

A bill for an act

relating to securities; modifying the Minnesota Securities Act; regulating registrations, filings, and fees; making various technical changes; amending Minnesota Statutes 2006, sections 80A.40; 80A.41; 80A.46; 80A.50; 80A.52; 80A.56; 80A.57; 80A.58; 80A.60; 80A.65, subdivisions 1, 2, 5; 80A.66; 80A.67; 80A.76; 80A.83; 80A.85; 80A.87.

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

Section 1. Minnesota Statutes 2006, section 80A.40, is amended to read:

80A.40 SECTION 101; SHORT TITLE.

This chapter may be cited as the ~~Uniform~~ Minnesota Securities Act ~~(2002)~~.

Sec. 2. Minnesota Statutes 2006, section 80A.41, is amended to read:

80A.41 SECTION 102; DEFINITIONS.

In this chapter, unless the context otherwise requires:

(1) "Accredited investor" means an accredited investor as the term is defined in Rule 501(a) of Regulation D adopted pursuant to the Securities Act of 1933.

~~(1)~~ (2) "Administrator" means the commissioner of commerce.

~~(2)~~ (3) "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. But a partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by rule adopted or order issued under this chapter.

~~(3)~~ (4) "Bank" means:

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

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

(C) any other banking institution, whether incorporated or not, doing business under the laws of a state or of the United States, a substantial portion of the business 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).

~~(4)~~ (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.

~~(5)~~ (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.

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~~(6)~~ (7) "Federal covered investment adviser" means a person registered under the Investment Advisers Act of 1940.

~~(7)~~ (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.

~~(8)~~ (9) "Filing" means the receipt under this chapter of a record by the administrator or a designee of the administrator.

~~(9)~~ (10) "Fraud," "deceit," and "defraud" are not limited to common law deceit.

~~(10)~~ (11) "Guaranteed" means guaranteed as to payment of all principal and all interest.

~~(11)~~ (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;

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(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, 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;

~~(12)~~ (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.

~~(13)~~ (14) "Insured" means insured as to payment of all principal and all interest.

~~(14)~~ (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.

~~(15)~~ (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;

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

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

(E) a federal covered investment adviser;

(F) a bank or savings institution;

(G) any other person that is excluded by the Investment Advisers Act of 1940 from the definition of investment adviser; or

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

~~(16)~~ (17) "Investment adviser representative" means an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds herself or himself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who:

(A) performs only clerical or ministerial acts;

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

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

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

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

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

~~(17)~~ (18) "Issuer" means a person that issues or proposes to issue a security, subject to the following:

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

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

~~(18)~~ (19) "Nonissuer transaction" or "nonissuer distribution" means a transaction or distribution not directly or indirectly for the benefit of the issuer.

~~(19)~~ (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)).

~~(20)~~ (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.

~~(21)~~ (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.

~~(22)~~ (23) "Predecessor Act" means Minnesota Statutes 2002, sections 80A.01 to 80A.31.

~~(23)~~ (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

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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.

~~(24)~~ (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.

~~(24a)~~ (26) "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 ~~as defined by Regulation D, Rule 501(3)~~.

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.

~~(25)~~ (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.

~~(26)~~ (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.

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(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.

~~(27)~~ (29) "Securities and Exchange Commission" means the United States Securities and Exchange Commission.

~~(28)~~ (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" an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors;

(E) 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

(F) 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

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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.

~~(29)~~ (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.

~~(30)~~ (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.

~~(31)~~ (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.

~~(32)~~ (34) "Associated with" with respect to a person means any partner, officer, director, or manager 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.

Sec. 3. Minnesota Statutes 2006, section 80A.46, is amended to read:

80A.46 SECTION 202; EXEMPT TRANSACTIONS.

The following transactions are exempt from the requirements of sections 80A.49 through 80A.54 and 80A.71:

(1) isolated nonissuer transactions, consisting of sale to not more than ten purchasers in Minnesota during any period of 12 consecutive months, whether effected by or through a broker-dealer or not;

(2) a nonissuer transaction by or through a broker-dealer registered, or exempt from registration under this chapter, and a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least 90 days, if, at the date of the transaction:

(A) the issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated

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that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(B) the security is sold at a price reasonably related to its current market price;

(C) the security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution;

(D) a nationally recognized securities manual or its electronic equivalent designated by rule adopted or order issued under this chapter or a record filed with the Securities and Exchange Commission that is publicly available contains:

(i) a description of the business and operations of the issuer;

(ii) the names of the issuer's executive officers and the names of the issuer's directors, if any;

(iii) an audited balance sheet of the issuer as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and

(iv) an audited income statement for each of the issuer's two immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; and

(E) any one of the following requirements is met:

(i) the issuer of the security has a class of equity securities listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System;

(ii) the issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;

(iii) the issuer of the security, including its predecessors, has been engaged in continuous business for at least three years; or

(iv) the issuer of the security has total assets of at least \$2,000,000 based on an audited balance sheet as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had such an audited balance sheet, a pro forma balance sheet for the combined organization;

(3) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security of a foreign issuer that is a margin security

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11.1 defined in regulations or rules adopted by the Board of Governors of the Federal Reserve
11.2 System;

11.3 (4) a nonissuer transaction by or through a broker-dealer registered or exempt
11.4 from registration under this chapter in an outstanding security if the guarantor of the
11.5 security files reports with the Securities and Exchange Commission under the reporting
11.6 requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C.
11.7 Sections 78m or 78o(d));

11.8 (5) a nonissuer transaction by or through a broker-dealer registered or exempt from
11.9 registration under this chapter in a security that:

11.10 (A) is rated at the time of the transaction by a nationally recognized statistical rating
11.11 organization in one of its four highest rating categories; or

11.12 (B) has a fixed maturity or a fixed interest or dividend, if:

11.13 (i) a default has not occurred during the current fiscal year or within the three
11.14 previous fiscal years or during the existence of the issuer and any predecessor if less than
11.15 three fiscal years, in the payment of principal, interest, or dividends on the security; and

11.16 (ii) the issuer is engaged in business, is not in the organizational stage or in
11.17 bankruptcy or receivership, and is not and has not been within the previous 12 months a
11.18 blank check, blind pool, or shell company that has no specific business plan or purpose or
11.19 has indicated that its primary business plan is to engage in a merger or combination of the
11.20 business with, or an acquisition of, an unidentified person;

11.21 (6) a nonissuer transaction by or through a broker-dealer registered or exempt from
11.22 registration under this chapter effecting an unsolicited order or offer to purchase;

11.23 (7) a nonissuer transaction executed by a bona fide pledgee without the purpose
11.24 of evading this chapter;

11.25 (8) a nonissuer transaction by a federal covered investment adviser with investments
11.26 under management in excess of \$100,000,000 acting in the exercise of discretionary
11.27 authority in a signed record for the account of others;

11.28 (9) a transaction in a security, whether or not the security or transaction is otherwise
11.29 exempt, in exchange for one or more bona fide outstanding securities, claims, or property
11.30 interests, or partly in such exchange and partly for cash, if the terms and conditions of
11.31 the issuance and exchange or the delivery and exchange and the fairness of the terms and
11.32 conditions have been approved by the administrator after a hearing;

11.33 (10) a transaction between the issuer or other person on whose behalf the offering is
11.34 made and an underwriter, or among underwriters;

11.35 (11) a transaction in a note, bond, debenture, or other evidence of indebtedness
11.36 secured by a mortgage or other security agreement if:

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- 12.1 (A) the note, bond, debenture, or other evidence of indebtedness is offered and sold
12.2 with the mortgage or other security agreement as a unit;
- 12.3 (B) a general solicitation or general advertisement of the transaction is not made; and
12.4 (C) a commission or other remuneration is not paid or given, directly or indirectly, to
12.5 a person not registered under this chapter as a broker-dealer or as an agent;
- 12.6 (12) a transaction by an executor, administrator of an estate, sheriff, marshal,
12.7 receiver, trustee in bankruptcy, guardian, or conservator;
- 12.8 (13) a sale or offer to sell to:
12.9 (A) an institutional investor;
12.10 (B) an accredited investor ~~as that term is defined in Regulation D, Rule 501(a);~~
12.11 (C) a federal covered investment adviser; or
12.12 (D) any other person exempted by rule adopted or order issued under this chapter;
- 12.13 (14) a sale or an offer to sell securities by an issuer, if the transaction is part of
12.14 a single issue in which:
12.15 (A) not more than 35 purchasers are present in this state during any 12 consecutive
12.16 months, other than those designated in paragraph (13);
12.17 (B) a general solicitation or general advertising is not made in connection with
12.18 the offer to sell or sale of the securities;
12.19 (C) a commission or other remuneration is not paid or given, directly or indirectly, to
12.20 a person other than a broker-dealer registered under this chapter or an agent registered
12.21 under this chapter for soliciting a prospective purchaser in this state; and
12.22 (D) the issuer reasonably believes that all the purchasers in this state, other than
12.23 those designated in paragraph (13), are purchasing for investment.
- 12.24 Any issuer selling to purchasers in this state in reliance on this clause (14) exemption
12.25 must provide to the administrator notice of the transaction by filing a statement of issuer
12.26 form as adopted by rule along with the fee required under section 80A.65. Notice must be
12.27 filed at least ten days in advance of any sale or such shorter period as permitted by the
12.28 administrator. The issuer may make sales to ten or fewer purchasers in this state during
12.29 any period of 12 consecutive months prior to filing this notice;
- 12.30 (15) a transaction under an offer to existing security holders of the issuer, including
12.31 persons that at the date of the transaction are holders of convertible securities, options, or
12.32 warrants, if a commission or other remuneration, other than a standby commission, is not
12.33 paid or given, directly or indirectly, for soliciting a security holder in this state;
- 12.34 (16) an offer to sell, but not a sale, of a security not exempt from registration under
12.35 the Securities Act of 1933 if:

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13.1 (A) a registration or offering statement or similar record as required under the
13.2 Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance
13.3 with Rule 165 adopted under the Securities Act of 1933 (17 C.F.R. 230.165); and

13.4 (B) a stop order of which the offeror is aware has not been issued against the offeror
13.5 by the administrator or the Securities and Exchange Commission, and an audit, inspection,
13.6 or proceeding that is public and that may culminate in a stop order is not known by the
13.7 offeror to be pending;

13.8 (17) an offer to sell, but not a sale, of a security exempt from registration under the
13.9 Securities Act of 1933 if:

13.10 (A) a registration statement has been filed under this chapter, but is not effective;

13.11 (B) a solicitation of interest is provided in a record to offerees in compliance with a
13.12 rule adopted by the administrator under this chapter; and

13.13 (C) a stop order of which the offeror is aware has not been issued by the administrator
13.14 under this chapter and an audit, inspection, or proceeding that may culminate in a stop
13.15 order is not known by the offeror to be pending;

13.16 (18) a transaction involving the distribution of the securities of an issuer to the
13.17 security holders of another person in connection with a merger, consolidation, exchange
13.18 of securities, sale of assets, or other reorganization to which the issuer, or its parent
13.19 or subsidiary and the other person, or its parent or subsidiary, are parties. The person
13.20 distributing the issuer's securities must provide to the administrator notice of the
13.21 transaction by filing a written description of the transaction along with a consent to service
13.22 of process complying with section 80A.88 and the fee required under section 80A.65;

13.23 (19) a rescission offer, sale, or purchase under section 80A.77;

13.24 (20) an offer or sale of a security to a person not a resident of this state and not
13.25 present in this state if the offer or sale does not constitute a violation of the laws of the
13.26 state or foreign jurisdiction in which the offeree or purchaser is present and is not part of
13.27 an unlawful plan or scheme to evade this chapter;

13.28 (21) employees' stock purchase, savings, option, profit-sharing, pension, or
13.29 similar employees' benefit plan, including any securities, plan interests, and guarantees
13.30 issued under a compensatory benefit plan or compensation contract, contained in a
13.31 record, established by the issuer, its parents, its majority-owned subsidiaries, or the
13.32 majority-owned subsidiaries of the issuer's parent for the participation of their employees
13.33 including offers or sales of such securities to:

13.34 (A) directors; general partners; trustees, if the issuer is a business trust; officers;
13.35 consultants; and advisors;

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14.1 (B) family members who acquire such securities from those persons through gifts or
14.2 domestic relations orders;

14.3 (C) former employees, directors, general partners, trustees, officers, consultants, and
14.4 advisors if those individuals were employed by or providing services to the issuer when
14.5 the securities were offered; and

14.6 (D) insurance agents who are exclusive insurance agents of the issuer, or the issuer's
14.7 subsidiaries or parents, or who derive more than 50 percent of their annual income from
14.8 those organizations.

14.9 A person establishing an employee benefit plan under the exemption in this clause
14.10 (21) must provide to the administrator notice of the transaction by filing a written
14.11 description of the transaction along with a consent to service of process complying with
14.12 section 80A.88 and the fee required under section 80A.65;

14.13 (22) a transaction involving:

14.14 (A) a stock dividend or equivalent equity distribution, whether the corporation or
14.15 other business organization distributing the dividend or equivalent equity distribution is
14.16 the issuer or not, if nothing of value is given by stockholders or other equity holders for
14.17 the dividend or equivalent equity distribution other than the surrender of a right to a cash
14.18 or property dividend if each stockholder or other equity holder may elect to take the
14.19 dividend or equivalent equity distribution in cash, property, or stock;

14.20 (B) an act incident to a judicially approved reorganization in which a security is
14.21 issued in exchange for one or more outstanding securities, claims, or property interests, or
14.22 partly in such exchange and partly for cash; or

14.23 (C) the solicitation of tenders of securities by an offeror in a tender offer in
14.24 compliance with Rule 162 adopted under the Securities Act of 1933 (17 C.F.R. 230.162);

14.25 (23) a nonissuer transaction in an outstanding security by or through a broker-dealer
14.26 registered or exempt from registration under this chapter, if the issuer is a reporting
14.27 issuer in a foreign jurisdiction designated by this paragraph or by rule adopted or order
14.28 issued under this chapter; has been subject to continuous reporting requirements in the
14.29 foreign jurisdiction for not less than 180 days before the transaction; and the security is
14.30 listed on the foreign jurisdiction's securities exchange that has been designated by this
14.31 paragraph or by rule adopted or order issued under this chapter, or is a security of the same
14.32 issuer that is of senior or substantially equal rank to the listed security or is a warrant or
14.33 right to purchase or subscribe to any of the foregoing. For purposes of this paragraph,
14.34 Canada, together with its provinces and territories, is a designated foreign jurisdiction
14.35 and The Toronto Stock Exchange, Inc., is a designated securities exchange. After an
14.36 administrative hearing in compliance with chapter 14, the administrator, by rule adopted

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15.1 or order issued under this chapter, may revoke the designation of a securities exchange
15.2 under this paragraph, if the administrator finds that revocation is necessary or appropriate
15.3 in the public interest and for the protection of investors;

15.4 (24) any transaction effected by or through a Canadian broker-dealer exempted from
15.5 broker-dealer registration pursuant to section 80A.56(b)(3); or

15.6 (25)(A) the offer and sale by a cooperative organized under chapter 308A, or
15.7 under the laws of another state, of its securities when the securities are offered and sold
15.8 only to its members, or when the purchase of the securities is necessary or incidental to
15.9 establishing membership in the cooperative, or when the securities are issued as patronage
15.10 dividends. This paragraph applies to a cooperative organized under chapter 308A, or
15.11 under the laws of another state, only if the cooperative has filed with the administrator
15.12 a consent to service of process under section 80A.88, has paid the fee required under
15.13 section 80A.65, and has, not less than ten days before the issuance or delivery, furnished
15.14 the administrator with a written general description of the transaction and any other
15.15 information that the administrator requires by rule or otherwise;

15.16 (B) the offer and sale by a cooperative organized under chapter 308B of its securities
15.17 when the securities are offered and sold to its existing members or when the purchase of the
15.18 securities is necessary or incidental to establishing patron membership in the cooperative,
15.19 or when such securities are issued as patronage dividends. The administrator has the
15.20 power to define "patron membership" for purposes of this paragraph. This paragraph
15.21 applies to securities, other than securities issued as patronage dividends, only when:

15.22 (i) the issuer, before the completion of the sale of the securities, provides each
15.23 offeree or purchaser disclosure materials that, to the extent material to an understanding of
15.24 the issuer, its business, and the securities being offered, substantially meet the disclosure
15.25 conditions and limitations found in rule 502(b) of Regulation D promulgated by the
15.26 Securities and Exchange Commission, Code of Federal Regulations, title 17, section
15.27 230.502; and

15.28 (ii) within 15 days after the completion of the first sale in each offering completed in
15.29 reliance upon this exemption, the cooperative has filed with the administrator a consent
15.30 to service of process under section 80A.88 (or has previously filed such a consent), and
15.31 has furnished the administrator with a written general description of the transaction,
15.32 the fee required under section 80A.65, and any other information that the administrator
15.33 requires by rule or otherwise; and

15.34 (C) a cooperative may, at or about the same time as offers or sales are being
15.35 completed in reliance upon the exemptions from registration found in this subpart and as
15.36 part of a common plan of financing, offer or sell its securities in reliance upon any other

exemption from registration available under this chapter. The offer or sale of securities in reliance upon the exemptions found in this subpart will not be considered or deemed a part of or be integrated with any offer or sale of securities conducted by the cooperative in reliance upon any other exemption from registration available under this chapter, nor will offers or sales of securities by the cooperative in reliance upon any other exemption from registration available under this chapter be considered or deemed a part of or be integrated with any offer or sale conducted by the cooperative in reliance upon this paragraph.

Sec. 4. Minnesota Statutes 2006, section 80A.50, is amended to read:

80A.50 SECTION 302; FEDERAL COVERED SECURITIES; SMALL CORPORATE OFFERING REGISTRATION.

(a) Federal covered securities.

(1) Required filing of records. With respect to a federal covered security, as defined in Section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(2)), that is not otherwise exempt under sections 80A.45 through 80A.47, a rule adopted or order issued under this chapter may require the filing of any or all of the following records:

(A) before the initial offer of a federal covered security in this state, all records that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933 and a consent to service of process complying with section 80A.88 signed by the issuer;

(B) after the initial offer of the federal covered security in this state, all records that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933; and

(C) to the extent necessary or appropriate to compute fees, a report of the value of the federal covered securities sold or offered to persons present in this state, if the sales data are not included in records filed with the Securities and Exchange Commission.

(2) Notice filing effectiveness and renewal. A notice filing under subsection (a) is effective for one year commencing on the later of the notice filing or the effectiveness of the offering filed with the Securities and Exchange Commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the Securities and Exchange Commission that are required by rule or order under this chapter to be filed. A previously filed consent to service of process complying with section 80A.88 may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

(3) Notice filings for federal covered securities under section 18(b)(4)(D). With respect to a security that is a federal covered security under Section 18(b)(4)(D) of the

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17.1 Securities Act of 1933 (15 U.S.C. Section 77r(b)(4)(D)), a rule under this chapter may
17.2 require a notice filing by or on behalf of an issuer to include a copy of Form D, including
17.3 the Appendix, as promulgated by the Securities and Exchange Commission, and a consent
17.4 to service of process complying with section 80A.88 signed by the issuer not later than 15
17.5 days after the first sale of the federal covered security in this state.

17.6 (4) **Stop orders.** Except with respect to a federal security under Section 18(b)(1)
17.7 of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)), if the administrator finds
17.8 that there is a failure to comply with a notice or fee requirement of this section, the
17.9 administrator may issue a stop order suspending the offer and sale of a federal covered
17.10 security in this state. If the deficiency is corrected, the stop order is void as of the time of
17.11 its issuance and no penalty may be imposed by the administrator.

17.12 (b) **Small corporation offering registration.**

17.13 (1) **Registration required.** A security meeting the conditions set forth in this section
17.14 may be registered as set forth in this section.

17.15 (2) **Availability.** Registration under this section is available only to the issuer of
17.16 securities and not to an affiliate of the issuer or to any other person for resale of the issuer's
17.17 securities. The issuer must be organized under the laws of one of the states or possessions
17.18 of the United States. The securities offered must be exempt from registration under the
17.19 Securities Act of 1933 pursuant to Rule 504 of Regulation D (15 U.S.C. Section 77c).

17.20 (3) **Disqualification.** Registration under this section is not available to any of the
17.21 following issuers:

17.22 (A) an issuer subject to the reporting requirements of Section 13 or 15(d) of the
17.23 Securities Exchange Act of 1934;

17.24 (B) an investment company;

17.25 (C) a development stage company that either has no specific business plan or
17.26 purpose or has indicated that its business plan is to engage in a merger or acquisition with
17.27 an unidentified company or companies or other entity or person;

17.28 (D) an issuer if the issuer or any of its predecessors, officers, directors, governors,
17.29 partners, ten percent stock or equity holders, promoters, or any selling agents of the
17.30 securities to be offered, or any officer, director, governor, or partner of the selling agent:

17.31 (i) has filed a registration statement that is the subject of a currently effective
17.32 registration stop order entered under a federal or state securities law within five years
17.33 before the filing of the small corporate offering registration application;

17.34 (ii) has been convicted within five years before the filing of the small corporate
17.35 offering registration application of a felony or misdemeanor in connection with the
17.36 offer, purchase, or sale of a security or a felony involving fraud or deceit, including, but

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18.1 not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny,
18.2 or conspiracy to defraud;

18.3 (iii) is currently subject to a state administrative enforcement order or judgment
18.4 entered by a state securities administrator or the Securities and Exchange Commission
18.5 within five years before the filing of the small corporate offering registration application,
18.6 or is subject to a federal or state administrative enforcement order or judgment in which
18.7 fraud or deceit, including, but not limited to, making untrue statements of material facts or
18.8 omitting to state material facts, was found and the order or judgment was entered within
18.9 five years before the filing of the small corporate offering registration application;

18.10 (iv) is currently subject to an order, judgment, or decree of a court of competent
18.11 jurisdiction temporarily restraining or enjoining, or is subject to an order, judgment, or
18.12 decree of a court of competent jurisdiction permanently restraining or enjoining the party
18.13 from engaging in or continuing any conduct or practice in connection with the purchase
18.14 or sale of any security or involving the making of a false filing with a state or with the
18.15 Securities and Exchange Commission entered within five years before the filing of the
18.16 small corporate offering registration application; or

18.17 (v) is subject to a state's administrative enforcement order, or judgment that
18.18 prohibits, denies, or revokes the use of an exemption for registration in connection with
18.19 the offer, purchase, or sale of securities,

18.20 (I) except that clauses (i) to (iv) do not apply if the person subject to the
18.21 disqualification is duly licensed or registered to conduct securities-related business in the
18.22 state in which the administrative order or judgment was entered against the person or if
18.23 the dealer employing the party is licensed or registered in this state and the form BD filed
18.24 in this state discloses the order, conviction, judgment, or decree relating to the person, and

18.25 (II) except that the disqualification under this subdivision is automatically
18.26 waived if the state securities administrator or federal agency that created the basis for
18.27 disqualification determines upon a showing of good cause that it is not necessary under
18.28 the circumstances to deny the registration.

18.29 **(4) Filing and effectiveness of registration statement.** A small corporate offering
18.30 registration statement must be filed with the administrator. If no stop order is in effect
18.31 and no proceeding is pending under section 80A.54, such registration statement shall
18.32 become effective automatically at the close of business on the 20th day after filing of
18.33 the registration statement or the last amendment of the registration statement or at such
18.34 earlier time as the administrator may designate by rule or order. For the purposes of
18.35 a nonissuer transaction, other than by an affiliate of the issuer, all outstanding securities
18.36 of the same class identified in the small corporate offering registration statement as a

19.1 security registered under this chapter are considered to be registered while the small
19.2 corporate offering registration statement is effective. A small corporate offering
19.3 registration statement is effective for one year after its effective date or for any longer
19.4 period designated in an order under this chapter. A small corporate offering registration
19.5 statement may be withdrawn only with the approval of the administrator.

19.6 **(5) Contents of registration statement.** A small corporate offering registration
19.7 statement under this section shall be on Form U-7, including exhibits required by
19.8 the instructions thereto, as adopted by the North American Securities Administrators
19.9 Association, or such alternative form as may be designated by the administrator by rule or
19.10 order and must include:

19.11 (A) a consent to service of process complying with section 80A.88;

19.12 (B) a statement of the type and amount of securities to be offered and the amount of
19.13 securities to be offered in this state;

19.14 (C) a specimen or copy of the security being registered, unless the security
19.15 is uncertificated, a copy of the issuer's articles of incorporation and bylaws or their
19.16 substantial equivalents in effect, and a copy of any indenture or other instrument covering
19.17 the security to be registered;

19.18 (D) a signed or conformed copy of an opinion of counsel concerning the legality
19.19 of the securities being registered which states whether the securities, when sold, will be
19.20 validly issued, fully paid, and nonassessable and, if debt securities, binding obligations
19.21 of the issuer;

19.22 (E) the states (i) in which the securities are proposed to be offered; (ii) in which a
19.23 registration statement or similar filing has been made in connection with the offering
19.24 including information as to effectiveness of each such filing; and (iii) in which a stop
19.25 order or similar proceeding has been entered or in which proceedings or actions seeking
19.26 such an order are pending;

19.27 (F) a copy of the offering document proposed to be delivered to offerees; and

19.28 (G) a copy of any other pamphlet, circular, form letter, advertisement, or other sales
19.29 literature intended as of the effective date to be used in connection with the offering and
19.30 any solicitation of interest used in compliance with section 80A.46(17)(B).

19.31 **(6) Copy to purchaser.** A copy of the offering document as filed with the
19.32 administrator must be delivered to each person purchasing the securities prior to sale
19.33 of the securities to such person.

20.1 Sec. 5. Minnesota Statutes 2006, section 80A.52, is amended to read:

20.2 **80A.52 SECTION 304; SECURITIES REGISTRATION BY**
20.3 **QUALIFICATION.**

20.4 (a) **Registration permitted.** A security may be registered by qualification under
20.5 this section.

20.6 (b) **Required records.** A registration statement under this section must contain
20.7 the information or records specified in section 80A.53, a consent to service of process
20.8 complying with section 80A.88, and, if required by rule adopted under this chapter, the
20.9 following information or records:

20.10 (1) with respect to the issuer and any significant subsidiary, its name, address, and
20.11 form of organization; the state or foreign jurisdiction and date of its organization; the
20.12 general character and location of its business; a description of its physical properties
20.13 and equipment; and a statement of the general competitive conditions in the industry or
20.14 business in which it is or will be engaged;

20.15 (2) with respect to each director and officer of the issuer, and other person having a
20.16 similar status or performing similar functions, the person's name, address, and principal
20.17 occupation for the previous five years; the amount of securities of the issuer held by
20.18 the person as of the 30th day before the filing of the registration statement; the amount
20.19 of the securities covered by the registration statement to which the person has indicated
20.20 an intention to subscribe; and a description of any material interest of the person in any
20.21 material transaction with the issuer or a significant subsidiary effected within the previous
20.22 three years or proposed to be effected;

20.23 (3) with respect to persons covered by paragraph (2), the aggregate sum of the
20.24 remuneration paid to those persons during the previous 12 months and estimated to be
20.25 paid during the next 12 months, directly or indirectly, by the issuer, and all predecessors,
20.26 parents, subsidiaries, and affiliates of the issuer;

20.27 (4) with respect to a person owning of record or owning beneficially, if known, ten
20.28 percent or more of the outstanding shares of any class of equity security of the issuer, the
20.29 information specified in paragraph (2) other than the person's occupation;

20.30 (5) with respect to a promoter, if the issuer was organized within the previous three
20.31 years, the information or records specified in paragraph (2), any amount paid to the
20.32 promoter within that period or intended to be paid to the promoter, and the consideration
20.33 for the payment;

20.34 (6) with respect to a person on whose behalf any part of the offering is to be made
20.35 in a nonissuer distribution, the person's name and address; the amount of securities of
20.36 the issuer held by the person as of the date of the filing of the registration statement; a

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21.1 description of any material interest of the person in any material transaction with the issuer
21.2 or any significant subsidiary effected within the previous three years or proposed to be
21.3 effected, and a statement of the reasons for making the offering;

21.4 (7) the capitalization and long-term debt, on both a current and pro forma basis,
21.5 of the issuer and any significant subsidiary, including a description of each security
21.6 outstanding or being registered or otherwise offered, and a statement of the amount and
21.7 kind of consideration, whether in the form of cash, physical assets, services, patents,
21.8 goodwill, or anything else of value, for which the issuer or any subsidiary has issued its
21.9 securities within the previous two years or is obligated to issue its securities;

21.10 (8) the kind and amount of securities to be offered; the proposed offering price or the
21.11 method by which it is to be computed; any variation at which a proportion of the offering is
21.12 to be made to a person or class of persons other than the underwriters, with a specification
21.13 of the person or class; the basis on which the offering is to be made if otherwise than for
21.14 cash; the estimated aggregate underwriting and selling discounts or commissions and
21.15 finders' fees, including separately cash, securities, contracts, or anything else of value to
21.16 accrue to the underwriters or finders in connection with the offering or, if the selling
21.17 discounts or commissions are variable, the basis of determining them and their maximum
21.18 and minimum amounts; the estimated amounts of other selling expenses, including legal,
21.19 engineering, and accounting charges; the name and address of each underwriter and each
21.20 recipient of a finder's fee; a copy of any underwriting or selling group agreement under
21.21 which the distribution is to be made or the proposed form of any such agreement whose
21.22 terms have not yet been determined; and a description of the plan of distribution of any
21.23 securities that are to be offered otherwise than through an underwriter;

21.24 (9) the estimated monetary proceeds to be received by the issuer from the offering;
21.25 the purposes for which the proceeds are to be used by the issuer; the estimated amount to
21.26 be used for each purpose; the order or priority in which the proceeds will be used for the
21.27 purposes stated; the amounts of any funds to be raised from other sources to achieve the
21.28 purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to
21.29 acquire property, including goodwill, otherwise than in the ordinary course of business,
21.30 the names and addresses of the vendors, the purchase price, the names of any persons that
21.31 have received commissions in connection with the acquisition, and the amounts of the
21.32 commissions and other expenses in connection with the acquisition, including the cost of
21.33 borrowing money to finance the acquisition;

21.34 (10) a description of any stock options or other security options outstanding, or to
21.35 be created in connection with the offering, and the amount of those options held or to be

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held by each person required to be named in paragraph (2), (4), (5), (6), or (8) and by any person that holds or will hold ten percent or more in the aggregate of those options;

(11) the dates of, parties to, and general effect concisely stated of each managerial or other material contract made or to be made otherwise than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous two years, and a copy of the contract;

(12) a description of any pending litigation, action, or proceeding to which the issuer is a party and that materially affects its business or assets, and any litigation, action, or proceeding known to be contemplated by governmental authorities;

(13) a copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering and any solicitation of interest used in compliance with section 80A.46(17)(B);

(14) a specimen or copy of the security being registered, unless the security is uncertificated; a copy of the issuer's articles of incorporation and bylaws or their substantial equivalents, in effect; and a copy of any indenture or other instrument covering the security to be registered;

(15) a signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, which states whether the security when sold will be validly issued, fully paid, and nonassessable and, if a debt security, a binding obligation of the issuer;

(16) a signed or conformed copy of a consent of any accountant, engineer, appraiser, or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than an official record, that is public, which is used in connection with the registration statement;

(17) a balance sheet of the issuer as of a date within four months before the filing of the registration statement; a statement of income and a statement of ~~case~~ cash flows for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant; and

(18) any additional information or records required by rule adopted or order issued under this chapter.

(c) Conditions for effectiveness of registration statement. A registration statement under this section becomes effective 30 days, or any shorter period provided by rule

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23.1 adopted or order issued under this chapter, after the date the registration statement or the
23.2 last amendment other than a price amendment is filed, if:

23.3 (1) a stop order is not in effect and a proceeding is not pending under section 80A.54;

23.4 (2) the administrator has not issued an order under section 80A.54 delaying
23.5 effectiveness; and

23.6 (3) the applicant or registrant has not requested that effectiveness be delayed.

23.7 (d) **Delay of effectiveness of registration statement.** The administrator may
23.8 delay effectiveness once for not more than 90 days if the administrator determines the
23.9 registration statement is not complete in all material respects and promptly notifies
23.10 the applicant or registrant of that determination. The administrator may also delay
23.11 effectiveness for a further period of not more than 30 days if the administrator determines
23.12 that the delay is necessary or appropriate.

23.13 (e) **Prospectus distribution may be required.** A rule adopted or order issued
23.14 under this chapter may require as a condition of registration under this section that a
23.15 prospectus containing a specified part of the information or record specified in subsection
23.16 (b) be sent or given to each person to which an offer is made, before or concurrently,
23.17 with the earliest of:

23.18 (1) the first offer made in a record to the person otherwise than by means of a public
23.19 advertisement, by or for the account of the issuer or another person on whose behalf the
23.20 offering is being made or by an underwriter or broker-dealer that is offering part of an
23.21 unsold allotment or subscription taken by the person as a participant in the distribution;

23.22 (2) the confirmation of a sale made by or for the account of the person;

23.23 (3) payment pursuant to such a sale; or

23.24 (4) delivery of the security pursuant to such a sale.

23.25 Sec. 6. Minnesota Statutes 2006, section 80A.56, is amended to read:

23.26 **80A.56 SECTION 401; BROKER-DEALER REGISTRATION**
23.27 **REQUIREMENT AND EXEMPTIONS.**

23.28 (a) **Registration requirement.** It is unlawful for a person to transact business in this
23.29 state as a broker-dealer unless the person is registered under this chapter as a broker-dealer
23.30 or is exempt from registration as a broker-dealer under subsection (b) or (d).

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

23.33 (1) a broker-dealer without a place of business in this state if its only transactions
23.34 effected in the state are with:

23.35 (A) the issuer of the securities involved in the transactions;

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24.1 (B) a broker-dealer registered under this chapter or not required to be registered as a
24.2 broker-dealer under this chapter;

24.3 (C) an institutional investor;

24.4 (D) an accredited investor;

24.5 ~~(E)~~ (E) a nonaffiliated federal covered investment adviser with investments under
24.6 management in excess of \$100,000,000 acting for the account of others pursuant to
24.7 discretionary authority in a signed record;

24.8 ~~(F)~~ (F) a bona fide preexisting customer whose principal place of residence is not in
24.9 this state and the person is registered as a broker-dealer under the Securities Exchange
24.10 Act of 1934 or not required to be registered under the Securities Exchange Act of 1934
24.11 and is registered under the securities act of the state in which the customer maintains a
24.12 principal place of residence;

24.13 ~~(G)~~ (G) a bona fide preexisting customer whose principal place of residence is in this
24.14 state but was not present in this state when the customer relationship was established, if:

24.15 (i) the broker-dealer is registered under the Securities Exchange Act of 1934 or not
24.16 required to be registered under the Securities Exchange Act of 1934 and is registered
24.17 under the securities laws of the state in which the customer relationship was established
24.18 and where the customer had maintained a principal place of residence; and

24.19 (ii) within 45 days after the customer's first transaction in this state, the person files
24.20 an application for registration as a broker-dealer in this state and a further transaction is not
24.21 effected more than 75 days after the date on which the application is filed, or, if earlier, the
24.22 date on which the administrator notifies the person that the administrator has denied the
24.23 application for registration or has stayed the pendency of the application for good cause;

24.24 ~~(H)~~ (H) not more than three customers in this state during the previous 12 months,
24.25 in addition to those customers specified in subparagraphs (A) through ~~(F)~~ (G) and under
24.26 subparagraph ~~(H)~~ (I), if the broker-dealer is registered under the Securities Exchange
24.27 Act of 1934 or not required to be registered under the Securities Exchange Act of 1934
24.28 and is registered under the securities act of the state in which the broker-dealer has its
24.29 principal place of business; and

24.30 ~~(I)~~ (I) any other person exempted by rule adopted or order issued under this
24.31 chapter; and

24.32 (2) a person that deals solely in United States government securities and is supervised
24.33 as a dealer in government securities by the Board of Governors of the Federal Reserve
24.34 System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation,
24.35 or the Office of Thrift Supervision; and

(3) a broker-dealer that is registered in Canada and who has no office or other physical presence in this state if the broker-dealer complies with the following conditions:

(A) the broker-dealer is registered with or is a member of a self-regulatory organization in Canada, a stock exchange in Canada, or the Bureau des services financiers;

(B) the broker-dealer maintains in good standing its provincial or territorial registration and its registration with or membership in a self-regulatory organization in Canada, a stock exchange in Canada, or the Bureau des services financiers; and

(C) the broker-dealer effects or attempts to effect transactions in securities:

(i) with or for a person from Canada who is temporarily present in this state, with whom the broker-dealer had a bona fide broker-dealer-client relationship before the person entered the United States; or

(ii) with or for a person from Canada who is present in this state, whose transactions are in a Canadian self-directed tax advantaged retirement account of which the person is the holder or contributor.

(c) Limits on employment or association. It is unlawful for a broker-dealer, or for an issuer engaged in offering, offering to purchase, purchasing, or selling securities in this state, directly or indirectly, to employ or associate with an individual to engage in an activity related to securities transactions in this state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with a broker-dealer, an issuer, an investment adviser, or a federal covered investment adviser by an order of the administrator under this chapter, the Securities and Exchange Commission, or a self-regulatory organization. A broker-dealer or issuer does not violate this subsection if the broker-dealer or issuer did not know and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from a broker-dealer or issuer and for good cause, an order under this chapter may modify or waive, in whole or in part, the application of the prohibitions of this subsection to the broker-dealer.

(d) Foreign transactions. A rule adopted or order issued under this chapter may permit:

(1) a broker-dealer that is registered in Canada or other foreign jurisdiction and that does not have a place of business in this state to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by:

(A) an individual from Canada or other foreign jurisdiction who is temporarily present in this state and with whom the broker-dealer had a bona fide customer relationship before the individual entered the United States;

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(B) an individual from Canada or other foreign jurisdiction who is present in the state and whose transactions are in a self-directed tax advantaged retirement plan of which the individual is the holder or contributor in that foreign jurisdiction; or

(C) an individual who is present in this state, with whom the broker-dealer customer relationship arose while the individual was temporarily or permanently resident in Canada or the other foreign jurisdiction; and

(2) an agent who represents a broker-dealer that is exempt under this subsection to effect transactions in securities or attempt to effect the purchase or sale of securities in this state as permitted for a broker-dealer described in paragraph (1).

Sec. 7. Minnesota Statutes 2006, section 80A.57, is amended to read:

80A.57 SECTION 402; AGENT REGISTRATION REQUIREMENT AND EXEMPTIONS.

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

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

(1) an individual who represents a broker-dealer in effecting transactions in this state limited to those described in Section 15(h)(2) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78(o)(2));

(2) an individual who represents a broker-dealer that is exempt under section 80A.56(b) or (d);

(3) an individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(4) an individual who represents an issuer and who effects transactions in the issuer's securities exempted by section 80A.46, other than section 80A.46(11) and (14);

(5) an individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under Section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(3) or 77r(b)(4)(D)) is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

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(6) an individual who represents a broker-dealer registered in this state under section 80A.56(a) or exempt from registration under section 80A.56(b) in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000 acting for the account of others pursuant to discretionary authority in a signed record;

(7) an individual who represents an issuer in connection with the purchase of the issuer's own securities;

(8) an individual who represents an issuer and who restricts participation to performing clerical or ministerial acts;

(9) an individual who represents an issuer in effecting transactions in a security exempted by section 80A.45;

(10) an individual who represents an issuer in effecting transactions with existing employees, partners, or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state;

(11) an individual who represents one or more issuers with respect to an offer or sale of the issuer's securities if the offer or sale of the securities is exempted by ~~section 80A.46~~ sections 80A.46(11) or 80A.46(14) and the individual complies with or satisfies each of the following conditions:

(A) the individual (i) would not be deemed disqualified pursuant to section 80A.50(b)(3)(D)(ii) to (iv); (ii) is not employed by or associated with a broker-dealer; and (iii) has not been the subject of (a) an action, order, or decision by any self-regulatory organization, commodities exchange, or securities exchange resulting in a censure or other sanction within 12 months prior to the offer or sale or (b) a denial, revocation, or restriction of any license or membership by any self-regulatory organization, commodities exchange, or securities exchange that has been effective at any time within 12 months prior to the offer or sale;

(B) neither the individual nor any person associated with the individual handles or takes possession of funds or securities;

(C) the individual files with the administrator a consent to service of process complying with ~~Section 611~~ section 80A.88 before commencing any such representation; and

(D) the individual files with the administrator a notice that contains (i) the full legal name, address, and phone of the individual; (ii) any other names used by the individual in the prior five years; (iii) a statement whether the individual is, or within the ~~last~~ prior five years has been, licensed by or registered with any state or federal government, government agency, or any self-regulatory organization, commodities exchange, or

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securities exchange as a broker-dealer, registered representative, investment advisor, or investment advisor representative, including, if applicable, the individual's IARD/CRD number; (iv) an undertaking to notify the administrator in writing of a change in any of the foregoing within five business days of such change; and (v) any additional information that may be required by rule adopted or order issued under this chapter. This notice must be filed before the individual commences any issuer representation. The notice is effective through December 31 of the year following the year in which it is filed and may be renewed annually in such manner as prescribed by the administrator; and

(12) any other individual exempted by rule adopted or order issued under this chapter.

(c) Registration effective only while employed or associated. The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this chapter or an issuer that is offering, selling, or purchasing its securities in this state.

(d) Limit on employment or association. It is unlawful for a broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this state, to employ or associate with an agent who transacts business in the state on behalf of broker-dealers or issuers unless the agent is registered under subsection (a) or exempt from registration under subsection (b).

(e) Limit on affiliations. An individual may not act as an agent for more than one broker-dealer or one issuer at a time, unless the broker-dealer or the issuer for which the agent acts are affiliated by direct or indirect common control or are authorized by rule or order under this chapter.

Sec. 8. Minnesota Statutes 2006, 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 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;

29.1 (C) accredited investors;

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

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

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

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

29.10 (c) **Limits on employment or association.** It is unlawful for an investment adviser,
29.11 directly or indirectly, to employ or associate with an individual to engage in an activity
29.12 related to investment advice in this state if the registration of the individual is suspended
29.13 or revoked or the individual is barred from employment or association with an investment
29.14 adviser, federal covered investment adviser, or broker-dealer by an order under this
29.15 chapter, the Securities and Exchange Commission, or a self-regulatory organization,
29.16 unless the investment adviser did not know, and in the exercise of reasonable care could
29.17 not have known, of the suspension, revocation, or bar. Upon request from the investment
29.18 adviser and for good cause, the administrator, by order, may waive, in whole or in part, the
29.19 application of the prohibitions of this subsection to the investment adviser.

29.20 Sec. 9. Minnesota Statutes 2006, section 80A.60, is amended to read:

29.21 **80A.60 SECTION 405; FEDERAL COVERED INVESTMENT ADVISER**
29.22 **NOTICE FILING REQUIREMENT.**

29.23 (a) **Notice filing requirement.** Except with respect to a federal covered investment
29.24 adviser described in subsection (b), it is unlawful for a federal covered investment adviser
29.25 to transact business in this state as a federal covered investment adviser unless the federal
29.26 covered investment adviser complies with subsection (c).

29.27 (b) **Notice filing requirement not required.** The following federal covered
29.28 investment advisers are not required to comply with subsection (c):

29.29 (1) a federal covered investment adviser without a place of business in this state if
29.30 its only clients in this state are:

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

29.33 (B) institutional investors;

29.34 (C) accredited investors;

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30.1 ~~(C)~~ (D) bona fide preexisting clients whose principal places of residence are not
30.2 in this state; or

30.3 ~~(D)~~ (E) other clients specified by rule adopted or order issued under this chapter;

30.4 (2) a federal covered investment adviser without a place of business in this state if
30.5 the person has had, during the preceding 12 months, not more than five clients that are
30.6 resident in this state in addition to those specified under paragraph (1); and

30.7 (3) any other person excluded by rule adopted or order issued under this chapter.

30.8 (c) **Notice filing procedure.** A person acting as a federal covered investment adviser,
30.9 not excluded under subsection (b), shall file a notice, a consent to service of process
30.10 complying with section 80A.88, and such records as have been filed with the Securities
30.11 and Exchange Commission under the Investment Advisers Act of 1940 required by rule
30.12 adopted or order issued under this chapter and pay the fees specified in section 80A.65(e).

30.13 (d) **Effectiveness of filing.** The notice under subsection (c) becomes effective upon
30.14 its filing.

30.15 Sec. 10. Minnesota Statutes 2006, section 80A.65, subdivision 1, is amended to read:

30.16 Subdivision 1. **Registration or notice filing fee.** (a) There shall be a filing fee
30.17 of \$100 for every application for registration or notice filing, other than a notice filing
30.18 required under section 80A.50(a)(3). There shall be an additional fee of one-tenth of one
30.19 percent of the maximum aggregate offering price at which the securities are to be offered
30.20 in this state, and the maximum combined fees shall not exceed \$300.

30.21 (b) There is a filing fee of \$50 for every notice filing required under section
30.22 80A.50(a)(3).

30.23 ~~(b)~~ (c) When an application for registration is withdrawn before the effective date
30.24 or a preeffective stop order is entered under section 80A.54, all but the \$100 filing fee
30.25 shall be returned. If an application to register securities is denied, the total of all fees
30.26 received shall be retained.

30.27 ~~(c)~~ (d) Where a filing is made in connection with a federal covered security under
30.28 section 18(b)(2) of the Securities Act of 1933, there is a fee of \$100 for every initial filing.
30.29 If the filing is made in connection with redeemable securities issued by an open end
30.30 management company or unit investment trust, as defined in the Investment Company Act
30.31 of 1940, there is an additional annual fee of 1/20 of one percent of the maximum aggregate
30.32 offering price at which the securities are to be offered in this state during the notice filing
30.33 period. The fee must be paid at the time of the initial filing and thereafter in connection
30.34 with each renewal no later than July 1 of each year and must be sufficient to cover the
30.35 shares the issuer expects to sell in this state over the next 12 months. If during a current

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31.1 notice filing the issuer determines it is likely to sell shares in excess of the shares for which
31.2 fees have been paid to the administrator, the issuer shall submit an amended notice filing
31.3 to the administrator under section 80A.50, together with a fee of 1/20 of one percent of the
31.4 maximum aggregate offering price of the additional shares. Shares for which a fee has
31.5 been paid, but which have not been sold at the time of expiration of the notice filing, may
31.6 not be sold unless an additional fee to cover the shares has been paid to the administrator
31.7 as provided in this section and section 80A.50. If the filing is made in connection with
31.8 redeemable securities issued by such a company or trust, there is no maximum fee for
31.9 securities filings made according to this paragraph. If the filing is made in connection
31.10 with any other federal covered security under Section 18(b)(2) of the Securities Act of
31.11 1933, there is an additional fee of one-tenth of one percent of the maximum aggregate
31.12 offering price at which the securities are to be offered in this state, and the combined fees
31.13 shall not exceed \$300. Beginning with fiscal year 2001 and continuing each fiscal year
31.14 thereafter, as of the last day of each fiscal year, the administrator shall determine the total
31.15 amount of all fees that were collected under this paragraph in connection with any filings
31.16 made for that fiscal year for securities of an open-end investment company on behalf of a
31.17 security that is a federal covered security pursuant to section 18(b)(2) of the Securities
31.18 Act of 1933. To the extent the total fees collected by the administrator in connection
31.19 with these filings exceed \$25,000,000 in a fiscal year, the administrator shall refund, on
31.20 a pro rata basis, to all persons who paid any fees for that fiscal year, the amount of fees
31.21 collected by the administrator in excess of \$25,000,000. No individual refund is required
31.22 of amounts of \$100 or less for a fiscal year.

31.23 Sec. 11. Minnesota Statutes 2006, section 80A.65, subdivision 2, is amended to read:

31.24 Subd. 2. **Registration application and renewal filing fee.** Every applicant for an
31.25 initial or renewal registration shall pay a filing fee of \$200 in the case of a broker-dealer,
31.26 \$50 in the case of an agent, and \$100 in the case of an investment adviser. When an
31.27 application is denied or withdrawn, the filing fee shall be retained. A registered agent who
31.28 has terminated employment with one broker-dealer shall, before beginning employment
31.29 with another broker-dealer, pay a transfer fee of \$25. ~~The fee for a filing made according~~
31.30 ~~to section 80A.56 is \$100.~~

31.31 Sec. 12. Minnesota Statutes 2006, section 80A.65, subdivision 5, is amended to read:

31.32 Subd. 5. **Exemption filing fee.** The filing of any exemption for which notice is
31.33 required to be given the administrator under section 80A.45 shall be accompanied by a fee

32.1 of ~~\$50~~ \$100. The filing of any exemption for which notice is required to be given to the
32.2 administrator under section 80A.46 must be accompanied by a fee of \$50.

32.3 Sec. 13. Minnesota Statutes 2006, section 80A.66, is amended to read:

32.4 **80A.66 SECTION 411; POSTREGISTRATION REQUIREMENTS.**

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

32.11 (b) **Financial reports.** Subject to Section 15(h) of the Securities Exchange Act of
32.12 1934 (15 U.S.C. Section 78o(h)) or Section 222(b) of the Investment Advisers Act of 1940
32.13 (15 U.S.C. Section 80b-22), a broker-dealer registered or required to be registered under
32.14 this chapter and an investment adviser registered or required to be registered under this
32.15 chapter shall file such financial reports as are required by a rule adopted or order issued
32.16 under this chapter. If the information contained in a record filed under this subsection is or
32.17 becomes inaccurate or incomplete in a material respect, the registrant shall promptly file
32.18 a correcting amendment.

32.19 (c) **Record keeping.** Subject to Section 15(h) of the Securities Exchange Act of
32.20 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940
32.21 (15 U.S.C. Section 80b-22):

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

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

32.30 (3) investment adviser records required to be maintained under paragraph (1)
32.31 may be maintained in any form of data storage required by rule adopted or order issued
32.32 under this chapter.

32.33 (d) **Audits or inspections.** The records of a broker-dealer registered or required
32.34 to be registered under this chapter and of an investment adviser registered or required to
32.35 be registered under this chapter 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) 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 \$25,000. 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) 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) 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.

(h) **Continuing education.** A rule adopted or order issued under this chapter may require an individual registered under section 80A.57 ~~or 80A.59~~ to participate in a continuing education program approved by the Securities and Exchange Commission and administered by a self-regulatory organization ~~or, in the absence of such a program, a rule adopted or order issued under this chapter may require continuing education for an individual registered under section 80A.59.~~

Sec. 14. Minnesota Statutes 2006, section 80A.67, is amended to read:

80A.67 SECTION 412; DENIAL, REVOCATION, SUSPENSION, WITHDRAWAL, RESTRICTION, CONDITION, OR LIMITATION OF REGISTRATION.

(a) **Disciplinary conditions-applicants.** If the administrator finds that the order is in the public interest and subsection (d) authorizes the action, an order issued under this chapter may deny an application, or may condition or limit registration of an applicant to be a broker-dealer, agent, or investment adviser, and, if the applicant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser.

(b) **Disciplinary conditions-registrants.** If the administrator finds that the order is in the public interest and subsection (d) authorizes the action an order issued under this chapter may revoke, suspend, condition, or limit the registration of a registrant and, if the registrant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser. However, the administrator may not:

(1) institute a revocation or suspension proceeding under this subsection based on an order issued under a law of another state that is reported to the administrator or a designee of the administrator more than one year after the date of the order on which it is based; or

(2) under subsection (d)(5)(A) or (B), issue an order on the basis of an order issued under the securities act of another state unless the other order was based on conduct for which subsection (d) would authorize the action had the conduct occurred in this state.

(c) **Disciplinary penalties-registrants.** If the administrator finds that the order is in the public interest and subsection (d)(1) through (6), (8), (9), (10), or (12) and (13) authorizes the action, an order under this chapter may censure, impose a bar, or impose a civil penalty in an amount up to \$10,000 for each violation, on a registrant, and, if the registrant is a broker-dealer or investment adviser, a partner, officer, director, person

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35.1 having a similar status or performing similar functions, or a person directly or indirectly in
35.2 control, of the broker-dealer or investment adviser.

35.3 (d) **Grounds for discipline.** A person may be disciplined under subsections (a)
35.4 through (c) if the person:

35.5 (1) has filed an application for registration in this state under this chapter or the
35.6 predecessor act within the previous ten years, which, as of the effective date of registration
35.7 or as of any date after filing in the case of an order denying effectiveness, was incomplete
35.8 in any material respect or contained a statement that, in light of the circumstances under
35.9 which it was made, was false or misleading with respect to a material fact;

35.10 (2) willfully violated or willfully failed to comply with this chapter or the
35.11 predecessor act or a rule adopted or order issued under this chapter or the predecessor
35.12 act within the previous ten years;

35.13 (3) has been convicted of a felony or within the previous ten years has been
35.14 convicted of a misdemeanor involving a security, a commodity future or option contract,
35.15 or an aspect of a business involving securities, commodities, investments, franchises,
35.16 insurance, banking, or finance;

35.17 (4) is enjoined or restrained by a court of competent jurisdiction in an action
35.18 instituted by the administrator under this chapter or the predecessor act, a state, the
35.19 Securities and Exchange Commission, or the United States from engaging in or continuing
35.20 an act, practice, or course of business involving an aspect of a business involving
35.21 securities, commodities, investments, franchises, insurance, banking, or finance.

35.22 (5) is the subject of an order, issued after notice and opportunity for hearing by:

35.23 (A) the securities, depository institution, insurance, or other financial services
35.24 regulator of a state or by the Securities and Exchange Commission or other federal agency
35.25 denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment
35.26 adviser, federal covered investment adviser, or investment adviser representative;

35.27 (B) the securities regulator of a state or the Securities and Exchange Commission
35.28 against a broker-dealer, agent, investment adviser, investment adviser representative, or
35.29 federal covered investment adviser;

35.30 (C) the Securities and Exchange Commission or a self-regulatory organization
35.31 suspending or expelling the registrant from membership in the self-regulatory organization;

35.32 (D) a court adjudicating a United States Postal Service fraud order;

35.33 (E) the insurance regulator of a state denying, suspending, or revoking registration
35.34 as an insurance agent; or

35.35 (F) a depository institution regulator suspending or barring the person from the
35.36 depository institution business;

(6) is the subject of an adjudication or determination, after notice and opportunity for hearing, by the Securities and Exchange Commission, the Commodity Futures Trading Commission; the Federal Trade Commission; a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a state that the person willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act, the securities or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated;

(7) is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the administrator may not enter an order against an applicant or registrant under this paragraph without a finding of insolvency as to the applicant or registrant;

(8) refuses to allow or otherwise impedes the administrator from conducting an audit or inspection under section 80A.66(d) or refuses access to a registrant's office to conduct an audit or inspection under section 80A.66(d);

(9) has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act within the previous ten years;

(10) has not paid the proper filing fee within 30 days after having been notified by the administrator of a deficiency, but the administrator shall vacate an order under this paragraph when the deficiency is corrected;

(11) after notice and opportunity for a hearing, has been found within the previous ten years:

(A) by a court of competent jurisdiction to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated;

(B) to have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative, or similar person; or

(C) to have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction;

(12) is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a state;

(13) has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous ten years; or

(14) is not qualified on the basis of factors such as training, experience, and knowledge of the securities business. However, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization ~~or by an individual for registration as an investment adviser representative~~, a denial order may not be based on this paragraph if the individual has successfully completed all examinations required by subsection (e). The administrator may require an applicant for registration under section 80A.57 ~~or 80A.59~~ who has not been registered in a state within the two years preceding the filing of an application in this state to successfully complete an examination.

(e) Examinations. A rule adopted or order issued under this chapter may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued under this chapter may waive, in whole or in part, an examination as to an individual and a rule adopted under this chapter may waive, in whole or in part, an examination as to a class of individuals if the administrator determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

(f) Summary process. The administrator may suspend or deny an application summarily; restrict, condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty on a registrant before final determination of an administrative proceeding. Upon the issuance of an order, the administrator shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, 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 by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

(g) Procedural requirements. An order issued may not be issued under this section, except under subsection (f), without:

(1) appropriate notice to the applicant or registrant;

(2) opportunity for hearing; and

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

(h) **Control person liability.** A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the administrator under subsections (a) through (c) to the same extent as the noncomplying person, unless the controlling person did not know, or knowingly or recklessly disregarded evidence, of the existence of conduct that is a ground for discipline under this section.

(i) **Limit on investigation or proceeding.** The administrator may not institute a proceeding under subsection (a), (b), or (c) based solely on material facts actually known by the administrator unless an investigation or the proceeding is instituted within one year after the administrator actually acquires knowledge of the material facts.

Sec. 15. Minnesota Statutes 2006, section 80A.76, is amended to read:

80A.76 SECTION 509; CIVIL LIABILITY.

(a) **Securities Litigation Uniform Standards Act.** Enforcement of civil liability under this section is subject to the Securities Litigation Uniform Standards Act of 1998.

(b) **Liability of seller to purchaser.** A person is liable to the purchaser if the person sells a security in violation of section 80A.49 or, by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the purchaser not knowing the untruth or omission and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following:

(1) The purchaser may maintain an action to recover the consideration paid for the security, less the amount of any income received on the security, and interest from the date of the purchase, costs, and reasonable attorneys' fees determined by the court, upon the tender of the security, or for actual damages as provided in paragraph (3).

(2) The tender referred to in paragraph (1) may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified. A purchaser that no longer owns the security may recover actual damages as provided in paragraph (3).

(3) Actual damages in an action arising under this subsection are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it, and interest from the date of the purchase, costs, and reasonable attorneys' fees determined by the court.

(c) **Liability of purchaser to seller.** A person is liable to the seller if the person buys a security by means of an untrue statement of a material fact or omission to state a

material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the seller not knowing of the untruth or omission, and the purchaser not sustaining the burden of proof that the purchaser did not know, and in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following:

(1) The seller may maintain an action to recover the security, and any income received on the security, costs, and reasonable attorneys' fees determined by the court, upon the tender of the purchase price, or for actual damages as provided in paragraph (3).

(2) The tender referred to in paragraph (1) may be made any time before entry of judgment. Tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified. If the purchaser no longer owns the security, the seller may recover actual damages as provided in paragraph (3).

(3) Actual damages in an action arising under this subsection are the difference between the price at which the security was sold and the value the security would have had at the time of the sale in the absence of the purchaser's conduct causing liability, and interest from the date of the sale of the security, costs, and reasonable attorneys' fees determined by the court.

(d) Liability of unregistered broker-dealer and agent. A person acting as a broker-dealer or agent that sells or buys a security in violation of section 80A.56(a), 80A.57(a), or 80A.73 is liable to the customer. The customer, if a purchaser, may maintain an action for recovery of actual damages as specified in subsections (b)(1) through (3), or, if a seller, for a remedy as specified in subsections (c)(1) through (3).

(e) Liability of unregistered investment adviser and investment adviser representative. A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of section 80A.58(a), ~~80A.59(a)~~, or 80A.73 is liable to the client. The client may maintain an action to recover the consideration paid for the advice, interest from the date of payment, costs, and reasonable attorneys' fees determined by the court.

(f) Liability for investment advice. A person that receives directly or indirectly any consideration for providing investment advice to another person and that employs a device, scheme, or artifice to defraud the other person or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit on the other person, is liable to the other person. An action under this subsection is governed by the following:

(1) The person defrauded may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent

conduct, interest from the date of the fraudulent conduct, costs, and reasonable attorneys' fees determined by the court, less the amount of any income received as a result of the fraudulent conduct.

(2) This subsection does not apply to a broker-dealer or its agents if the investment advice provided is solely incidental to transacting business as a broker-dealer and no special compensation is received for the investment advice.

(g) Joint and several liability. The following persons are liable jointly and severally with and to the same extent as persons liable under subsections (b) through (f):

(1) a person that directly or indirectly controls a person liable under subsections (b) through (f), unless the controlling person sustains the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist;

(2) an individual who is a managing partner, executive officer, or director of a person liable under subsections (b) through (f), including an individual having a similar status or performing similar functions, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could have known, of the existence of conduct by reason of which the liability is alleged to exist;

(3) an individual who is an employee of or associated with a person liable under subsections (b) through (f) and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist; and

(4) a person that is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under subsections (b) through (f), unless the person sustains the burden of proof that the person did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which liability is alleged to exist.

(h) Right of contribution. A person liable under this section has a right of contribution as in cases of tort against any other person liable under this section for the same conduct.

(i) Survival of cause of action. A cause of action under this section survives the death of an individual who might have been a plaintiff or defendant.

(j) Statute of limitations. A person may not obtain relief:

(1) under subsection (b) for violation of section 80A.49, or under subsection (d) or (e), unless the action is instituted within one year after the violation occurred; or

(2) under subsection (b), other than for violation of section 80A.49, or under subsection (c) or (f), unless the action is instituted within the earlier of two years after discovery of the facts constituting the violation or five years after the violation.

(k) No enforcement of violative contract. A person that has made, or has engaged in the performance of, a contract in violation of this chapter or a rule adopted or order issued under this chapter, or that has acquired a purported right under the contract with knowledge of conduct by reason of which its making or performance was in violation of this chapter, may not base an action on the contract.

(l) No contractual waiver. A condition, stipulation, or provision binding a person purchasing or selling a security or receiving investment advice to waive compliance with this chapter or a rule adopted or order issued under this chapter is void.

(m) Survival of other right or remedies. The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist, but this chapter does not create a cause of action not specified in this section or section 80A.66(e).

Sec. 16. Minnesota Statutes 2006, section 80A.83, is amended to read:

80A.83 SECTION 606; ADMINISTRATIVE FILES AND OPINIONS.

(a) Public register of filings. The administrator shall maintain, or designate a person to maintain, a register of applications for registration of securities; registration statements; notice filings; applications for registration of broker-dealers, agents, and investment advisers, ~~and investment adviser representatives~~; notice filings by federal covered investment advisers that are or have been effective under this chapter or the predecessor act; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this chapter or the predecessor act; and interpretative opinions or no action determinations issued under this chapter.

(b) Public availability. The administrator shall make all rules, forms, interpretative opinions, and orders available to the public.

(c) Copies of public records. The administrator shall furnish a copy of a record that is a public record or a certification that the public record does not exist to a person that so requests. A rule adopted under this chapter may establish a reasonable charge for furnishing the record or certification. A copy of the record certified or a certificate by the administrator of a record's nonexistence is prima facie evidence of a record or its nonexistence.

Sec. 17. Minnesota Statutes 2006, section 80A.85, is amended to read:

80A.85 SECTION 608; UNIFORMITY AND COOPERATION WITH OTHER AGENCIES.

(a) **Objective of uniformity.** The administrator shall, in its discretion, cooperate, coordinate, consult, and, subject to section 80A.84, share records and information with the securities regulator of another state, Canada, a Canadian province or territory, a foreign jurisdiction, the Securities and Exchange Commission, the United States Department of Justice, the Commodity Futures Trading Commission, the Federal Trade Commission, the Securities Investor Protection Corporation, a self-regulatory organization, a national or international organization of securities regulators, a federal or state banking and insurance regulator, and a governmental law enforcement agency to effectuate greater uniformity in securities matters among the federal government, self-regulatory organizations, states, and foreign governments.

(b) **Policies to consider.** In cooperating, coordinating, consulting, and sharing records and information under this section and in acting by rule, order, or waiver under this chapter, the administrator shall, in its discretion, 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 affecting essentials of investor protection.

(c) **Subjects for cooperation.** The cooperation, coordination, consultation, and sharing of records and information authorized by this section includes:

- (1) establishing or employing one or more designees as a central depository for registration and notice filings under this chapter and for records required or allowed to be maintained under this chapter;
- (2) developing and maintaining uniform forms;
- (3) conducting a joint examination or investigation;
- (4) holding a joint administrative hearing;
- (5) instituting and prosecuting a joint civil or administrative proceeding;
- (6) sharing and exchanging personnel;
- (7) coordinating registrations under sections 80A.49 and 80A.56 through ~~80A.59~~ 80A.58 and exemptions under section 80A.47;
- (8) sharing and exchanging records, subject to section 80A.84;
- (9) formulating rules, statements of policy, guidelines, forms, and interpretative opinions and releases;

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- 43.1 (10) formulating common systems and procedures;
- 43.2 (11) notifying the public of proposed rules, forms, statements of policy, and
- 43.3 guidelines;
- 43.4 (12) attending conferences and other meetings among securities regulators, which
- 43.5 may include representatives of governmental and private sector organizations involved in
- 43.6 capital formation, deemed necessary or appropriate to promote or achieve uniformity; and
- 43.7 (13) developing and maintaining a uniform exemption from registration for small
- 43.8 issuers, and taking other steps to reduce the burden of raising investment capital by small
- 43.9 businesses.

43.10 Sec. 18. Minnesota Statutes 2006, section 80A.87, is amended to read:

43.11 **80A.87 SECTION 610; JURISDICTION.**

43.12 (a) **Sales and offers to sell.** Sections 80A.49, 80A.50, 80A.56(a), 80A.57(a),

43.13 80A.58(a), ~~80A.59(a)~~, 80A.68, 80A.73, 80A.76, and 80A.77 do not apply to a person that

43.14 sells or offers to sell a security unless the offer to sell or the sale is made in this state or the

43.15 offer to purchase or the purchase is made and accepted in this state.

43.16 (b) **Purchases and offers to purchase.** Sections 80A.56(a), 80A.57(a), 80A.58(a),

43.17 ~~80A.59(a)~~, 80A.68, 80A.73, 80A.76, and 80A.77 do not apply to a person that purchases

43.18 or offers to purchase a security unless the offer to purchase or the purchase is made in this

43.19 state or the offer to sell or the sale is made and accepted in this state.

43.20 (c) **Offers in this state.** For the purpose of this section, an offer to sell or to purchase

43.21 a security is made in this state, whether or not either party is then present in this state, if

43.22 the offer:

- 43.23 (1) originates from within this state; or
- 43.24 (2) is directed by the offeror to a place in this state and received at the place to
- 43.25 which it is directed.

43.26 (d) **Acceptances in this state.** For the purpose of this section, an offer to purchase

43.27 or to sell is accepted in this state, whether or not either party is then present in this

43.28 state, if the acceptance:

- 43.29 (1) is communicated to the offeror in this state and the offeree reasonably believes
- 43.30 the offeror to be present in this state and the acceptance is received at the place in this
- 43.31 state to which it is directed; and
- 43.32 (2) has not previously been communicated to the offeror, orally or in a record,
- 43.33 outside this state.

43.34 (e) **Publications, radio, television, or electronic communications.** An offer

43.35 to sell or to purchase is not made in this state when a publisher circulates or there is

circulated on the publisher's behalf in this state a bona fide newspaper or other publication of general, regular, and paid circulation that is not published in this state, or that is published in this state but has had more than two-thirds of its circulation outside this state during the previous 12 months or when a radio or television program or other electronic communication originating outside this state is received in this state. A radio or television program, or other electronic communication is considered as having originated in this state if either the broadcast studio or the originating source of transmission is located in this state, unless:

(1) the program or communication is syndicated and distributed from outside this state for redistribution to the general public in this state;

(2) the program or communication is supplied by a radio, television, or other electronic network with the electronic signal originating from outside this state for redistribution to the general public in this state;

(3) the program or communication is an electronic communication that originates outside this state and is captured for redistribution to the general public in this state by a community antenna or cable, radio, cable television, or other electronic system; or

(4) the program or communication consists of an electronic communication that originates in this state, but which is not intended for distribution to the general public in this state.

(f) Investment advice and misrepresentations. Sections 80A.58(a), ~~80A.59(a)~~, 80A.60(a), 80A.69, 80A.72, and 80A.73 apply to a person if the person engages in an act, practice, or course of business instrumental in effecting prohibited or actionable conduct in this state, whether or not either party is then present in this state.

Sec. 19. **REVISOR'S INSTRUCTION.**

The revisor of statutes shall change the references to "section 80A.41(28)" in Minnesota Statutes, sections 66A.40, subdivision 9, 82.23, 302A.011, subdivision 26, and 322B.03, subdivision 43, to "section 80A.41(30)" to reflect the renumbering of that section made by this act.