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State of Minnesota

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HOUSE OF REPRESENTATIVES

NINETIETH SESSION

H. F. No. 444

- 01/23/2017 Authored by Loon, Slocum and Hoppe
- The bill was read for the first time and referred to the Committee on Commerce and Regulatory Reform
- 02/09/2017 Adoption of Report: Placed on the General Register as Amended
- Read for the Second Time
- 03/02/2017 Calendar for the Day
- Read for the Third Time
- Passed by the House and transmitted to the Senate
- 03/20/2017 Passed by the Senate and returned to the House
- 03/21/2017 Presented to Governor
- 03/22/2017 Governor Approval

1.1 A bill for an act

1.2 relating to securities; modifying the MNvest registration exemption; amending

1.3 Minnesota Statutes 2016, section 80A.461.

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

1.5 Section 1. Minnesota Statutes 2016, section 80A.461, is amended to read:

1.6 **80A.461 MNVEST REGISTRATION EXEMPTION.**

1.7 Subdivision 1. **Definitions.** (a) For purposes of this section, the terms defined in

1.8 paragraphs (b) through (e) have the meanings given them.

1.9 (b) "MNvest issuer" means an entity ~~organized under the laws of Minnesota~~, other than

1.10 a general partnership, that satisfies the requirements of Code of Federal Regulations, title

1.11 17, part ~~230.147~~ 230.147A, and the following requirements:

1.12 ~~(1) the principal office of the entity is located in Minnesota;~~

1.13 ~~(2) as of the last day of the most recent semiannual fiscal period of the entity, at least~~

1.14 ~~80 percent, or other threshold permitted by Code of Federal Regulations, title 17, part~~

1.15 ~~230.147, of the entity's assets were located in Minnesota;~~

1.16 ~~(3) except in the case of an entity whose gross revenue during the most recent period of~~

1.17 ~~12 full months did not exceed \$5,000, the entity derived at least 80 percent, or other threshold~~

1.18 ~~permitted by Code of Federal Regulations, title 17, part 230.147, of the entity's gross revenues~~

1.19 ~~from the operation of a business in Minnesota during (i) the previous fiscal year, if the~~

1.20 ~~MNvest offering begins during the first six months of the entity's fiscal year; or (ii) during~~

1.21 ~~the 12 months ending on the last day of the sixth month of the entity's current fiscal year,~~

1.22 ~~if the MNvest offering begins following the last day;~~

2.1 (1) for purposes of this section only, the MNvest issuer shall at the time of any offers
2.2 and sales have its principal place of business in Minnesota and be doing business within
2.3 Minnesota;

2.4 (i) the MNvest issuer shall be deemed to have its principal place of business in Minnesota
2.5 if the officers, partners, or managers of the issuer primarily direct, control, and coordinate
2.6 the activities of the issuer from within Minnesota; and

2.7 (ii) the MNvest issuer shall be deemed to be doing business within Minnesota if the
2.8 issuer satisfies at least one of the following requirements:

2.9 (A) the issuer derived at least 80 percent of its consolidated gross revenues from the
2.10 operation of a business or of real property located in or from the rendering of services within
2.11 Minnesota. Revenues must be calculated based on the issuer's most recent fiscal year, if the
2.12 first offer of securities pursuant to this section is made during the first six months of the
2.13 issuer's current fiscal year, and based on the first six months of the issuer's current fiscal
2.14 year or during the 12-month fiscal period ending with such six-month period, if the first
2.15 offer of securities pursuant to this section is made during the last six months of the issuer's
2.16 current fiscal year;

2.17 (B) the issuer had at the end of its most recent semiannual fiscal period prior to an initial
2.18 offer of securities in any offering or subsequent offering pursuant to this section, at least
2.19 80 percent of its assets and those of its subsidiaries on a consolidated basis located within
2.20 Minnesota;

2.21 (C) the issuer intends to use and uses at least 80 percent of the net proceeds to the issuer
2.22 from sales made pursuant to Code of Federal Regulations, title 17, part 230.147A, in
2.23 connection with the operation of a business or of real property, the purchase of real property
2.24 located in, or the rendering of services within Minnesota; or

2.25 (D) a majority of the issuer's employees are based in Minnesota;

2.26 (2) an issuer that has previously conducted an intrastate offering pursuant to Code of
2.27 Federal Regulations, title 17, part 230.147A, or Rule 147, part 230.147, may not conduct
2.28 another intrastate offering pursuant to Code of Federal Regulations, title 17, part 230.147A,
2.29 in a different state or territory, until the expiration of the time period specified in Code of
2.30 Federal Regulations, title 17, part 230.147A(e), or Rule 147, section 230.147(e), calculated
2.31 on the basis of the date of the last sale in such offering;

3.1 ~~(4)~~(3) the entity does not attempt to limit its liability, or the liability of any other person,
3.2 for fraud or intentional misrepresentation in connection with the offering of its securities
3.3 in a MNvest offering; and

3.4 ~~(5)~~(4) the entity is not:

3.5 (i) engaged in the business of investing, reinvesting, owning, holding, or trading in
3.6 securities, except that the entity may hold securities of one class in an entity that is not itself
3.7 engaged in the business of investing, reinvesting, owning, holding, or trading in securities;
3.8 or

3.9 (ii) subject to the reporting requirements of the Securities and Exchange Act of 1934,
3.10 section 13 or 15(d), United States Code, title 15, sections 78m and 78o(d).

3.11 (c) "MNvest offering" means an offer, or an offer and sale, of securities by a MNvest
3.12 issuer that: (1) is conducted exclusively through a MNvest portal, and (2) satisfies the
3.13 requirements of this section and other requirements the administrator imposes by rule.

3.14 (d) "MNvest portal" means an Internet Web site that is operated by a portal operator for
3.15 the offer or sale of MNvest offerings under this section or registered securities under section
3.16 80A.50, paragraph (b), or 80A.52, and satisfies the requirements of subdivision 6.

3.17 (e) "Portal operator" means an entity, including an issuer, that:

3.18 (1) is authorized to do business in Minnesota;

3.19 (2) is a broker-dealer registered under this chapter or otherwise registers with the
3.20 administrator as a portal operator in accordance with subdivision 7, paragraph (a), and is
3.21 therefore excluded from broker-dealer registration; and

3.22 (3) satisfies such other conditions as the administrator may determine.

3.23 (f) "Purchaser" means a person or entity that complies with this section and satisfies
3.24 other requirements the administrator imposes by rule.

3.25 Subd. 2. **Generally.** The offer, sale, and issuance of securities in a MNvest offering is
3.26 exempt from the requirements of sections 80A.49 to 80A.54, except 80A.50, paragraph (a),
3.27 clause (3), and 80A.71, if the issuer meets the qualifications under this section.

3.28 Subd. 3. **MNvest offering.** A MNvest offering must satisfy the following requirements:

3.29 (1) the issuer must be a MNvest issuer on the date that its securities are first offered for
3.30 sale in the offering and continuously through the closing of the offering;

4.1 (2) the offering must meet the requirements of the federal exemption for intrastate
4.2 offerings in ~~section 3(a)(11) of the Securities Act of 1933, United States Code, title 15,~~
4.3 ~~section 77e(a)(11), and Rule 147 147A,~~ adopted under the Securities Act of 1933, Code of
4.4 Federal Regulations, title 17, part ~~230.147~~ 230.147A;

4.5 (3) the sale of securities must be conducted exclusively through a MNvest portal;

4.6 (4) the MNvest issuer shall require the portal operator to provide or make available to
4.7 prospective purchasers through the MNvest portal a copy of the MNvest issuer's balance
4.8 sheet and income statement for the MNvest issuer's most recent fiscal year, if the issuer was
4.9 in existence. For offerings beginning more than 90 days after the issuer's most recent fiscal
4.10 year end, or if the MNvest issuer was not in existence the previous calendar year, the MNvest
4.11 issuer must provide or make available a balance sheet as of a date not more than 90 days
4.12 before the commencement of the MNvest offering for the MNvest issuer's most recently
4.13 completed fiscal year, or such shorter portion the MNvest issuer was in existence during
4.14 that period, and the year-to-date period, or inception-to-date period, if shorter, corresponding
4.15 with the more recent balance sheet required by this clause;

4.16 (5) in any 12-month period, the MNvest issuer shall not raise more than the aggregate
4.17 amounts set forth in item (i) or (ii), either in cash or other consideration, in connection with
4.18 one or more MNvest offerings:

4.19 (i) \$2,000,000 if the financial statements described in clause (4) have been (A) audited
4.20 by a certified public accountant firm licensed under chapter 326A using auditing standards
4.21 issued by either the American Institute of Certified Public Accountants or the Public
4.22 Company Accounting Oversight Board, or (B) reviewed by a certified public accountant
4.23 firm licensed under chapter 326A using the Statements on Standards for Accounting and
4.24 Review Services issued by the Accounting and Review Services Committee of the American
4.25 Institute of Certified Public Accountants; or

4.26 (ii) \$1,000,000 if the financial statements described in clause (4) have not been audited
4.27 or reviewed as described in item (i);

4.28 (6) ~~the MNvest issuer must use at least 80 percent of the net proceeds of the offering in~~
4.29 ~~connection with the operation of its business within Minnesota;~~ offers or sales made in
4.30 reliance on this section will not be integrated with:

4.31 (i) offers or sales of securities made prior to the commencement of offers and sales of
4.32 securities pursuant to this section; or

5.1 (ii) offers or sales made after completion of offers and sales of securities pursuant to
5.2 this section that are:

5.3 (A) registered under the Securities Act of 1933, except as provided in Code of Federal
5.4 Regulations, part 230.147A, paragraph (h);

5.5 (B) exempt from registration under Regulation A, title 17, parts 230.251 to 230.263;

5.6 (C) exempt from registration under Rule 701, title 17, part 230.701;

5.7 (D) made pursuant to an employee benefit plan;

5.8 (E) exempt from registration under Regulation S, title 17, parts 230.901 to 230.905;

5.9 (F) exempt from registration under section 4(a)(6) of the Securities Act of 1933, United
5.10 States Code, title 15, section 77d(a)(6); or

5.11 (G) made more than six months after the completion of an offering conducted pursuant
5.12 to this section.

5.13 For purposes of clarity, this section does not permit a MNvest issuer to conduct
5.14 simultaneous securities offerings;

5.15 (7) no single purchaser may purchase more than \$10,000 in securities of the MNvest
5.16 issuer under this exemption in connection with a single MNvest offering unless the purchaser
5.17 is an accredited investor under Rule 501, adopted under the Securities Act of 1933, Code
5.18 of Federal Regulations, title 17, part 230.501;

5.19 (8) all payments for the purchase of securities must be held in escrow until the aggregate
5.20 capital deposited into escrow from all purchasers is equal to or greater than the stated
5.21 minimum offering amount. Purchasers will receive a return of all their subscription funds
5.22 if the minimum offering amount is not raised by the stipulated expiration date required in
5.23 subdivision 4, clause (2). The escrow agent must be a bank, regulated trust company, savings
5.24 bank, savings association, or credit union authorized to do business in Minnesota. Prior to
5.25 the execution of the escrow agreement between the issuer and the escrow agent, the escrow
5.26 agent must conduct searches of the issuer, its executive officers, directors, governors, and
5.27 managers, as provided to the escrow agent by the portal operator, against the Specially
5.28 Designated Nationals list maintained by the Office of Foreign Assets Control. The escrow
5.29 agent is only responsible to act at the direction of the party establishing the escrow account
5.30 and does not have a duty or liability, contractual or otherwise, to an investor or other person
5.31 except as set forth in the applicable escrow agreement or other contract;

6.1 (9) the MNvest issuer shall require the portal operator to make available to the prospective
6.2 purchaser through the MNvest portal a disclosure document that meets the requirements
6.3 set forth in subdivision 4;

6.4 (10) before selling securities to a prospective purchaser on a MNvest portal, the MNvest
6.5 issuer shall require the portal operator to obtain from the prospective purchaser the
6.6 certification required under subdivision 5;

6.7 (11) not less than ten days before the beginning of an offering of securities in reliance
6.8 on the exemption under this section, the MNvest issuer shall provide the following to the
6.9 administrator:

6.10 (i) a notice of claim of exemption from registration, specifying that the MNvest issuer
6.11 will be conducting an offering in reliance on the exemption under this section;

6.12 (ii) a copy of the disclosure document to be provided to prospective purchasers in
6.13 connection with the offering, as described in subdivision 4; ~~and~~

6.14 (iii) a filing fee of \$300; and

6.15 (iv) MNvest offerings otherwise registered pursuant to sections 80A.50 and 80A.52 are
6.16 excluded from such ten-day wait period; and

6.17 (12) the MNvest issuer and the portal operator may engage in solicitation and advertising
6.18 of the MNvest offering provided that:

6.19 (i) the advertisement contains disclaiming language which clearly states:

6.20 (A) the advertisement is not the offer and is for informational purposes only;

6.21 (B) the offering is being made in reliance on the exemption under this section;

6.22 (C) the offering ~~is directed~~ indicates that purchasers may only to be residents of the state;

6.23 (D) all offers and sales are made through a MNvest portal; and

6.24 (E) the Department of Commerce is the securities regulator in Minnesota;

6.25 (ii) along with the disclosures required under item (i), the advertisement may contain
6.26 no more than the following information:

6.27 (A) the name and contact information of the MNvest issuer;

6.28 (B) a brief description of the general type of business of the MNvest issuer;

6.29 (C) the minimum offering amount the MNvest issuer is attempting to raise through its
6.30 offering;

- 7.1 (D) a description of how the issuer will use the funds raised through the MNvest offering;
- 7.2 (E) the duration that the MNvest offering will remain open;
- 7.3 (F) the MNvest issuer's logo; and
- 7.4 (G) a link to the MNvest issuer's Web site and the MNvest portal in which the MNvest
- 7.5 offering is being made; and
- 7.6 (iii) the advertisement complies with all applicable state and federal laws.

7.7 Subd. 4. **Required disclosures to prospective MNvest offering purchasers.** The

7.8 MNvest issuer shall require the portal operator to make available to the prospective purchaser

7.9 through the MNvest portal a printable or downloadable disclosure document containing the

7.10 following:

7.11 (1) the MNvest issuer's type of entity, the address and telephone number of its principal

7.12 office, its formation history for the previous five years, a summary of the material facts of

7.13 its business plan and its capital structure, and its intended use of the offering proceeds,

7.14 including any amounts to be paid from the proceeds of the MNvest offering, as compensation

7.15 or otherwise, to an owner, executive officer, director, governor, manager, member, or other

7.16 person occupying a similar status or performing similar functions on behalf of the MNvest

7.17 issuer;

7.18 (2) the MNvest offering must stipulate the date on which the offering will expire, which

7.19 must not be longer than 12 months from the date the MNvest offering commenced;

7.20 (3) a copy of the escrow agreement between the escrow agent, the MNvest issuer, and,

7.21 if applicable, the portal operator, as described in subdivision 3, clause (8);

7.22 (4) the financial statements required under subdivision 3, clause (4);

7.23 (5) the identity of all persons owning more than ten percent of any class of equity interests

7.24 in the company;

7.25 (6) the identity of the executive officers, directors, governors, managers, members, and

7.26 other persons occupying a similar status or performing similar functions in the name of and

7.27 on the behalf of the MNvest issuer, including their titles and their relevant experience;

7.28 (7) the terms and conditions of the securities being offered, a description of investor exit

7.29 strategies, and of any outstanding securities of the MNvest issuer; the minimum and

7.30 maximum amount of securities being offered; either the percentage economic ownership

7.31 of the MNvest issuer represented by the offered securities, assuming the minimum and, if

7.32 applicable, maximum number of securities being offered is sold, or the valuation of the

8.1 MNvest issuer implied by the price of the offered securities; the price per share, unit, or
8.2 interest of the securities being offered; any restrictions on transfer of the securities being
8.3 offered; and a disclosure that any future issuance of securities might dilute the value of
8.4 securities being offered;

8.5 (8) the identity of and consideration payable to a person who has been or will be retained
8.6 by the MNvest issuer to assist the MNvest issuer in conducting the offering and sale of the
8.7 securities, including a portal operator, but excluding (i) persons acting primarily as
8.8 accountants or attorneys, and (ii) employees whose primary job responsibilities involve
8.9 operating the business of the MNvest issuer rather than assisting the MNvest issuer in raising
8.10 capital;

8.11 (9) a description of any pending material litigation, legal proceedings, or regulatory
8.12 action involving the MNvest issuer or any executive officers, directors, governors, managers,
8.13 members, and other persons occupying a similar status or performing similar functions in
8.14 the name of and on behalf of the MNvest issuer;

8.15 (10) a statement of the material risks unique to the MNvest issuer and its business plans;

8.16 (11) a statement that the securities have not been registered under federal or state
8.17 securities law and that the securities are subject to limitations on resale; ~~and~~

8.18 (12) the following legend must be displayed conspicuously in the disclosure document:

8.19 "IN MAKING AN INVESTMENT DECISION, PURCHASERS MUST RELY ON
8.20 THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE
8.21 OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE
8.22 SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE
8.23 SECURITIES COMMISSION OR DIVISION OR OTHER REGULATORY
8.24 AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT
8.25 CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS
8.26 DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL
8.27 OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON
8.28 TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR
8.29 RESOLD EXCEPT AS PERMITTED BY SUBSECTION (e) OF SEC RULE ~~147~~ 147A
8.30 (CODE OF FEDERAL REGULATIONS, TITLE 17, PART ~~230.147~~ 230.147A (e)) AS
8.31 PROMULGATED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND
8.32 THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION
8.33 OR EXEMPTION THEREFROM. PURCHASERS SHOULD BE AWARE THAT

9.1 THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS
9.2 INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

9.3 SALES WILL BE MADE ONLY TO RESIDENTS OF MINNESOTA. OFFERS AND
9.4 SALES OF THESE SECURITIES ARE MADE UNDER AN EXEMPTION FROM
9.5 FEDERAL REGISTRATION AND HAVE NOT BEEN REGISTERED UNDER THE
9.6 SECURITIES ACT OF 1933. FOR A PERIOD OF SIX MONTHS FROM THE DATE
9.7 OF THE SALE BY THE ISSUER OF THE SECURITIES, ANY RESALE OF THE
9.8 SECURITIES (OR THE UNDERLYING SECURITIES IN THE CASE OF
9.9 CONVERTIBLE SECURITIES) SHALL BE MADE ONLY TO PERSONS RESIDENT
9.10 WITHIN MINNESOTA. ANY RESALE OF THESE SECURITIES MUST BE
9.11 REGISTERED OR EXEMPT PURSUANT TO THIS CHAPTER."; and

9.12 (13) the following legend must be displayed conspicuously on the certificate or other
9.13 document, if applicable, evidencing the security stating that:

9.14 "OFFERS AND SALES OF THESE SECURITIES WERE MADE UNDER AN
9.15 EXEMPTION FROM FEDERAL REGISTRATION AND HAVE NOT BEEN
9.16 REGISTERED UNDER THE SECURITIES ACT OF 1933. FOR A PERIOD OF SIX
9.17 MONTHS FROM THE DATE OF THE SALE BY THE ISSUER OF THESE
9.18 SECURITIES, ANY RESALE OF THESE SECURITIES (OR THE UNDERLYING
9.19 SECURITIES IN THE CASE OF CONVERTIBLE SECURITIES) SHALL BE MADE
9.20 ONLY TO PERSONS RESIDENT WITHIN MINNESOTA. ANY RESALE OF THESE
9.21 SECURITIES MUST BE REGISTERED OR EXEMPT PURSUANT TO THIS
9.22 CHAPTER."

9.23 Subd. 5. **Required certification from MNvest offering purchasers.** Before selling
9.24 securities to a prospective purchaser through a MNvest portal, the MNvest issuer shall
9.25 require the portal operator to obtain from the prospective purchaser through the applicable
9.26 MNvest portal a written or electronic certification that includes, at a minimum, the following
9.27 statements:

9.28 "I UNDERSTAND AND ACKNOWLEDGE THAT:

9.29 If I make an investment in an offering through this MNvest portal, it is very likely that
9.30 I am investing in a high-risk, speculative business venture that could result in the complete
9.31 loss of my investment, and I need to be able to afford such a loss.

9.32 This offering has not been reviewed or approved by any state or federal securities
9.33 commission or division or other regulatory authority and that no such person or authority

10.1 has confirmed the accuracy or determined the adequacy of any disclosure made to me
10.2 relating to this offering.

10.3 If I make an investment in an offering through this MNvest portal, it is very likely that
10.4 the investment will be difficult to transfer or sell and, accordingly, I may be required to
10.5 hold the investment indefinitely.

10.6 By entering into this transaction with the company, I am affirmatively representing
10.7 myself as being a Minnesota resident at the time that this contract is formed, and if this
10.8 representation is subsequently shown to be false, the contract is void."

10.9 Subd. 6. **MNvest portal.** A MNvest portal must satisfy the requirements of clauses (1)
10.10 through (4):

10.11 (1) the Web site does not contain the word "MNvest" in its URL address;

10.12 (2) the Web site implements steps to limit Web site access to ~~the offer~~ or sale of securities
10.13 to only Minnesota residents when conducting MNvest offerings; and

10.14 (3) MNvest offerings may not be viewed on the MNvest portal by a prospective purchaser
10.15 until:

10.16 (i) the portal operator verifies, through its exercise of reasonable steps, such as using a
10.17 third-party verification service or as otherwise approved by the administrator, that the
10.18 prospective purchaser is a Minnesota resident; and

10.19 (ii) the prospective purchaser makes an affirmative acknowledgment, electronically
10.20 through the MNvest portal, that:

10.21 (A) I am a Minnesota resident;

10.22 (B) the securities and investment opportunities listed on this Web site involve high-risk,
10.23 speculative business ventures. If I choose to invest in any securities or investment opportunity
10.24 listed on this Web site, I may lose all of my investment, and I can afford such a loss;

10.25 (C) the securities and investment opportunities listed on this Web site have not been
10.26 reviewed or approved by any state or federal securities commission or division or other
10.27 regulatory authority, and no such person or authority, including this Web site, has confirmed
10.28 the accuracy or determined the adequacy of any disclosure made to prospective investors
10.29 relating to any offering; and

10.30 (D) if I choose to invest in any securities or investment opportunity listed on this Web
10.31 site, I understand that the securities I will acquire may be difficult to transfer or sell, that
10.32 there is no ready market for the sale of such securities, that it may be difficult or impossible

11.1 for me to sell or otherwise dispose of this investment at any price, and that, accordingly, I
11.2 may be required to hold this investment indefinitely; and

11.3 (4) the Web site complies with all other rules adopted by the administrator.

11.4 Subd. 7. **Portal operator.** (a) An entity, other than a registered broker-dealer, wishing
11.5 to become a portal operator shall file with the administrator:

11.6 (1) ~~form~~ ~~..... [to be approved by the administrator]~~ the Portal Operator Registration
11.7 Form, including all applicable schedules and supplemental information;

11.8 (2) a copy of the articles of incorporation or other documents that indicate the entity's
11.9 form of organization; and

11.10 (3) a filing fee of \$200.

11.11 (b) A portal operator's registration expires 12 months from the date the administrator
11.12 has approved the entity as a portal operator, and subsequent registration for the succeeding
11.13 12-month period shall be issued upon written application and upon payment of a renewal
11.14 fee of \$200, without filing of further statements or furnishing any further information, unless
11.15 specifically requested by the administrator. This section is not applicable to a registered
11.16 broker-dealer functioning as a portal operator.

11.17 (c) A portal operator that is not a broker-dealer registered under this chapter shall not:

11.18 (1) offer investment advice or recommendations, provided that a portal operator shall
11.19 not be deemed to be offering investment advice or recommendations merely because it (i)
11.20 selects, or may perform due diligence with respect to, issuers or offerings to be listed, or
11.21 (ii) provides general investor educational materials;

11.22 (2) provide transaction-based compensation for securities sold under this chapter to
11.23 employees, agents, or other persons unless the employees, agents, or other persons are
11.24 registered with the administrator and permitted to receive such compensation;

11.25 (3) charge a fee to the issuer for an offering of securities on a MNvest portal unless the
11.26 fee is (i) a fixed amount for each offering, (ii) a variable amount based on the length of time
11.27 that the securities are offered on the MNvest portal, or (iii) a combination of such fixed and
11.28 variable amounts; or

11.29 (4) hold, manage, possess, or otherwise handle purchaser funds or securities. This
11.30 restriction does not apply if the issuer is the portal operator.

11.31 (d) A portal operator shall provide the administrator with read-only access to
11.32 administrative sections of the MNvest portal.

12.1 (e) A portal operator shall comply with the record-keeping requirements of this paragraph,
12.2 provided that the failure of a portal operator that is not an issuer to maintain records in
12.3 compliance with this paragraph shall not affect the MNvest issuer's exemption from
12.4 registration afforded by this section:

12.5 (1) a portal operator shall maintain and preserve, for a period of five years from either
12.6 the date of the closing or termination of the securities offering, the following records:

12.7 (i) the name of each issuer whose securities have been listed on its MNvest portal;

12.8 (ii) the full name, residential address, Social Security number, date of birth, and copy
12.9 of a state-issued identification for all owners with greater than ten percent voting equity in
12.10 an issuer;

12.11 (iii) copies of all offering materials that have been displayed on its MNvest portal;

12.12 (iv) the names and other personal information of each purchaser who has registered at
12.13 its MNvest portal;

12.14 (v) any agreements and contracts between the portal operator and the issuer; and

12.15 (vi) any information used to establish that a MNvest issuer, prospective MNvest
12.16 purchaser, or MNvest purchaser is a Minnesota resident;

12.17 (2) a portal operator shall, upon written request of the administrator, furnish to the
12.18 administrator any records required to be maintained and preserved under this subdivision;

12.19 (3) the records required to be kept and preserved under this subdivision must be
12.20 maintained in a manner, including by any electronic storage media, that will permit the
12.21 immediate location of any particular document so long as such records are available for
12.22 immediate and complete access by representatives of the administrator. Any electronic
12.23 storage system must preserve the records exclusively in a nonrewriteable, nonerasable
12.24 format; verify automatically the quality and accuracy of the storage media recording process;
12.25 serialize the original and, if applicable, duplicate units storage media, and time-date for the
12.26 required period of retention the information placed on such electronic storage media; and
12.27 be able to download indexes and records preserved on electronic storage media to an
12.28 acceptable medium. In the event that a records retention system commingles records required
12.29 to be kept under this subdivision with records not required to be kept, representatives of the
12.30 administrator may review all commingled records; and

12.31 (4) a portal operator shall maintain such other records as the administrator shall determine
12.32 by rule.

13.1 Subd. 8. **Portal operator; privacy of purchaser information.** (a) For purposes of this
13.2 subdivision, "personal information" means information provided to a portal operator by a
13.3 prospective purchaser or purchaser that identifies, or can be used to identify, the prospective
13.4 purchaser or purchaser.

13.5 (b) Except as provided in paragraph (c), a portal operator must not disclose personal
13.6 information without written or electronic consent from the prospective purchaser or purchaser
13.7 that authorizes the disclosure.

13.8 (c) Paragraph (b) does not apply to:

13.9 (1) records required to be provided to the administrator under subdivision 7, paragraph
13.10 (e);

13.11 (2) the disclosure of personal information to a MNvest issuer relating to its MNvest
13.12 offering; or

13.13 (3) the disclosure of personal information to the extent required or authorized under
13.14 other law.

13.15 Subd. 9. **Bad actor disqualification.** (a) An exemption under this section is not available
13.16 for a sale if securities in the MNvest issuer; any predecessor of the MNvest issuer; any
13.17 affiliated issuer; any director, governor, executive officer, other officer participating in the
13.18 MNvest offering, general partner, or managing member of the MNvest issuer; any beneficial
13.19 owner of 20 percent or more of the MNvest issuer's outstanding voting equity securities,
13.20 calculated on the basis of voting power; any promoter connected with the MNvest issuer
13.21 in any capacity at the time of the sale; any investment manager of an issuer that is a pooled
13.22 investment fund; any general partner or managing member of any investment manager; or
13.23 any director, governor, executive officer, or other officer participating in the offering of
13.24 any investment manager or general partner or managing member of the investment manager:

13.25 (1) has been convicted, within ten years before the offering, or five years, in the case of
13.26 MNvest issuers, their predecessors, and affiliated issuers, of any felony or misdemeanor:

13.27 (i) in connection with the purchase or sale of any security;

13.28 (ii) involving the making of any false filing with the Securities and Exchange Commission
13.29 or a state administrator; or

13.30 (iii) arising out of the conduct of the business of an underwriter, broker, dealer, municipal
13.31 securities dealer, investment adviser, or paid solicitor of purchasers of securities;

14.1 (2) is subject to any order, judgment, or decree of any court of competent jurisdiction,
14.2 entered within five years before the sale, that, at the time of the sale, restrains or enjoins
14.3 the person from engaging or continuing to engage in any conduct or practice:

14.4 (i) in connection with the purchase or sale of any security;

14.5 (ii) involving the making of any false filing with the Securities and Exchange Commission
14.6 or a state administrator; or

14.7 (iii) arising out of the conduct of the business of an underwriter, broker, dealer, municipal
14.8 securities dealer, investment adviser, or paid solicitor of purchasers of securities;

14.9 (3) is subject to a final order of a state securities commission or an agency or officer of
14.10 a state performing like functions; a state authority that supervises or examines banks, savings
14.11 associations, or credit unions; a state insurance commission or an agency or officer of a
14.12 state performing like functions; an appropriate federal banking agency; the United States
14.13 Commodity Futures Trading Commission; or the National Credit Union Administration
14.14 that:

14.15 (i) at the time of the offering, bars the person from:

14.16 (A) association with an entity regulated by the commission, authority, agency, or officer;

14.17 (B) engaging in the business of securities, insurance, or banking; or

14.18 (C) engaging in savings association or credit union activities; or

14.19 (ii) constitutes a final order based on a violation of any law or regulation that prohibits
14.20 fraudulent, manipulative, or deceptive conduct entered within ten years before the offering;

14.21 (4) is subject to an order of the Securities and Exchange Commission entered pursuant
14.22 to section 15(b) or 15B(c) of the Securities Exchange Act of 1934, United States Code, title
14.23 15, section 78o(b) or 78o-4(c) or section 203(e) or (f) of the Investment Advisers Act of
14.24 1940, United States Code, title 15, section 80b-3(e) or (f) that, at the time of the offering:

14.25 (i) suspends or revokes the person's registration as a broker, dealer, municipal securities
14.26 dealer, or investment adviser;

14.27 (ii) places limitations on the activities, functions, or operations of the person; or

14.28 (iii) bars the person from being associated with any entity or from participating in the
14.29 offering of any penny stock;

14.30 (5) is subject to any order of the Securities and Exchange Commission or a state
14.31 administrator entered within five years before the sale that, at the time of the sale, orders

15.1 the person to cease and desist from committing or causing a violation or future violation
15.2 of:

15.3 (i) any scienter-based antifraud provision of the federal securities laws, including without
15.4 limitation section 17(a)(1) of the Securities Act of 1933, United States Code, title 15, section
15.5 77q(a)(1), section 10(b) of the Securities Exchange Act of 1934, United States Code, title
15.6 15, section 78j(b) and Code of Federal Regulations, title 17, section 240.10b-5, section
15.7 15(c)(1) of the Securities Exchange Act of 1934, United States Code, title 15, section
15.8 78o(c)(1) and section 206(1) of the Investment Advisers Act of 1940, United States Code,
15.9 title 15, section 80b-6(1), or any other rule or regulation thereunder; or

15.10 (ii) section 5 of the Securities Act of 1933, United States Code, title 15, section 77e;

15.11 (6) is suspended or expelled from membership in, or suspended or barred from association
15.12 with a member of, a registered national securities exchange or a registered national or
15.13 affiliated securities association for any act or omission to act constituting conduct inconsistent
15.14 with just and equitable principles of trade;

15.15 (7) has filed as a registrant or issuer, or was or was named as an underwriter in, any
15.16 registrations statement or Regulation A offering statement filed with the Securities and
15.17 Exchange Commission or a state administrator that, within five years before the sale, was
15.18 the subject of a refusal order, stop order, or order suspending the Regulation A exemption,
15.19 or is, at the time of the sale, the subject of an investigation or proceeding to determine
15.20 whether a stop order or suspension order should be issued; or

15.21 (8) is subject to a United States Postal Service false representation order entered within
15.22 five years before the offering, or is, at the time of the offering, subject to a temporary
15.23 restraining order or preliminary injunction with respect to conduct alleged by the United
15.24 States Postal Service to constitute a scheme or device for obtaining money or property
15.25 through the mail by means of false representations.

15.26 (b) Paragraph (a) does not apply:

15.27 (1) with respect to any conviction, order, judgment, decree, suspension, expulsion, or
15.28 bar that occurred or was issued before September 23, 2013;

15.29 (2) upon a showing of good cause and without prejudice to any other action by the
15.30 Securities and Exchange Commission or a state administrator, if the Securities and Exchange
15.31 Commission or a state administrator determines that it is not necessary under the
15.32 circumstances that an exemption be denied;

16.1 (3) if, before the relevant offering, the court of regulatory authority that entered the
16.2 relevant order, judgment, or decree advises in writing, whether contained in the relevant
16.3 judgment, order, or decree or separately to the Securities and Exchange Commission or a
16.4 state administrator or their staff, that disqualification under paragraph (a) should not arise
16.5 as a consequence of the order, judgment, or decree; or

16.6 (4) if the MNvest issuer establishes that it did not know and, in the exercise of reasonable
16.7 care, could not have known that a disqualification existed under paragraph (a).

16.8 (c) For purposes of paragraph (a), events relating to any affiliated issuer that occurred
16.9 before the affiliation arose will not be considered disqualifying if the affiliated entity is not:

16.10 (1) in control of the issuer; or

16.11 (2) under common control with the issuer by a third party that was in control of the
16.12 affiliated entity at the time of the events.

16.13 Subd. 10. Residence of purchasers. Sales of securities pursuant to this section must be
16.14 made only to residents of Minnesota, or who the issuer reasonably believes, at the time of
16.15 sale, are residents of Minnesota. For purposes of determining the residence of purchasers:

16.16 (1) a corporation, partnership, limited liability company, trust, or other form of business
16.17 organization shall be deemed to be a resident of Minnesota if, at the time of sale to it, it has
16.18 its principal place of business determined in the same manner as the principal place of
16.19 business for a MNvest issuer within Minnesota;

16.20 (2) individuals shall be deemed to be residents of Minnesota if the individuals have, at
16.21 the time of sale to them, their principal residence in Minnesota;

16.22 (3) a corporation, partnership, trust, or other form of business organization, which is
16.23 organized for the specific purpose of acquiring securities offered pursuant to this section,
16.24 shall not be a resident of Minnesota unless all of the beneficial owners of the organization
16.25 are residents of Minnesota;

16.26 (4) obtaining a written representation from purchasers of in-state residency status will
16.27 not, without more, be sufficient to establish a reasonable belief that the purchasers are
16.28 in-state residents; and

16.29 (5) a trust that is not deemed by the law of the state or territory of its creation to be a
16.30 separate legal entity is deemed to be a resident of each state or territory in which its trustee
16.31 is, or trustees are, residents.

16.32 **EFFECTIVE DATE.** This section is effective April 20, 2017.