

CHAPTER 2655
DEPARTMENT OF COMMERCE
INTERSTATE BANKING

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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.

Statutory Authority: *MS s 45.023; 48.93; 48.99*

History: *11 SR 1311*

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;

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- 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.

Statutory Authority: *MS s 45.023; 48.93; 48.99*

History: *11 SR 1311*

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.

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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.

Statutory Authority: *MS s 45.023; 48.93; 48.99*

History: *11 SR 1311*

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.

Statutory Authority: *MS s 45.023; 48.93; 48.99*

History: *11 SR 1311*

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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.

Statutory Authority: *MS s 45.023; 48.93; 48.99*

History: *11 SR 1311*

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 be typeset in a format acceptable for the publication of a bank charter application.

Statutory Authority: *MS s 45.023; 48.93; 48.99*

History: *11 SR 1311*