ongoing reports	
Section 80A.56—BROKER-DEALER REGISTRATION REQUIREMENT AND EXEMPTIONS		
80A.56(b)(1)(H); 401	specify additional persons exempt from the registration requirement	
80A.56(d); 401	permit certain foreign transactions	
Section 80A.57—AGENT REGISTRATION REQUIREMENT AND EXEMPTIONS		
80A.57(b)(11)(D); 402	specify standards of conduct and additional information to be filed by agents of issuers exempt from the broker-dealer registration requirement when representing an issuer in certain exempt transactions	2876.4020
80A.57(b)(12); 402	specify individuals exempt from the registration requirement	
80A.57(e); 402	authorize affiliations among broker-dealers or issuers on whose behalf an agent may act	2876.4021
Section 80A.58—INVESTMENT ADVISER REGISTRATION REQUIREMENT AND EXEMPTIONS		
80A.58(b)(1)(D); 403	specify class of clients investment adviser can transact business with to trigger registration exemption	

Section (Minnesota Securities Act; 2002 Act)	Purpose of Rule	Proposed Rule
80A.58(b)(3); 403	specify additional persons exempt from the registration requirement	
Section 80A.60—FEDERAL COVERED INVESTMENT ADVISER NOTICE FILING REQUIREMENT		
80A.60(b)(1)(D); 405	specify class of clients federal covered investment adviser without place of business in Minnesota can transact business with to trigger notice filing exemption	
80A.60(b)(3); 405	specify additional persons exempt from the notice filing requirement	
80A.60(c); 405	require certain records to be filed by federal covered investment advisers in order to satisfy notice filing requirement	2876.4050
Section 80A.61—REGISTRATION BY BROKER-DEALER, AGENT, AND INVESTMENT ADVISER		
80A.61(a); 406	designate CRD/IARD to receive and store registration-related filings by (1) broker-dealers and agents representing broker-dealers (CRD) and (2) investment advisers (IARD)	2876.4060
80A.61(c); 406	specify filings required and effective dates for investment adviser registrations, broker-dealer, and broker-dealer agent registrations	2876.4061; 2876.4062
80A.61(d); 406	specify records that, when filed, automatically renew registration	
80A.61(e); 406	impose additional conditions for registration	
Section 80A.62—SUCCESSION AND CHANGE IN REGISTRATION OF BROKER-DEALER OR INVESTMENT ADVISER		
80A.62(d); 407	specify requirements for change of control of a broker-dealer or investment adviser	
Section 80A.63—TERMINATION OF EMPLOYMENT OR ASSOCIATION OF AGENT AND TRANSFER OF EMPLOYMENT OR ASSOCIATION		
80A.63(e); 408	require the registration be terminated or the application denied when registrant/applicant no longer in existence or acting as registrant	
Section 80A.64—WITHDRAWAL OF REGISTRATION OF BROKER-DEALER, AGENT, AND INVESTMENT ADVISER		

Section (Minnesota Securities Act; 2002 Act)	Purpose of Rule	Proposed Rule
80A.64; 409	specify time when application to withdraw becomes effective	
Section 80A.65—FEES AND EXPENSES		
80A.65, subd. 3; 410	designate amendments to existing registration requiring an order of the administrator	2876.4100
80A.82(a); 410	define “promptly remedied” for purposes of rectifying late payment or underpayment of fees	2876.4101
Section 80A.66—POSTREGISTRATION REQUIREMENTS		
80A.82(a); 605	specify conditions under which broker-dealers or agents may accept proceeds from a distribution	2876.4110
80A.66(a); 411	establish minimum financial requirements for investment advisers and establish net capital requirements for broker-dealers	2876.4112
80A.66(b); 411	require investment advisers with custody and/or discretionary authority over client funds or securities to file certain financial reports	2876.4113
80A.66(c)(1); 411	require broker-dealers and investment advisers to make and preserve certain books and records	2876.4114
80A.66(c)(3); 411	specify investment adviser records required to be kept (see next preceding row) and form of data storage	
80A.66(e); 411	require investment advisers with custody or discretionary authority over client funds or securities to post a bond or letter of credit	2876.4115
80A.66(f); 411	specify standards of conduct for investment advisers with custody of securities or funds of a client	2876.4116
80A.66(g); 411	require investment advisers to furnish certain information to (prospective) clients—brochure rule	2876.4117
80A.66(h); 411	require agents to participate in a continuing education program	
Section 80A.67—DENIAL, REVOCATION, SUSPENSION, WITHDRAWAL, RESTRICTION, CONDITION, OR LIMITATION OF REGISTRATION		

Section (Minnesota Securities Act; 2002 Act)	Purpose of Rule	Proposed Rule
80A.67(e); 412	examination and experience requirements for broker-dealers, agents representing broker-dealers, and investment advisers	2876.4120
Section 80A.69—PROHIBITED CONDUCT IN PROVIDING INVESTMENT ADVICE		
80A.82(a); 605	specify standards of conduct for broker-dealers	2876.5021
80A.69(c); 502	specify the contents of an investment advisory contract entered into, extended, or renewed by an investment adviser	2876.5022
80A.69(b); 502	specify standards of conduct for investment advisers	2876.5023
80A.82(a); 605	specify standards of conduct for persons engaged in business of financial planning	2876.5024
80A.69(b); 502	regulate use of senior-specific designations	2876.5025
Section 80A.71—FILING OF SALES AND ADVERTISING LITERATURE		
80A.71(a); 504	require the filing of advertising records relating to a security or investment advice, addressed or intended for distribution to prospective investors	
Section 80A.82—RULES, FORMS, ORDERS, INTERPRETATIVE OPINIONS, AND HEARINGS		
80A.82(a); 605	blanket rulemaking authority	
80A.82(c); 605	specify accounting rules to be used for preparation of financial statements filed under chapter 80A	2876.6052
Section 80A.83—ADMINISTRATIVE FILES AND OPINIONS		
80A.83(c); 606	establish a reasonable charge for furnishing a public record or certifying that a public record does not exist	
Section 80A.84—PUBLIC RECORDS; CONFIDENTIALITY		

Section (Minnesota Securities Act; 2002 Act)	Purpose of Rule	Proposed Rule
80A.84(b)(6); 607	specify when certain records must be determined to be nonpublic or nondisclosable by the administrator's designee	
Section 80A.88—SERVICE OF PROCESS		
80A.88(a); 611	specify form to be used when filing a consent to service of process	2876.6110

ANALYSIS

According to § 14.23, the SONAR must include the analysis required by § 14.131.

◀ § 14.131 Analysis—Items (1)-(7) ▶

In particular, the SONAR must include the following information to be ascertained by Commerce through reasonable efforts:

- 1) *a description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule*

The classes of persons affected by the proposed rules are the classes of persons required to register and provide notice filings under the Minnesota Securities Act; persons issuing securities; persons reselling securities; and investors in securities.

The classes of persons required to register and provide notice filings are broker-dealers, agents, investment advisers, and federal covered investment advisers. Although the proposed rules would not create any new fees for these classes of persons, they would bear the costs of compliance with the rules. Similarly, persons issuing and reselling securities would bear the costs of compliance with the rules. One proposed rule modifies the predecessor act's fee for offerings undertaken pursuant to Rule 506 of Regulation D. Its impact is discussed below in item (2).

The proposed rules are intended to ensure and improve the orderliness of capital markets and fairness in securities-related transactions, outcomes that benefit regulated persons, issuers, persons reselling securities, and investors alike.

- 2) *the probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues*

The proposed rules would not implement any new securities-related programs to be administered by Commerce, which would be materially different from the programs currently administered by Commerce. It is true that one of the proposed rules, part 2876.4020, creates a new filing requirement for certain agents of issuers—so-called finders—but the cost of implementing this new program will be negligible.

On the other hand, certain filing requirements imposed by rules promulgated pursuant to the predecessor act have been eliminated, like, for example, part 2875.2380 requiring

broker-dealers to file annual reports. In addition, dozens of merit review-related rules promulgated pursuant to the predecessor act will be eliminated. Elimination of these rules will likely decrease the amount of time devoted to examination of registration statements. Thus, on balance, Commerce does not expect any increased costs related to implementation of the proposed rules.

Likewise, the standards of conduct and other requirements imposed by the proposed rules on registrants, issuers, or resellers of securities will not materially curtail or expand Commerce's current enforcement duties. Thus, Commerce does not foresee any significant change in its enforcement costs because of the proposed rules.

With respect to other agencies, Commerce does not foresee any new cost to them that would be attributable to these proposed rules.

Last, the proposed rules' impact on state revenues will be neutral, except for the modest increase expected from the revised fee for offerings undertaken pursuant to Rule 506 of Regulation D. The fee under the predecessor act was \$50; the fee created by part 2876.3020 would be from \$100 to \$300, depending on the maximum aggregate offering price at which the securities are to be offered in Minnesota. Using the average of the number of such notice filings received in FY 2006-2007 (1,414) and FY 2007-2008 (1,255), Commerce expects to receive approximately 1,335 filings in FY 2008-2009. The increase in revenue would range from \$66,750 to \$333,750.

3) *a determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule*

Optimal securities regulations maximize the protection of investors and minimize burdens imposed on the business of capital formation. Unfortunately, it will generally be impossible to determine when a regulation would have this desired optimal outcome or even if a regulation *could* have such an optimal outcome.

However, state and federal securities regulations have been in effect for several decades now. And these regulations reflect regulators' responses to the complicated and rapid development of our capital markets. One measure of optimal regulatory design, therefore, is determining whether a given regulation is implemented by other jurisdictions. The enormous losses to investors in 2008 because of fraudulent schemes and the distressed state of the capital markets made plain that, to the extent there was a regulatory consensus on how to prevent fraud and preserve orderly markets, such a consensus was no guarantee of an optimal regulatory outcome.

Nevertheless, the Minnesota Securities Act states that, when formulating rules, the Commissioner must "take into consideration in carrying out the public interest the following general policies:

- (1) maximizing effectiveness of regulation for the protection of investors;
- (2) maximizing uniformity in federal and state regulatory standards; and
- (3) minimizing burdens on the business of capital formation, without adversely [a]ffecting essentials of investor protection."

Minnesota Statutes § 80A.85(b)(1)-(3); *id.* § 80A.85(c)(9). The foregoing general policies effectively set forth the standards for measuring the costliness and intrusiveness

of rules promulgated pursuant to *Minnesota Statutes* chapter 80A. In addition, many of the proposed rules are effectively verbatim restatements of rules promulgated pursuant to the predecessor act—i.e. rules that have already been subjected to the rigors of the rulemaking process under *Minnesota Statutes* chapter 14. Each such proposed rule will be identified in the following list with a citation to the now-repealed part corresponding to it. The other proposed rules in the following list will contain a brief explanation of why they are optimal in the sense just discussed.

- 2876.1020** harmonizes Minnesota’s exclusion from the definition of broker-dealer for depository institutions with the federal exclusion in 15 U.S.C. § 78c(a)(4)(B).
- 2876.1021** merely provides a citation for Regulation D, federal regulations governing certain private placements. A similar rule, part 2875.0145, was promulgated pursuant to the predecessor act.
- 2876.1030** merely specifies the effective date applicable to federal and state authorities incorporated by reference into the proposed rules.
- 2876.2020** is an updated version of part 2875.0145, which was promulgated pursuant to the predecessor act. The update merely reflects a change in the name of certain manuals (now Mergent Manuals but formerly known as Moody’s Manuals).
- 2876.2021** harmonizes Minnesota’s standard for determining when multiple offerings pursuant to § 80A.46(14) should be “integrated” with the federal integration standard under Regulation D, 17 C.F.R. § 230.502(a). The proposed rule does include a technical deviation from Rule 502’s five-factor integration test designed to reflect the Minnesota Supreme Court’s recent analysis of this test in *Risdall v. Brown-Wilbert, Inc.*, 753 N.W.2d 723 (Minn. 2008).
- 2876.3020** specifies records required to satisfy notice filing requirements for offerings involving 1933 Act §§ 18(b)(2) and 18(b)(4) federal covered securities, namely, securities issued by registered investment companies and securities involved in a Rule 506 offering, respectively. This rule makes specific current agency requirements, and these requirements are sanctioned by NSMIA as codified at 15 U.S.C. § 77r(c)(2).
- 2876.3021** specifies filings required for small corporate offerings and makes specific what is already an agency requirement. The form required by this part, Form U-7, was a form adopted by NASAA in 1989 and was later adopted by the SEC in 1989 for Regulation A offerings. NASAA revised Form U-7 in 1999, but the revised version was not adopted by the SEC. Minnesota, like many other states, requires the revised form. Bear in mind that the “U” in U-7, like the other forms mentioned in this SONAR with that prefix, stands for “uniform.”
- 2876.3040** requires certain information and records to be contained in a registration statement. This rule is consistent with the current agency requirements. The form to be used is the Form U-1, a form used by many other states.

- 2876.3041** provides important investor protections by requiring certain disclosures in a registration statement for intrastate offerings. These disclosures were also required by part 2875.0570.
- 2876.3042** provides important investor protections by requiring delivery of a prospectus to each person to whom an offer is made. This requirement appeared in part 2875.2390, subp. 1.
- 2876.4020** is a new rule creating a form to be filed by finders. It is merely a notice filing and will not impose an undue burden on the class of persons affected by the rule.
- 2876.4021** clarifies what it means for broker-dealers to be affiliated by direct common control for purposes of determining on whose behalf an agent representing a broker-dealer may act, just as part 2875.1560 did.
- 2876.4050** makes specific what is already an agency requirement by setting forth in detail what records must be filed by federal covered investment advisers in order to satisfy the notice filing requirement. This requirement is sanctioned by NSMIA as codified at 15 U.S.C. § 80b-3a Note.
- 2876.4060** designates CRD and IARD as the depositories for registration-related filings by (1) broker-dealers and agents representing broker-dealers (CRD) and (2) investment advisers (IARD). CRD and IARD were created and are administered by the National Association of Securities Dealers (“NASD,” now FINRA), and these depositories are used as well for federal registration-related filings by broker-dealers, their associated persons, investment advisers, and investment adviser representatives. Also, these depositories are the designees to receive such filings for many other states.
- 2876.4061** specifies the registration-related filings required for investment advisers. By way of brief background, NSMIA created what states refer to as federal covered investment advisers, investment advisers registered with the SEC under 15 U.S.C. § 80b-3. Generally, investment advisers with assets under management of not less than \$25,000,000 must register with the SEC; those with less must register with states requiring such investment advisers to register. Thus, investment advisers with less than \$25,000,000 of assets under management are not subject to federal regulation.
- This part merely makes specific the current agency requirement that investment advisers must file a uniform application (Form ADV), which is used by many other states. This part is also one of the revised model investment adviser rules adopted by NASAA in 2008.
- 2876.4062** specifies the registration-related filings required for broker-dealers and their agents. Unlike investment advisers, broker-dealers and agents representing broker-dealers are jointly regulated by the states, FINRA, and the SEC. This part merely makes specific current agency practice, which requires broker-dealers and their agents to file a uniform application that is used by many other states and also for federal registrations.

- 2876.4100** designates amendments to existing registration requiring an order of the administrator, just as part 2875.0420 did.
- 2876.4101** defines “promptly remedied” for purposes of giving registrants an opportunity to rectify late payment or underpayment of fees. This part is also one of the revised model investment adviser rules adopted by NASAA in 2008.
- 2876.4110** provides important investor protections by specifying conditions under which broker-dealers or agents may accept proceeds from a distribution, just as part 2875.0930 did.
- 2876.4112** establishes minimum financial requirements for investment advisers who have custody of or discretionary authority over client funds or securities. Subparts 1-9 are largely taken from a NASAA model investment adviser rule and are similar to current agency requirements.
- This part also establishes net capital requirements for broker-dealers. However, because of NSMIA, any state laws establishing capital, custody, margin, financial responsibility, books and records, bonding, or financial or operational reporting requirements for broker-dealers are preempted to the extent they differ from the federal requirements. 15 U.S.C. 78o(h)(1). Accordingly, this part incorporates by reference the federal regulation governing net capital requirements for broker-dealers.
- 2876.4113** requires investment advisers with custody or discretionary authority over client funds or securities to file certain financial reports. This proposed rule is one of the NASAA model investment adviser rules.
- 2876.4114** requires investment advisers to make and preserve certain books and records and relies extensively on the federal books and records requirements imposed on federal covered investment advisers. This part is one of the NASAA model investment adviser rules and is largely consistent with and adds to the current agency requirements as set forth in part 2875.2300.
- This part also governs broker-dealers, and it incorporates by reference the federal regulations governing the books and records for broker-dealers.
- 2876.4115** requires investment advisers with custody or discretionary authority over client funds or securities to post a bond or letter of credit. This part is one of the NASAA model investment adviser rules and is largely consistent with current agency requirements as set forth in part 2875.1930.
- 2876.4116** provides important investor protections by specifying standards of conduct for investment advisers with custody of securities or funds of a client. This part is one of the NASAA model investment adviser rules and is largely consistent with and adds to the current agency requirements as set forth in part 2875.1020.
- 2876.4117** provides important investor protections by requiring investment advisers to furnish certain information to (prospective) clients. This part is one of the NASAA model investment adviser rules and is largely consistent

with and adds to the current agency requirements as set forth in part 2875.1010.

2876.4120 makes specific current examination and experience requirements for broker-dealers, agents representing broker-dealers, and investment advisers as generally set forth in part 2875.1910.

2876.5021 provides important investor protections by specifying standards of conduct for broker-dealers and adds to the current agency requirements as set forth in part 2875.0910. Aiming for uniformity, this proposed rule incorporates by reference the federal regulations and FINRA rules specifying broker-dealer standards of conduct.

2876.5022 provides important investor protections by specifying the required contents of an investment advisory contract entered into, extended, or renewed by an investment adviser. This part is one of the NASAA model investment adviser rules and is largely consistent with and adds to the current agency requirements as set forth in part 2875.1010.

2876.5023 provides important investor protections by specifying standards of conduct for investment advisers. This part is one of the NASAA model investment adviser rules.

2876.5024 specifies standards of conduct for persons engaged in the business of financial planning. It is a nearly verbatim copy of part 2875.1051.

2876.5025 provides targeted protection of senior investors by regulating the use of senior-specific designations. This part is a NASAA model rule adopted in 2008, which is nearly identical to the National Association of Insurance Commissioners' model regulation governing the use of senior-specific designations, which was also adopted in 2008.

2876.6052 specifies the accounting rules to be used for preparation of financial statements filed under chapter 80A and is consistent with current agency requirements as set forth in part 2875.0950.

2876.6110 specifies the form to be used when filing a consent to service of process, the U-2. This form is used by many states and appeared in full in part 2875.9950.

If a **repealed rule** was promulgated pursuant to the predecessor act but was not proposed to be repromulgated in this rulemaking effort, then Commerce determined that such a rule was either obsolete, preempted, or unnecessary.

In sum, it is reasonable to conclude that ample consideration went into determining whether the proposed rules are the least costly and least intrusive methods for (1) maximizing the effectiveness of regulation for the protection of investors; (2) maximizing uniformity in federal and state regulatory standards; and (3) minimizing burdens on the business of capital formation, without adversely affecting essentials of investor protection of the proposed rule.

- 4) *a description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule*

Maximizing uniformity in federal and state regulatory standards is one of the guiding policy objectives for this rulemaking effort. That is, the search for alternatives is *discouraged* as a matter of policy. Moreover, these proposed rules are not novel regulations. They represent the culmination of countless judgments by state and federal securities regulators. For example, part 2876.3040 requires certain information to be contained in a registration statement. The purpose of this part is to ensure that investors receive adequate disclosure about a registered offering. Of course, what constitutes adequate disclosure is debatable, but the importance of adequate disclosure is not. Thus, deciding on what the rule should require for adequate disclosure was very seriously considered, but the alternative, caveat emptor, was not. So generally, the proposed rules were selected to maximize—not stray from—regulatory uniformity and consistency.

the probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals

Commerce does not believe that compliance with the proposed rules would significantly increase regulated persons' current compliance costs, because the proposed rules would not require any significant changes in the conduct or practices of regulated persons from the conduct and practices required by the present scheme of securities regulation. In fact, the proposed rules would actually decrease compliance costs for some regulated persons. For example, part 2876.4120 creates a new exemption from the examination requirement for supervisory/control persons of investment advisers who have certain professional designations.

- 5) *the probable costs or consequences of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of government units, businesses, or individuals*

It is not reasonably possible to estimate the actual costs of not adopting the proposed rules, but not doing so would be tantamount to abandoning nearly a century of regulatory wisdom; subjecting investors to known, avoidable risks; and impeding Commerce's ability to enforce the securities laws and protect Minnesota investors.

- 6) *an assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference*

As explained in item (3), ample consideration was given to drafting the proposed rules with an eye toward achieving uniformity in federal and state regulatory standards. The interaction of these proposed rules with federal laws are briefly summarized in the immediately following paragraphs that discuss the federal laws applicable to each class of persons subject to the proposed rules.

Broker-dealers and agents representing broker-dealers: Under the proposed rules, broker-dealers and their agents must register through CRD. These persons must register through CRD according to FINRA rules as well. And, as explained in item (3), because of NSMIA, any state laws establishing capital, custody, margin, financial responsibility, books and records, bonding, or financial or operational reporting requirements for

broker-dealers are preempted to the extent they differ from the federal requirements. Accordingly, any proposed rule dealing with any such matters incorporates by reference the federal regulation governing it. The standards of conduct are largely derived from SEC and FINRA rules and regulations as well. However, Minnesota, like many other states, does require a state-level examination as a condition for registration. The relevant state exams were developed by NASAA and are accepted by all states. One of the important objectives of these state-level uniform exams is to test registrants on the principles of state securities regulation reflected in the Uniform Securities Act.

Agents representing issuers: For certain agents representing issuers otherwise exempt from the registration requirement, part 2876.4020 imposes standards of conduct. One could roughly map these standards of conduct to content in SEC No-Action Letters, but Commerce is unaware of any federal law expressly requiring such standards. Nevertheless, the limitations imposed on such agents' activities and the required disclosures are worthwhile investor protection regulations.

Investment advisers and federal covered investment advisers: States have exclusive regulatory jurisdiction over investment advisers with assets under management with less than \$25,000,000 of value. Thus, there is no federal regulatory counterpart to the proposed rules governing such investment advisers.

However, under NSMIA, states retain fraud-related regulatory jurisdiction over federal covered investment advisers. Thus, any proposed rule regulating federal covered investment advisers expressly acknowledges that the rule applies to federal covered investment advisers only to the extent permitted by NSMIA.

Also, under the proposed rules, investment advisers must register through IARD. Federal covered investment advisers must register through IARD according to SEC rules as well.

Issuers and resellers of securities: All of the proposed rules in this category with federal regulatory counterparts are not materially different, except, perhaps, Minnesota's historical and proposed approval of the 1999 version of Form U-7 for small corporate offerings in contrast to the SEC's approval of only the 1989 version. In effect, the 1999 version accomplished two useful regulatory goals without imposing any excessive regulatory burdens: (1) it clarified the form's content and presentation in response to concerns expressed by issuers and (2) broadened the required disclosures.

◀ § 14.131 Analysis—Consideration of Policy Objectives in § 14.002 ▶

In addition to the foregoing information, the SONAR must describe how the agency, in developing the rules, considered and implemented the legislative policy expressed in § 14.002 stating that rules and regulatory programs should “emphasize superior achievement in meeting the agency’s regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.” But § 14.002’s legislative policy is nothing more than an abstract statement of chapter 80A’s more specific legislative policies already set forth at the beginning of item (3). Namely, in developing the rules, Commerce should try to maximize the effectiveness of regulation for the protection of investors; maximize uniformity in federal and state regulatory standards; and minimize burdens on the business of capital formation, without adversely affecting essentials of investor protection of the proposed rule. And, as explained in

item (3), ample consideration went into determining whether the proposed rules would comport with these legislative policies.

◄ § 14.23—Notification Plan ►

Mandatory Notification

In order to comply with § 14.22, subd. 1, Commerce will give notice of its intention to adopt these rules without public hearing by (1) publishing the notice in the *State Register* on January 20, 2009 and (2) delivering the notice by United States mail to persons who have registered their names with Commerce under § 14.14, subd. 1a. Commerce will send notice and a copy of the SONAR to the legislators named in § 14.116. And Commerce will also send a copy of the SONAR to the Legislative Reference Library when the notice of intent to adopt is mailed.

Additional Notification

In addition, Commerce will provide notice to:

- the following organizations identified by Commerce as organizations representing persons who may be significantly affected by the rules:
 - American Association of Retired Persons;
 - American Council of Life Insurers;
 - Consumer Federation of America;
 - Certified Financial Planner Board of Standards;
 - Council of Institutional Investors;
 - Financial Planning Association;
 - Investment Advisor Association;
 - Investment Company Institute;
 - National Association of Personal Financial Advisors;
 - Public Investors Arbitration Association; and
 - Securities Industry and Financial Markets Association.
- the following regulatory bodies and organizations representing regulators:
 - Commodities Futures Trading Commission;
 - Conference of State Bank Examiners;
 - Financial Industry Regulatory Authority;
 - National Association of Insurance Commissioners;
 - North American Securities Administrators Association; and
 - Securities and Exchange Commission.
- Commerce Clearing House (CCH, Inc.) for the purpose of having the notice published in one of CCH's securities-related reports.
- the Minnesota State Bar Association.
- the general public by posting the SONAR and rules on Commerce's Website, [Chapter 2876 - Proposed Securities Rules](#).

◄ § 14.131 Analysis—Consultation with Commissioner of Minnesota Management & Budget ►

Section 14.131 states that the agency must consult with the Commissioner of Finance (now Minnesota Management & Budget) to help evaluate the fiscal impact and fiscal benefits of the proposed rules on units of local government. The Department consulted with Mr. Ryan Baumtrog, Executive Budget Officer, on these proposed rules and sent to Mr. Baumtrog the same documents sent to the Governor's Office for review and approval, including this SONAR and a copy of the draft of the proposed rules prepared by the Revisor of Statutes.

◆ § 14.127 Analysis—Cost Thresholds ◆

According to § 14.127, Commerce must determine if the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for (1) any one business with less than fifty full-time employees or (2) any one statutory or home rule charter city with less than ten full-time employees.

Any existing business already subject to Minnesota's securities laws likely would not incur any material increase in its compliance costs attributable to these proposed rules, because the proposed rules would not require any significant changes in the conduct or practices of regulated persons from the conduct and practices required by the present scheme of securities regulation. However, an investment adviser or broker-dealer, for example, organized from scratch would almost certainly incur in excess of \$25,000 of compliance costs if such a registrant intended to conduct a sizable volume of regulated transactions.

The proposed rules would not apply to the cities described in (2). Therefore, such cities would not bear any costs of compliance attributable to the proposed rules.