

SENATE
STATE OF MINNESOTA
EIGHTY-EIGHTH LEGISLATURE

S.F. No. 1376

(SENATE AUTHORS: REINERT and Sieben)

DATE	D-PG	OFFICIAL STATUS
03/13/2013	976	Introduction and first reading Referred to Commerce
03/14/2013	1030	Chief author stricken, shown as co-author Sieben Chief author added Reinert
03/21/2013		Comm report: To pass as amended Second reading

1.1

A bill for an act

1.2

relating to commerce; modifying securities registration and franchise registration

1.3

provisions; amending Minnesota Statutes 2012, sections 80A.41; 80A.54;

1.4

80A.58; 80A.61; 80A.66; 80C.08, by adding a subdivision.

1.5

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.6

Section 1. Minnesota Statutes 2012, section 80A.41, is amended to read:

1.7

80A.41 SECTION 102; DEFINITIONS.

1.8

In this chapter, unless the context otherwise requires:

1.9

(1) "Accredited investor" means an accredited investor as the term is defined in Rule

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501(a) of Regulation D adopted pursuant to the Securities Act of 1933.

1.11

(2) "Administrator" means the commissioner of commerce.

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(3) "Agent" means an individual, other than a broker-dealer, who represents a

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broker-dealer in effecting or attempting to effect purchases or sales of securities or

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represents an issuer in effecting or attempting to effect purchases or sales of the issuer's

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securities. But a partner, officer, or director of a broker-dealer or issuer, or an individual

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having a similar status or performing similar functions is an agent only if the individual

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otherwise comes within the term. The term does not include an individual excluded by

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rule adopted or order issued under this chapter.

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(4) "Bank" means:

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(A) a banking institution organized under the laws of the United States;

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(B) a member bank of the Federal Reserve System;

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(C) any other banking institution, whether incorporated or not, doing business

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under the laws of a state or of the United States, a substantial portion of the business

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of which consists of receiving deposits or exercising fiduciary powers similar to those

permitted to be exercised by national banks under the authority of the Comptroller of the Currency pursuant to Section 1 of Public Law 87-722 (12 U.S.C. Section 92a), and which is supervised and examined by a state or federal agency having supervision over banks, and which is not operated for the purpose of evading this chapter; and

(D) a receiver, conservator, or other liquidating agent of any institution or firm included in subparagraph (A), (B), or (C).

(5) "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. The term does not include:

(A) an agent;

(B) an issuer;

(C) a depository institution; provided such activities are conducted in accordance with such rules as may be adopted by the administrator;

(D) an international banking institution; or

(E) a person excluded by rule adopted or order issued under this chapter.

(6) "Depository institution" means:

(A) a bank; or

(B) a savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law. The term does not include:

(i) an insurance company or other organization primarily engaged in the business of insurance;

(ii) a Morris Plan bank; or

(iii) an industrial loan company that is not an "insured depository institution" as defined in section 3(c)(2) of the Federal Deposit Insurance Act, United States Code, title 12, section 1813(c)(2), or any successor federal statute.

(7) "Federal covered investment adviser" means a person registered under the Investment Advisers Act of 1940.

(8) "Federal covered security" means a security that is, or upon completion of a transaction will be, a covered security under Section 18(b) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)) or rules or regulations adopted pursuant to that provision.

(9) "Filing" means the receipt under this chapter of a record by the administrator or a designee of the administrator.

(10) "Fraud," "deceit," and "defraud" are not limited to common law deceit.

(11) "Guaranteed" means guaranteed as to payment of all principal and all interest.

(12) "Institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity:

(A) a depository institution or international banking institution;

(B) an insurance company;

(C) a separate account of an insurance company;

(D) an investment company as defined in the Investment Company Act of 1940;

(E) a broker-dealer registered under the Securities Exchange Act of 1934;

(F) an employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of \$10,000,000 or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution, or an insurance company;

(G) a plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of \$10,000,000 or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution, or an insurance company;

(H) a trust, if it has total assets in excess of \$10,000,000, its trustee is a depository institution, and its participants are exclusively plans of the types identified in subparagraph (F) or (G), regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;

(I) an organization described in Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Section 501(c)(3)), corporation, Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$10,000,000;

(J) a small business investment company licensed by the Small Business Administration under Section 301(c) of the Small Business Investment Act of 1958 (15 U.S.C. Section 681(c)) with total assets in excess of \$10,000,000;

(K) a private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(22)) with total assets in excess of \$10,000,000;

(L) a federal covered investment adviser acting for its own account;

(M) a "qualified institutional buyer" as defined in Rule 144A(a)(1), other than Rule 144A(a)(1)(i)(H), adopted under the Securities Act of 1933 (17 C.F.R. 230.144A);

(N) a "major U.S. institutional investor" as defined in Rule 15a-6(b)(4)(i) adopted under the Securities Exchange Act of 1934 (17 C.F.R. 240.15a-6);

(O) any other person, other than an individual or a private fund, of institutional character with total assets in excess of \$10,000,000 not organized for the specific purpose of evading this chapter; or

(P) any other person specified by rule adopted or order issued under this chapter;

(13) "Insurance company" means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a state.

(14) "Insured" means insured as to payment of all principal and all interest.

(15) "International banking institution" means an international financial institution of which the United States is a member and whose securities are exempt from registration under the Securities Act of 1933.

(16) "Investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. The term does not include:

~~(A) an investment adviser representative;~~

~~(B)~~ (A) a lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession;

~~(C)~~ (B) a broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice;

~~(D)~~ (C) a publisher of a bona fide newspaper, news magazine, or business or financial publication of general and regular circulation;

5.1 ~~(E)~~ (D) a federal covered investment adviser;
5.2 ~~(F)~~ (E) a bank or savings institution;
5.3 ~~(G)~~ (F) any other person that is excluded by the Investment Advisers Act of 1940
5.4 from the definition of investment adviser; or

5.5 ~~(H)~~ (G) any other person excluded by rule adopted or order issued under this chapter.

5.6 (17) "Investment adviser representative" means an individual employed by or
5.7 associated with an investment adviser or federal covered investment adviser and who
5.8 makes any recommendations or otherwise gives investment advice regarding securities,
5.9 manages accounts or portfolios of clients, determines which recommendation or advice
5.10 regarding securities should be given, provides investment advice or holds herself or
5.11 himself out as providing investment advice, receives compensation to solicit, offer, or
5.12 negotiate for the sale of or for selling investment advice, or supervises employees who
5.13 perform any of the foregoing. The term does not include an individual who:

5.14 (A) performs only clerical or ministerial acts;

5.15 (B) is an agent whose performance of investment advice is solely incidental to
5.16 the individual acting as an agent and who does not receive special compensation for
5.17 investment advisory services;

5.18 (C) is employed by or associated with a federal covered investment adviser, unless the
5.19 individual has a "place of business" in this state as that term is defined by rule adopted under
5.20 Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-3a) and is

5.21 (i) an "investment adviser representative" as that term is defined by rule adopted
5.22 under Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-3a); or

5.23 (ii) not a "supervised person" as that term is defined in Section 202(a)(25) of the
5.24 Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(25)); or

5.25 (D) is excluded by rule adopted or order issued under this chapter.

5.26 (18) "Issuer" means a person that issues or proposes to issue a security, subject to
5.27 the following:

5.28 (A) The issuer of a voting trust certificate, collateral trust certificate, certificate of
5.29 deposit for a security, or share in an investment company without a board of directors or
5.30 individuals performing similar functions is the person performing the acts and assuming
5.31 the duties of depositor or manager pursuant to the trust or other agreement or instrument
5.32 under which the security is issued.

5.33 (B) The issuer of an equipment trust certificate or similar security serving the same
5.34 purpose is the person by which the property is or will be used or to which the property
5.35 or equipment is or will be leased or conditionally sold or that is otherwise contractually
5.36 responsible for assuring payment of the certificate.

(C) The issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of production under a lease, right, or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale.

(19) "Nonissuer transaction" or "nonissuer distribution" means a transaction or distribution not directly or indirectly for the benefit of the issuer.

(20) "Offer to purchase" includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. The term does not include a tender offer that is subject to Section 14(d) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78n(d)).

(21) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(22) "Place of business" of a broker-dealer, an investment adviser, or a federal covered investment adviser means:

(A) an office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients; or

(B) any other location that is held out to the general public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients.

(23) "Predecessor Act" means Minnesota Statutes 2002, sections 80A.01 to 80A.31.

(24) "Price amendment" means the amendment to a registration statement filed under the Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the Securities Act of 1933 that includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices, and other matters dependent upon the offering price.

(25) "Principal place of business" of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser.

(26) Only for purposes of calculating the number of purchasers under section 80A.46, clauses (1) and (14), "purchaser" does not include:

(A) any relative, spouse, or relative of the spouse of a purchaser who has the same principal residence as the purchaser;

(B) any trust or estate in which a purchaser and any of the persons related to him as specified in Regulation D, Rule 501(e)(1)(i) or (e)(1)(ii) collectively have more than 50 percent of the beneficial interest (excluding contingent interests);

(C) any corporation or other organization of which a purchaser and any of the persons related to the purchaser as specified in Regulation D, Rule 501(e)(1)(i) or (e)(1)(ii) collectively are beneficial owners of more than 50 percent of the equity securities (excluding directors' qualifying shares) or equity interests; and

(D) any accredited investor.

A corporation, partnership, or other entity must be counted as one purchaser. If, however, that entity is organized for the specific purpose of acquiring the securities offered and is not an accredited investor, then each beneficial owner of equity securities or equity interests in the entity shall count as a separate purchaser for all provisions of Regulation D, except to the extent provided in Regulation D, Rule 501(e)(1).

A noncontributory employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 shall be counted as one purchaser where the trustee makes all investment decisions for the plan.

(27) "Record," except in the phrases "of record," "official record," and "public record," means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(28) "Sale" includes every contract of sale, contract to sell, or disposition of, a security or interest in a security for value, and "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value.

(A) A security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value.

(B) A gift of assessable stock is considered to involve an offer and sale.

(C) A sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, are each considered to include an offer of the other security.

(29) "Securities and Exchange Commission" means the United States Securities and Exchange Commission.

(30) "Security" means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a "security"; or a certificate of interest or participation in, temporary or interim certificate for, receipt for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. The term:

(A) includes both a certificated and an uncertificated security;

(B) does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed or variable sum of money either in a lump sum or periodically for life or other specified period;

(C) does not include an interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974;

(D) includes as an "investment contract," among other contracts, an interest in a limited partnership and a limited liability company and an investment in a viatical settlement or similar agreement; and

(E) does not include any equity interest of a closely held corporation or other entity with not more than 35 holders of the equity interest of such entity offered or sold pursuant to a transaction in which 100 percent of the equity interest of such entity is sold as a means to effect the sale of the business of the entity if the transaction has been negotiated on behalf of all purchasers and if all purchasers have access to inside information regarding the entity before consummating the transaction.

(31) "Self-regulatory organization" means a national securities exchange registered under the Securities Exchange Act of 1934, a national securities association of broker-dealers registered under the Securities Exchange Act of 1934, a clearing agency registered under the Securities Exchange Act of 1934, or the Municipal Securities Rulemaking Board established under the Securities Exchange Act of 1934.

(32) "Sign" means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach or logically associate with the record an electronic symbol, sound, or process.

(33) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(34) "Associated with" with respect to a person means any partner, officer, director, ~~or~~ manager, or employee of such person or any person occupying a similar status or performing similar functions or any person directly or indirectly controlling, controlled by, or in common control with, such person, but does not include a person whose primary duties are ministerial or clerical. "Employee" includes an independent contractor who performs advisory functions on behalf of an investment adviser.

(35) "Private fund" means an issuer that would be an investment company as defined in Section 3 of the Investment Company Act of 1940 but for section 3(c)(1) or 3(c)(7) of that act.

(36) "Private fund adviser" means an investment adviser whose only advisory clients are one or more qualifying private funds.

(37) "Qualifying private fund" means a private fund that meets the definition of a qualifying private fund in SEC Rule 203(m)-1, Code of Federal Regulations, title 17, section 275.203(m)-1.

(38) "3(c)(1) fund" means a qualifying private fund that is eligible for the exclusion from the definition of an investment company under section 3(c)(1) of the Investment Company Act of 1940, United States Code, title 15, section 80a-3(c)(1).

(39) "Venture capital fund" means a private fund that meets the definition of a venture capital fund in SEC Rule 203(1)-1, Code of Federal Regulations, title 17, section 275.203(1)-1.

(40) "Funding portal" means any person acting as a funding portal as defined in section 3(a)(80) of the Securities Exchange Act of 1934, United States Code, title 15, section 78c(a)(80), and any rule adopted or order issued thereunder.

Sec. 2. Minnesota Statutes 2012, section 80A.54, is amended to read:

80A.54 SECTION 306; DENIAL, SUSPENSION, AND REVOCATION OF SECURITIES REGISTRATION.

(a) **Stop orders.** The administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the administrator finds that the order is in the public interest and that:

(1) the registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under section 80A.53(i) as of its effective date, or a report under section 80A.53(h), is incomplete in a material respect or

contains a statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) this chapter or a rule adopted or order issued under this chapter or a condition imposed under this chapter has been willfully violated, in connection with the offering, by:

(A) the person filing the registration statement, if the person is directly or indirectly controlled by or acting for the issuer;

(B) the issuer;

(C) a partner, officer, or director of the issuer or a person having a similar status or performing similar functions;

(D) a promoter of the issuer;

(E) a person directly or indirectly controlling or controlled by the issuer; or

(F) an underwriter;

(3) the security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued under any federal, foreign, or state law other than this chapter applicable to the offering, but the administrator may not institute a proceeding against an effective registration statement under this paragraph more than one year after the date of the order or injunction on which it is based, and the administrator may not issue an order under this paragraph on the basis of an order or injunction issued under the securities act of another state unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section;

(4) the issuer's enterprise or method of business includes or would include activities that are unlawful where performed;

(5) the terms of the securities offering are unfair and inequitable; provided, however, that the commissioner may not determine that an offering is unfair and inequitable solely on the grounds that the securities are to be sold at an excessive price where the offering price has been determined by arm's-length negotiation between nonaffiliated parties. The selling price of any security being sold by a broker-dealer licensed in this state who is unaffiliated with the issuer shall be presumed to have been determined by arm's-length negotiation;

~~(5)~~ (6) with respect to a security sought to be registered under section 80A.51, there has been a failure to comply with the undertaking required by section 80A.51(b)(4); or

~~(6)~~ (7) the applicant or registrant has not paid the filing fee, but the administrator shall void the order if the deficiency is corrected.

(b) **Institution of stop order.** The administrator may not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the administrator when the registration statement became effective

unless the proceeding is instituted within 30 days after the registration statement became effective.

(c) **Summary process.** The administrator may summarily revoke, deny, postpone, or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the administrator shall promptly notify each person specified in subsection (d) that the order has been issued; the reasons for the revocation, denial, postponement, or suspension; and that within 15 days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator, within 30 days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.

(d) **Procedural requirements for stop order.** A stop order may not be issued under this section without:

(1) appropriate notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered;

(2) an opportunity for hearing; and

(3) findings of fact and conclusions of law in a record in accordance with chapter 14.

(e) **Modification or vacation of stop order.** The administrator may modify or vacate a stop order issued under this section if the administrator finds that the conditions that caused its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.

Sec. 3. Minnesota Statutes 2012, section 80A.58, is amended to read:

**80A.58 SECTION 403; INVESTMENT ADVISER REGISTRATION
REQUIREMENT AND EXEMPTIONS.**

(a) **Registration requirement.** It is unlawful for a person to transact business in this state as an investment adviser or investment adviser representative unless the person is registered under this chapter ~~as an investment adviser~~ or is exempt from registration ~~as an investment adviser~~ under subsection (b).

(b) **Exemptions from registration.** The following persons are exempt from the registration requirement of subsection (a):

(1) any person whose only clients in this state are:

(A) federal covered investment advisers, investment advisers registered under this chapter, or broker-dealers registered under this chapter;

(B) institutional investors;

12.1 ~~(C) accredited investors;~~

12.2 ~~(D)~~ (C) bona fide preexisting clients whose principal places of residence are not in
12.3 this state if the investment adviser is registered under the securities act of the state in
12.4 which the clients maintain principal places of residence; or

12.5 ~~(E)~~ (D) any other client exempted by rule adopted or order issued under this chapter;

12.6 (2) a person without a place of business in this state if the person has had, during the
12.7 preceding 12 months, not more than five clients that are resident in this state in addition
12.8 to those specified under paragraph (1); ~~or~~

12.9 (3) A private fund advisor, subject to the additional requirements of subsection (c), if
12.10 the private fund adviser satisfies each of the following conditions:

12.11 (i) neither the private fund adviser nor any of its advisory affiliates are subject
12.12 to a disqualification as described in Rule 262 of SEC Regulation A, Code of Federal
12.13 Regulations, title 17, section 230.262;

12.14 (ii) the private fund adviser files with the state each report and amendment thereto
12.15 that an exempt reporting adviser is required to file with the Securities and Exchange
12.16 Commission pursuant to SEC Rule 204-4, Code of Federal Regulations, title 17, section
12.17 275.204-4; and

12.18 (iii) the private fund adviser pays the fees specified in section 80A.61; or

12.19 ~~(3)~~ (4) any other person exempted by rule adopted or order issued under this chapter.

12.20 **(c) Additional requirements for private fund advisers to certain 3(c)(1) funds.**

12.21 In order to qualify for the exemption described in subsection (b)(3), a private fund adviser
12.22 who advises at least one 3(c)(1) fund that is not a venture capital fund shall, in addition to
12.23 satisfying each of the conditions specified in subsection (b)(3), comply with the following
12.24 requirements:

12.25 (1) The private fund adviser shall advise only those 3(c)(1) funds, other than venture
12.26 capital funds, whose outstanding securities, other than short-term paper, are beneficially
12.27 owned entirely by persons who, after deducting the value of the primary residence from
12.28 the person's net worth, would each meet the definition of a qualified client in SEC Rule
12.29 205-3, Code of Federal Regulations, title 17, section 275.205-3, at the time the securities
12.30 are purchased from the issuer;

12.31 (2) At the time of purchase, the private fund adviser shall disclose the following in
12.32 writing to each beneficial owner of a 3(c)(1) fund that is not a venture capital fund:

12.33 (i) all services, if any, to be provided to individual beneficial owners;

12.34 (ii) all duties, if any, the investment adviser owes to the beneficial owners; and

12.35 (iii) any other material information affecting the rights or responsibilities of the
12.36 beneficial owners; and

13.1 (3) The private fund adviser shall obtain on an annual basis audited financial
13.2 statements of each 3(c)(1) fund that is not a venture capital fund and shall deliver a copy
13.3 of such audited financial statements to each beneficial owner of the fund.

13.4 (d) **Federal covered investment advisers.** If a private fund adviser is registered
13.5 with the Securities and Exchange Commission, the adviser shall not be eligible for this
13.6 exemption and shall comply with the state notice filing requirements applicable to federal
13.7 covered investment advisers in section 80A.58.

13.8 (e) **Investment adviser representatives.** A person is exempt from the registration
13.9 requirements of section 80A.58, if he or she is employed by or associated with an
13.10 investment adviser that is exempt from registration in this state pursuant to this section
13.11 and does not otherwise act as an investment adviser representative.

13.12 (f) **Electronic filings.** The report filings described in subsection (b)(3)(ii) shall be
13.13 made electronically through the IARD. A report shall be deemed filed when the report
13.14 and the fee required by sections 80A.60 and 80A.65 are filed and accepted by the IARD
13.15 on the state's behalf.

13.16 (g) **Transition.** An investment adviser who becomes ineligible for the exemption
13.17 provided by this section must comply with all applicable laws and rules requiring
13.18 registration or notice filing within 90 days from the date of the investment adviser's
13.19 eligibility for this exemption ceases.

13.20 (h) **Limits on employment or association.** It is unlawful for an investment adviser,
13.21 directly or indirectly, to employ or associate with an individual to engage in an activity
13.22 related to investment advice in this state if the registration of the individual is suspended
13.23 or revoked or the individual is barred from employment or association with an investment
13.24 adviser, federal covered investment adviser, or broker-dealer by an order under this
13.25 chapter, the Securities and Exchange Commission, or a self-regulatory organization,
13.26 unless the investment adviser did not know, and in the exercise of reasonable care could
13.27 not have known, of the suspension, revocation, or bar. Upon request from the investment
13.28 adviser and for good cause, the administrator, by order, may waive, in whole or in part, the
13.29 application of the prohibitions of this subsection to the investment adviser.

13.30 (i) **Definitions.** For purposes of this section, the following definitions apply:

13.31 (1) "Value of primary residence" means the fair market value of a person's primary
13.32 residence, minus the amount of debt secured by the property up to its fair market value.

13.33 (2) "Private fund" means an issuer that would be an investment company, as defined
13.34 in section 3 of the Investment Company Act of 1940, United States Code, title 15, section
13.35 80a, but for section 3(c)(1) or 3(c)(7) of that act.

(3) "Private fund adviser" means an investment adviser who provides advice solely to one or more qualifying private funds.

(4) "Qualifying private fund" means a private fund that meets the definition of a qualifying private fund in SEC Rule 203(m)-1, Code of Federal Regulations, title 17, section 275.203(m)-1.

(5) "3(c)(1) fund" means a qualifying private fund that is eligible for the exclusion from the definition of an investment company under section 3(c)(1) of the Investment Company Act of 1940, United States Code, title 15, section 80a-3(c)(1).

(6) "Venture capital fund" means a private fund that meets the definition of a venture capital fund in SEC Rule 203(1)-1, Code of Federal Regulations, title 17, section 275.203(1)-1.

Sec. 4. Minnesota Statutes 2012, section 80A.61, is amended to read:

80A.61 SECTION 406; REGISTRATION BY BROKER-DEALER, AGENT, ~~AND FUNDING PORTAL~~, INVESTMENT ADVISER, AND INVESTMENT ADVISER REPRESENTATIVE.

(a) **Application for initial registration by broker-dealer, agent, or investment adviser.** A person shall register as a broker-dealer, agent, or investment adviser by filing an application and a consent to service of process complying with section 80A.88, and paying the fee specified in section 80A.65 and any reasonable fees charged by the designee of the administrator for processing the filing. The application must contain:

- (1) the information or record required for the filing of a uniform application; and
- (2) upon request by the administrator, any other financial or other information or record that the administrator determines is appropriate.

(b) **Amendment.** If the information or record contained in an application filed under subsection (a) is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) **Effectiveness of registration.** If an order is not in effect and a proceeding is not pending under section 80A.67, registration becomes effective at noon on the 45th day after a completed application is filed, unless the registration is denied. A rule adopted or order issued under this chapter may set an earlier effective date or may defer the effective date until noon on the 45th day after the filing of any amendment completing the application.

(d) **Registration renewal.** A registration is effective until midnight on December 31 of the year for which the application for registration is filed. Unless an order is in effect under section 80A.67, a registration may be automatically renewed each year by filing such records as are required by rule adopted or order issued under this chapter, by

15.1 paying the fee specified in section 80A.65, and by paying costs charged by the designee of
15.2 the administrator for processing the filings.

15.3 **(e) Additional conditions or waivers.** A rule adopted or order issued under this
15.4 chapter may impose such other conditions, not inconsistent with the National Securities
15.5 Markets Improvement Act of 1996. An order issued under this chapter may waive, in
15.6 whole or in part, specific requirements in connection with registration as are in the public
15.7 interest and for the protection of investors.

15.8 (f) A funding portal that has its principal place of business in the state of Minnesota
15.9 shall register with the state of Minnesota by filing with the administrator a copy of the
15.10 information or record required for the filing of an application for registration as a funding
15.11 portal in the manner established by the Securities and Exchange Commission and/or the
15.12 Financial Institutions Regulatory Authority (FINRA), along with any rule adopted or
15.13 order issued, and any amendments thereto.

15.14 **(g) Application for investment adviser representative registration.**

15.15 (1) The application for initial registration as an investment adviser representative
15.16 pursuant to section 80A.58 is made by completing Form U-4 (Uniform Application for
15.17 Securities Industry Registration or Transfer) in accordance with the form instructions
15.18 and by filing the form U-4 with the IARD. The application for initial registration must
15.19 also include the following:

15.20 (i) proof of compliance by the investment adviser representative with the
15.21 examination requirements of:

15.22 (A) the Uniform Investment Adviser Law Examination (Series 65); or

15.23 (B) the General Securities Representative Examination (Series 7) and the Uniform
15.24 Combined State Law Examination (Series 66);

15.25 (ii) the fee required by section 80A.65; and

15.26 (iii) any other information the administrator may reasonably require.

15.27 (2) The application for the annual renewal registration as an investment adviser
15.28 representative shall be filed with the IARD. The application for annual renewal registration
15.29 shall include the fee required by section 80A.65.

15.30 (3)(i) The investment adviser representative is under a continuing obligation to
15.31 update information required by Form U-4 as changes occur.

15.32 (ii) An investment adviser representative and the investment adviser must file
15.33 promptly with the IARD any amendments to the representative's Form U-4; and

15.34 (iii) An amendment will be considered to be filed promptly if the amendment is filed
15.35 within 30 days of the event that requires the filing of the amendment.

(4) An application for initial or renewal of registration is not considered filed for purposes of section 80A.58 until the required fee and all required submissions have been received by the administrator.

(5) The application for withdrawal of registration as an investment adviser representative pursuant to section 80A.58 shall be completed by following the instructions on Form U-5 (Uniform Termination Notice for Securities Industry Registration) and filed upon Form U-5 with the IARD.

Sec. 5. Minnesota Statutes 2012, section 80A.66, is amended to read:

80A.66 SECTION 411; POSTREGISTRATION REQUIREMENTS.

(a) Financial requirements. Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a rule adopted or order issued under this chapter may establish minimum financial requirements for broker-dealers registered or required to be registered under this chapter and investment advisers registered or required to be registered under this chapter.

(b) Financial reports. Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222(b) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a broker-dealer registered or required to be registered under this chapter and an investment adviser registered or required to be registered under this chapter shall file such financial reports as are required by a rule adopted or order issued under this chapter. If the information contained in a record filed under this subsection is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) Record keeping. Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22):

(1) a broker-dealer registered or required to be registered under this chapter ~~and an investment adviser registered or required to be registered under this chapter~~ shall make and maintain the accounts, correspondence, memoranda, papers, books, and other records required by rule adopted or order issued under this chapter;

(2) broker-dealer records required to be maintained under paragraph (1) may be maintained in any form of data storage acceptable under Section 17(a) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78q(a)) if they are readily accessible to the administrator; and

17.1 (3) Investment adviser records required to be maintained under paragraph (d)(1)
17.2 may be maintained in any form of data storage required by rule adopted or order issued
17.3 under this chapter.

17.4 **(d) Records and reports of private funds.**

17.5 **(1) In general.** An investment adviser registered or required to be registered under
17.6 this chapter shall maintain such records of, and file with the administrator such reports
17.7 and amendments thereto, that an exempt reporting adviser is required to file with the
17.8 Securities and Exchange Commission pursuant to SEC Rule 204-4, Code of Federal
17.9 Regulations, title 17, section 275.204-4.

17.10 **(2) Treatment of records.** The records and reports of any private fund to which
17.11 an investment adviser provides investment advice shall be deemed to be the records and
17.12 reports of the investment adviser.

17.13 **(3) Required information.** The records and reports required to be maintained
17.14 by an investment adviser, which are subject to inspection by a representative of the
17.15 administrator at any time, shall include for each private fund advised by the investment
17.16 adviser, a description of:

17.17 **(A) the amount of assets under management;**

17.18 **(B) the use of leverage, including off-balance-sheet leverage, as to the assets under**
17.19 **management;**

17.20 **(C) counterparty credit risk exposure;**

17.21 **(D) trading and investment positions;**

17.22 **(E) valuation policies and practices of the fund;**

17.23 **(F) types of assets held;**

17.24 **(G) side arrangements or side letters, whereby certain investors in a fund obtain**
17.25 **more favorable rights or entitlements than other investors;**

17.26 **(H) trading practices; and**

17.27 **(I) such other information as the administrator determines is necessary and**
17.28 **appropriate in the public interest and for the protection of investors, which may include**
17.29 **the establishment of different reporting requirements for different classes of fund advisers,**
17.30 **based on the type or size of the private fund being advised.**

17.31 **(4) Filing of records.** A rule or order under this chapter may require each investment
17.32 adviser to a private fund to file reports containing such information as the administrator
17.33 deems necessary and appropriate in the public interest and for the protection of investors.

17.34 ~~(d)~~ **(e) Audits or inspections.** The records of a broker-dealer registered or required
17.35 to be registered under this chapter and of an investment adviser registered or required to
17.36 be registered under this chapter, including the records of a private fund described in

paragraph (d) and the records of investment advisers to private funds, are subject to such reasonable periodic, special, or other audits or inspections by a representative of the administrator, within or without this state, as the administrator considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The administrator may copy, and remove for audit or inspection copies of, all records the administrator reasonably considers necessary or appropriate to conduct the audit or inspection. The administrator may assess a reasonable charge for conducting an audit or inspection under this subsection.

(e) (f) Custody and discretionary authority bond or insurance. Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a rule adopted or order issued under this chapter may require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security in an amount ~~not to exceed~~ of at least \$25,000, but not to exceed \$100,000. The administrator may determine the requirements of the insurance, bond, or other satisfactory form of security. Insurance or a bond or other satisfactory form of security may not be required of a broker-dealer registered under this chapter whose net capital exceeds, or of an investment adviser registered under this chapter whose minimum financial requirements exceed, the amounts required by rule or order under this chapter. The insurance, bond, or other satisfactory form of security must permit an action by a person to enforce any liability on the insurance, bond, or other satisfactory form of security if instituted within the time limitations in section 80A.76(j)(2).

(f) (g) Requirements for custody. Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), an agent may not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser representative may not have custody of funds or securities of a client except under the supervision of an investment adviser or a federal covered investment adviser. A rule adopted or order issued under this chapter may prohibit, limit, or impose conditions on a broker-dealer regarding custody of funds or securities of a customer and on an investment adviser regarding custody of securities or funds of a client.

(g) (h) Investment adviser brochure rule. With respect to an investment adviser registered or required to be registered under this chapter, a rule adopted or order issued under this chapter may require that information or other record be furnished or disseminated to clients or prospective clients in this state as necessary or appropriate in the public interest and for the protection of investors and advisory clients.

19.1 ~~(h)~~ **(i) Continuing education.** A rule adopted or order issued under this
19.2 chapter may require an individual registered under section 80A.57 to participate in a
19.3 continuing education program approved by the Securities and Exchange Commission and
19.4 administered by a self-regulatory organization.

19.5 **(j) Rulemaking.** To the extent that the requirements of this section and Minnesota
19.6 Rules, part 2876.4114, promulgated thereunder, do not fully comport with the existing
19.7 provisions of federal law, the administrator may amend existing rules under section 14.389.

19.8 Sec. 6. Minnesota Statutes 2012, section 80C.08, is amended by adding a subdivision
19.9 to read:

19.10 Subd. 3. **Withdrawal due to inactivity.** If no activity occurs with respect to the
19.11 public offering statement for a period of 120 days the commissioner may declare by
19.12 order the application withdrawn.