

1843(7), 44-4-104

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ARIZONA CORPORATION COMMISSION

SECURITIES DIVISION
(602) 542-4242

December 21, 1990

44-1843(7)

Mr. David Frolich
Arnold & Porter
1200 New Hampshire Avenue, N.W.
Washington, DC 20036

RE: Norwest No-Action Letter

Dear Mr. Frolich:

On the basis of the facts set forth in your letter of October 9, 1990 the Securities Division will not recommend enforcement action for violation of the Securities Act of Arizona should the transaction take place as set forth in your letter. We are unable to concur with all of your analysis as to the availability of an exemption but concur with the following parts:

- 1) The securities are exempt from registration under A.R.S. § 44-1843 (7) as securities listed on the New York Stock Exchange.
- 2) Norwest is exempt from registration as a dealer under Rule 14-4-104, as a issuer offering securities to securities holders of the issuer. We specifically reject your opinion that Norwest, or any of its officers, directors or employees, is not a dealer under the Act.

As this position is premised upon the facts set forth in your letter, it should not be relied on for any other set of facts or by any other person. Please also note that this position applies only to the registration requirements of the Act; the anti-fraud provisions of the Act continue to be applicable.

We have attached photocopies of your letter. By doing this we are able to avoid having to recite or summarize the facts set forth therein.

Very truly yours,

DEE RIDDELL HARRIS
Director of Securities

DRH:sw

enclosures

ARNOLD & PORTER

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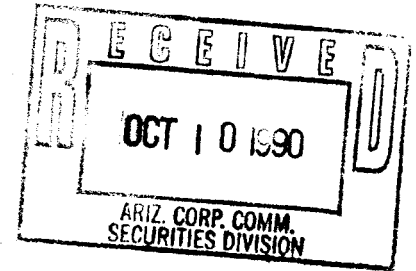
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October 9, 1990

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VIA FEDERAL EXPRESS

Dee R. Harris
Director
Securities Division
Corporation Commission
1200 West Washington Street
Second Floor
Phoenix, Arizona 85007

Dear Director Harris:

On behalf of Norwest Corporation, a Delaware corporation ("Norwest"), we are writing to request that you take a position of no-action regarding the offer and sale of the common stock of Norwest, par value \$1 2/3 per share, and the grant of subscription rights thereto, to be issued pursuant to the proposed acquisition of First Minnesota Savings Bank, F.S.B ("First Minnesota") by Norwest ("Acquisition").

A detailed description of the Acquisition is contained in the enclosed copy of Norwest's Registration Statement on Form S-3 as filed with the Securities and Exchange Commission on August 22, 1990 ("Registration Statement"). Essentially, Norwest, a regional bank holding company registered under the Bank Holding Company Act of 1956, as amended, proposes to acquire First Minnesota, a federally chartered mutual savings bank, in a multi-step transaction whereby the savings bank would be converted first from a federal mutual savings bank to a federal stock savings bank and then be converted immediately to a national banking association. Immediately thereafter the institution would be merged into Norwest Bank Minnesota, N.A., one of the bank holding company's existing subsidiary national banking associations.

The conversion of First Minnesota to a federal stock savings bank would be undertaken pursuant to the federal regulations governing "modified conversions" of federal savings institutions, 12 C.F.R. § 563b, Subpart D. Consistent with those regulations, Norwest

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would be required to grant subscription rights to certain account holders and certain borrowers of the savings bank (the "Eligible Account Holders"). The Eligible Account Holders will give no consideration in exchange for the subscription rights, which will be nontransferable and which will grant each recipient the right to subscribe to a specified amount of Norwest common stock (the "Offer"). The purchase price per share for the Norwest common stock purchased through exercise of the subscription rights will be the closing price of the common stock on the New York Stock Exchange on the last day of the subscription period. The shares to be issued in connection with the Offer will be registered with the Securities and Exchange Commission pursuant to the Registration Statement and will be listed with the New York Stock Exchange.

First Minnesota is not currently in compliance with the capital standards of the Office of Thrift Supervision ("OTS"). Savings institutions whose deposits are insured by the Savings Association Insurance Fund and which fail to meet OTS capital requirements are required to submit a capital plan to their OTS District Director for approval, setting forth how the institution proposes to bring itself into compliance with the capital requirements. Institutions whose capital plans are not approved or which do not comply with an approved plan are subject to restrictions on operations or more severe regulatory actions, including appointment of a conservator or receiver. First Minnesota's capital plan, which has been approved by the OTS District Director, is premised on consummation of the modified conversion and the subsequent merger.

No solicitation agent will be hired in connection with the Offer. The bank holding company officers and employees will transmit the subscription rights to the Eligible Account Holders and will effect the exercise of any subscription rights that Eligible Account Holders tender to the holding company. No holding company officer or employee will be hired for the purpose of performing these tasks, and no officer or employee will receive compensation or remuneration directly or indirectly related to the transactions. The salary paid to any Norwest employees assisting in the Offer will not be predicated upon the quantity of subscription transactions.

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As we discussed by telephone on October 1, 1990, with Mr. Robert Ybarra, Director of Financial Analysis, based on the facts set forth above, we believe that the securities offered pursuant to the Offer are exempt from registration and that any Norwest officers or employees assisting in the Offer are excepted out from the statutory definitions of "dealer" and "salesman."

Section 44-1843(7) of the Arizona Revised Statutes exempts from registration "[s]ecurities listed or approved for listing upon the issuance thereof upon the New York stock exchange" as well as "any warrant or right to purchase or subscribe to any [such security]." Therefore, because the Norwest common stock offered pursuant to the Offer will be listed on the New York Stock Exchange, the securities involved in the Offer are exempted from registration in Arizona.

Section 44-1842(A) makes it "unlawful for any dealer to sell or purchase or offer to sell or buy any securities, or for any salesman to sell or buy any securities within or from this state unless the dealer or salesman is registered as such pursuant to [the Arizona securities laws]." We submit, however, that the provisions of Section 44-1842(A) are not applicable to the Offer, for the various reasons set forth below.

1. Section R14-4-104

Section 44-1843 states that the provisions of Section 44-1842 are inapplicable to the securities exempted by Section 1843, and therefore at first appears to exempt the Offer completely from the provisions of Section 44-1842. However, yet another statutory provision, Section 44-1848, states that "[a]ny other provision of law notwithstanding," the Arizona Corporation Commission may promulgate rules that require the registration of any dealer or salesman who engages in transactions involving securities exempted from registration by, inter alia, the Section 44-1843(7) exemption for securities listed on certain major securities exchanges or on a national market system.

The Commission has, in fact, issued a rule, Section R14-4-104 of Title 14, Chapter 4, Article 1 of the Regulations of the Arizona Corporation Commission, stating that no dealer or salesman may engage in a

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transaction involving securities exempt from registration pursuant to Section 44-1843(7), unless that dealer or salesman is registered under the Arizona securities laws. The Rule continues on, however, to state specifically that a dealer or salesman is not required to register

for the purpose of selling or offering to sell that portion of an offering of securities . . . listed . . . or approved for listing [on the New York Stock Exchange] which is directed to securities holders or employees of an issuer when the offering is made by the issuer, or is made by a dealer or salesman acting without compensation other than a reasonable standby charge applicable to such securities by virtue of a distribution agreement relating to the balance of the offering remaining unsubscribed by existing securities holders or employees of the issuer.

This exemption from broker and salesman registration is applicable to the Offer because the Norwest common stock will be approved for listing on the New York Stock Exchange and may be purchased in the Offer only from the issuer and only by the holders of the Norwest subscription rights.¹ In addition, the Norwest employees assisting in the Offer will receive no compensation or remuneration directly or indirectly predicated upon the occurrence of subscription transactions.

¹ No "sale" is involved in the grant of subscription rights to the Eligible Account Holders pursuant to the modified conversion regulations. The Eligible Account Holders do not give consideration in exchange for the rights. Accordingly, the Eligible Account Holders will have made no investment decision to receive the rights, and, in fact, have no say in whether they receive the rights or, for that matter, in whether the acquisition is consummated.

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2. Section 44-1844(A)(9)

Section 44-1844(A)(9) of the Arizona Revised Statutes exempts from the securities, dealer and salesman registration requirements "[t]he issuance and delivery of securities in exchange for other securities of the same issuer pursuant to a right of conversion entitling the holder of the securities surrendered in exchange to make such conversion."

This transactional exemption is applicable to the Offer for essentially the same reasons as the dealer and salesman registration exemption under Section R14-4-104 is applicable. Both the subscription rights and the Norwest common stock are securities issued by Norwest. Furthermore, the subscription rights are securities that may be exchanged for Norwest common stock pursuant to a right of conversion.

3. Policy Considerations Behind the Dealer and Salesman Registration Requirements

Additionally, we believe that Norwest and its officers, directors and employees should be exempted from "dealer" and "salesman" registration because, as a matter of policy, these participants are not functioning as "dealers" and "salesmen" as contemplated by the Arizona securities laws.

Section 44-1801(9)(a) defines a "dealer" as (1) "a person who directly or indirectly engages full or part time in this state as agent, broker or principal in the business of offering, buying, selling or otherwise dealing or trading in securities issued by another person, and who is not a salesman for a registered dealer or is not a bank or savings institution the business of which is supervised and regulated by an agency of this state or the United States" or (2) "an issuer² who, directly or through an officer, director, employee or agent who is not registered as a dealer

² Except for certain exceptions inapplicable to the Offer, Section 44-1801(11) of the Arizona securities laws defines an "issuer" as "any person who issues or proposes to issue any security." Norwest therefore appears to be an "issuer" for purposes of the Arizona securities laws.

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under this chapter, engages in selling securities issued by such issuer."

Norwest itself, as an issuer, comes under the language of the statutory definition if it is deemed to be engaged in the selling of securities. The officers, directors and employees of Norwest could only come within the first part of the statutory definition, and are "dealers" only if they are deemed to be engaged in the business of offering, buying, selling or otherwise dealing or trading in securities.

Pursuant to the applicable federal regulations, Norwest will be offering subscription rights only to the Eligible Account Holders. Norwest should not be deemed a "dealer" because Norwest does not regularly engage in the business of selling securities. Norwest will be offering its securities for a limited time to a limited number of depositors in Arizona -- in order to fulfil its obligations under the federal banking laws -- and should not be deemed to be engaged in the business of selling securities in Arizona.

As noted above, the role and function of any bank holding company personnel participating in any transactions pursuant to the Offer will be consistent with the policies and purposes of the Arizona securities laws. All personnel participating in the Offer will be ongoing bank holding company employees. No individuals will be hired for the purpose of effecting transactions pursuant to the Offer. The holding company employees will perform functions that are primarily ministerial: they will undertake tasks necessary to fulfillment of the subscription transactions, respond to incoming calls relating to the mechanics of the offering and generally will be under instructions not to solicit subscriptions. Accordingly, the compensation and remuneration of the employees will be in no way predicated upon any solicitation of transactions, and, moreover, will be in no way tied to transactions actually effected under the Offer.

Section 44-1801(19) defines "salesman" as "an individual, other than a dealer, employed, appointed or authorized by a dealer to sell securities in [Arizona]." If Norwest is not a "dealer," then Norwest officers, directors and employees, to the extent that they are deemed to have been employed, appointed or authorized by

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Norwest to sell securities, have not been so employed, appointed or authorized by a "dealer" and are therefore not "salesmen."

Furthermore, based on the facts as discussed above, the roles performed by any Norwest personnel assisting in the Offer should not, in any event, bring them within the salesman registration requirement.

In light of the foregoing, we believe, as a matter of policy, that the dealer and salesman registration requirements of the Arizona securities laws should not be deemed to be applicable to Norwest or to its officers, directors or employees for any activities or roles related to the Offer.

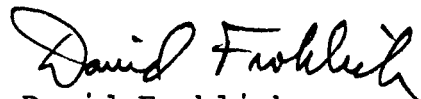
* * *

If you should disagree with our position that the dealer and salesman registration requirements should not be applicable to the Offer because of the statutory and regulatory provisions of the Arizona securities laws, then we request that you take a position of no-action with regard to the Offer as described herein.

Pursuant to Section 44-1861(L), we have enclosed a check made payable to the Arizona Corporation Commission in the amount of \$200.00.

Because the Offer is integral to completion of a transaction under the federal banking laws, we respectfully request expedited processing of this letter. We appreciate your time and your attention to these matters. If you have any questions or wish to discuss this request, please do not hesitate to call me at (202) 872-3648.

Sincerely,



David Frohlich
admitted in Kansas only

Enclosures