

CHAPTER 140 — H.F.No. 634

An act relating to securities; providing for improved regulation of the sale of securities and the licensing of broker-dealers, agents, and investment advisers; making miscellaneous clarifications and revisions; amending Minnesota Statutes 1980, Sections 80A.04, Subdivision 4; 80A.05, Subdivision 1; 80A.07, Subdivision 1; 80A.12, Subdivision 3; 80A.14; 80A.15, Subdivisions 1 and 2; 80A.16; 80A.21, Subdivision 1; 80A.28, Subdivisions 1, 2, 3, 4 and 7, and by adding a subdivision; 80A.30, Subdivision 2.

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

Section 1. Minnesota Statutes 1980, Section 80A.04, Subdivision 4, is amended to read:

Subd. 4. Every license shall expire on ~~October 1~~ December 31 of each year unless an application for renewal has been received by the commissioner by ~~September 1~~, except that during the 12 month period following August 1, 1973 the commissioner by rule or order may establish a schedule for license renewals. For this purpose the commissioner may adjust the license fee proportionately November 15.

Sec. 2. Minnesota Statutes 1980, Section 80A.05, Subdivision 1, is amended to read:

Subdivision 1. A broker-dealer, agent or investment adviser may obtain an initial or renewal license by filing with the commissioner or his designee an application together with a consent to service of process pursuant to section 80A.27, subdivision 7. The application shall be on a form prescribed by the commissioner and shall contain whatever information the commissioner requires concerning such matters as the applicant's form and place of organization, proposed method of doing business and financial condition, the qualifications and experience of the applicant, including, in the case of a broker-dealer or investment adviser, the qualifications and experience of any partner, officer, director or controlling person, any injunction or administrative order or conviction of a misdemeanor involving securities and any conviction of a felony. The commissioner may by order, with respect to any particular application, require the submission of information concerning any other matters which he determines are relevant to the application. The commissioner may by rule or order require an applicant for an initial license to publish an announcement of the application in one or more specified newspapers published in this state.

If no denial order is in effect, no proceeding is pending under section 80A.07, and all of the requirements of this subdivision and subdivision 3 have been complied with, the licensing becomes effective 30 days after an application is filed. The commissioner may by rule or order specify an earlier effective date, and may by order defer the effective date until 30 days after the filing of any amendment. ~~Licensing of a broker-dealer automatically constitutes licens-~~

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ing of any agent who is a partner, officer, or director, or a person occupying a similar status or performing similar functions.

Sec. 3. Minnesota Statutes 1980, Section 80A.07, Subdivision 1, is amended to read:

Subdivision 1. The commissioner may by order deny, suspend or revoke any license or may censure the licensee, if he finds (a) that the order is in the public interest and (b) that the applicant or licensee or, in the case of a broker-dealer or investment adviser, any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

(1) has filed an application for license which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) has willfully violated or failed to comply with any provision of this chapter or a predecessor law or the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or any rule under any of ~~such~~ these statutes, or any order thereunder of which he has notice and to which he is subject;

(3) has been convicted, within the past ten years, of any misdemeanor involving a security or any aspect of the securities business, or any felony;

(4) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(5) is the subject of an order of the commissioner denying, suspending or revoking a license as a broker-dealer, agent or investment adviser;

(6) is the subject of an order entered within the past five years by the securities administrator of any other state or by the securities and exchange commission denying or revoking registration or license as a broker-dealer, agent or investment adviser, or is the subject of an order of the securities and exchange commission suspending or expelling him from a national securities exchange or association registered under the Securities Exchange Act of 1934, or is the subject of a United States post office fraud order; but the commissioner may not institute a revocation or suspension proceeding under this clause more than one year from the date of the order relied on, and may not enter an order under this clause on the basis of an order under another state law unless the order was based on facts which would currently constitute a ground for an order under this section;

(7) has engaged in dishonest or fraudulent practices in the securities business;

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(8) has failed to maintain the minimum net capital or to comply with the limitation on aggregate indebtedness which the commissioner by rule prescribes;

(9) is not qualified on the basis of such factors as training, experience and knowledge of the securities business;

(10) has failed reasonably to supervise his agents if he is a broker-dealer or his employees if he is an investment adviser;

(11) has failed to pay the proper filing fee, but the commissioner shall vacate ~~any such~~ the order when the deficiency has been corrected;

(12) has offered or sold securities in this state through any unlicensed agent; ~~or~~

(13) has made any material misrepresentation to the commissioner, or upon request reasonably made by the commissioner, has withheld or concealed information from, or refused to furnish information to, the commissioner; or

(14) has failed to reasonably supervise the agents of a broker-dealer or the employees of an investment adviser if he has assumed or has been designated to carry out the supervisory procedures of the broker-dealer or investment adviser.

Sec. 4. Minnesota Statutes 1980, Section 80A.12, Subdivision 3, is amended to read:

Subd. 3. Any document filed under sections 80A.01 to 80A.31 or a predecessor act within ~~five~~ three years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

Sec. 5. Minnesota Statutes 1980, Section 80A.14, is amended to read:

80A.14 DEFINITIONS.

Subdivision 1. TERMS. When used in sections 80A.01 to 80A.31, the terms defined in this section have the meanings given them unless the context otherwise requires.

(a) Subd. 2. AFFILIATE. "Affiliate" of another person means any person directly or indirectly controlling, controlled by, or under common control with ~~such~~ the other person.

(b) Subd. 3. AGENT. "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer in:

(1) effecting transactions in a security exempted by section 80A.15, subdivision 1, ~~clauses (a), (b), (c), (d), (e), (g), (h) or (j);~~

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(2) effecting transactions exempted by section 80A.15, subdivision 2;

(3) 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;

(4) effecting other transactions, if ~~such~~ the individual is an officer or director of the issuer, no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state, and, upon application, ~~such~~ the individual is specifically authorized by name in an order issued by the commissioner; or

(5) effecting transactions in securities registered by notification under section 80A.09 if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he otherwise comes within this definition.

(e) Subd. 4. BROKER-DEALER. "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:

(1) an agent;

(2) an issuer;

(3) a bank, savings institution or trust company, or

(4) a person who has no place of business in this state if he effects transactions in this state exclusively with or through (i) the issuers of the securities involved in the transactions, (ii) other broker-dealers, or (iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit sharing trusts, or other financial institutions or institutional buyers, or to broker-dealers, whether the purchaser is acting for itself or in some fiduciary capacity; or

(5) other persons not within the intent of this subsection whom the commissioner by rule or order designates.

(d) Subd. 5. COMMISSIONER. "Commissioner" means the commissioner of securities and real estate of the department of commerce.

(e) Subd. 6. FRAUD, DECEIT, DEFRAUD. "Fraud," "deceit" and "defraud" are not limited to common law deceit.

(f) Subd. 7. GUARANTEED. "Guaranteed" means guaranteed as to payment of principal and interest or principal and dividends.

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(g) Subd. 8. INDUSTRIAL REVENUE BOND. "Industrial revenue bond" means any obligation issued by a governmental unit (including the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing), other than a general obligation of a governmental unit having power to tax property or of an agency of the state of Minnesota, (1) which is issued as part of an issue, all or a major portion of the proceeds of which are to be used directly or indirectly in any trade or business carried on by any person who is not an exempt person, and (2) the payment of the principal or interest on which (under the terms of such obligation or any underlying arrangement) is, in whole or in major part, (i) secured by any interest in property used or to be used in a trade or business or in payment in respect of such property, or (ii) to be derived from payments in respect of property or borrowed money, used or to be used in a trade or business. For purposes of the preceding sentence, an exempt person is a governmental unit or an organization described in Minnesota Statutes 1971, Section 290.05, Subdivision 1, Clauses (h) and (i).

(h) Subd. 9. INVESTMENT ADVISER. "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:

- (1) a bank, savings institution or trust company;
- (2) a lawyer, accountant, engineer or teacher whose performance of these services is solely incidental to the practice of his profession;
- (3) a broker-dealer whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them;
- (4) a publisher of any bona fide newspaper, news magazine or business or financial publication of general, regular and paid circulation;
- (5) a person whose advice, analyses or reports relate only to securities exempted by section 80A.15, subdivision 1, clause (a);
- (6) a person ~~who has no place of business in this state if his~~ whose only clients in this state are other investment advisers, ~~broker-dealers~~ or persons to whom sales are exempted under section 80A.15, subdivision 2, clause (g); or
- (7) such other persons not within the intent of this ~~paragraph~~ subdivision as the commissioner may by rule or order designate.

(i) Subd. 10. INVESTMENT METAL. "Investment metal" means any object which contains gold, silver or platinum, or any other metal which the

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commissioner may specify by rule upon a showing that such other metal is being purchased and sold by the public as an investment.

(j) Subd. 11. INVESTMENT GEM. "Investment gem" means any gem which the commissioner may specify by rule upon a showing that ~~such~~ the gem is being purchased and sold by the public as an investment.

(k) Subd. 12. INVESTMENT METAL CONTRACT. "Investment metal contract" or "investment gem contract" means:

(i) a sale of an investment metal or investment gem in which the seller or an affiliate of the seller retains possession of the investment metal or investment gem; or

(ii) a contract of purchase or sale which provides for the future delivery of an investment metal or investment gem, or any option to purchase or option to sell such a contract; or

(iii) a sale of an investment metal or investment gem pursuant to a contract known to the trade as a margin account, margin contract, leverage account, or leverage contract.

"Investment metal contract" or "investment gem contract" shall not include:

(i) the sale of an investment metal or investment gem where the seller has reasonable grounds to believe that the investment metal or investment gem is being acquired for manufacturing, commercial or industrial purposes; or

(ii) the sale, or contract for the future purchase or sale, of jewelry, art objects or other manufactured or crafted goods other than bullion or bulk sales of coins; or

(iii) the sale of an investment metal or investment gem where full payment is made to the seller and delivery is made to the purchaser within 20 days of the date of purchase provided that a purchaser may designate a bank, savings institution, trust company, or licensed broker-dealer, within this state, to accept delivery on his behalf if ~~such~~ the bank, savings institution, trust company or licensed broker-dealer maintains ~~such~~ the investment metal or investment gem in safe-keeping and as the specifically identifiable property of the purchaser; or

(iv) any futures contracts traded on a commodities exchange registered under the Federal Commodity Futures Trading Commission Act of 1974.

(l) Subd. 13. ISSUER. "Issuer" means any person who issues or proposes to issue any security and any promoter who acts for an issuer to be formed, except:

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(1) with respect to certificates of deposit or trust certificates, issuer means the person performing the act and assuming the duties of depositor, manager or trustee pursuant to the provisions of the trust or other instrument under which the security is issued;

(2) with respect to certificates of interest or participation in oil, gas or mining rights, titles or leases, issuer means the owner of any such right, title or lease, who creates fractional interest therein for the purposes of sale.

(m) Subd. 14. NONISSUER. "Nonissuer" means not directly or indirectly for the benefit of the issuer or an affiliate of the issuer.

(n) Subd. 15. PERSON. "Person" means an individual, corporation, a partnership, an association, a joint stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, a political subdivision of a government or any other entity.

(o) Subd. 16. PURCHASING FOR INVESTMENT. "Purchasing for investment" means a purchase made for investment and not for the purpose of resale. In determining whether securities have been purchased for investment, the length of the period for which the securities are held will be one of the factors considered. Securities held for two years after their purchase shall be conclusively deemed to have been purchased for investment.

(p) Subd. 17. SALE, SELL. (1) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

(2) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(3) Any 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.

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

(5) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(6) The terms defined in this ~~subsection~~ subdivision do not include (i) any bona fide pledge or loans; (ii) any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not.

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(+) Subd. 18. SECURITY. "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable shares; investment contract; investment metal contract or investment gem contract; voting trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas or mining right, title or lease or in payments out of production under such a the right, title or lease; or, in general, any interest or instrument commonly known as a security, or any 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. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or for some other specified period.

(+) Subd. 19. STATE. "State" means any state, territory or possession of the United States, the District of Columbia and Puerto Rico.

Sec. 6. Minnesota Statutes 1980, Section 80A.15, Subdivision 1, is amended to read:

Subdivision 1. The following securities are exempted from sections 80A.08 and 80A.16:

(a) Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state or any corporate or other instrumentality of one or more of the foregoing; but this exemption shall not include any industrial revenue bond.

(b) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any province, any agency or corporate or other instrumentality of one or more of the foregoing, if the security is recognized as a valid obligation by the issuer or guarantor; but this exemption shall not include any revenue obligation payable solely from payments to be made in respect of property or money used under a lease, sale or loan arrangement by or for a nongovernmental industrial or commercial enterprise.

(c) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution or trust company organized under the laws of any state and subject to regulation in respect of the issuance or guarantee of its securities by a governmental authority of that state.

(d) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state.

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(e) Any security issued or guaranteed by any federal credit union or any credit union, or similar association organized and supervised under the laws of this state.

(f) Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, ~~or the Pacific Coast Stock Exchange, or the Chicago Board Options Exchange~~; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing.

(g) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of the paper which is likewise limited, or any guarantee of the paper or of any renewal which are not advertised for sale to the general public in newspapers or other publications of general circulation or otherwise, or by radio, television or direct mailing.

(h) Any interest in any employee's savings, stock purchase, pension, profit sharing or similar benefit plan, or a self-employed person's retirement plan.

(i) Any security issued or guaranteed by any railroad, other common carrier or public utility which is subject to regulation in respect to the issuance or guarantee of its securities by a governmental authority of the United States.

(j) Any interest in a common trust fund or similar fund maintained by a state bank or trust company organized and operating under the laws of Minnesota, or a national bank wherever located, for the collective investment and reinvestment of funds contributed thereto by the bank or trust company in its capacity as trustee, executor, administrator, or guardian; and any interest in a collective investment fund or similar fund maintained by the bank or trust company, or in a separate account maintained by an insurance company, for the collective investment and reinvestment of funds contributed thereto by the bank, trust company or insurance company in its capacity as trustee or agent, which interest is issued in connection with an employee's savings, pension, profitsharing or similar benefit plan, or a self-employed person's retirement plan.

(k) Any security which meets all of the following conditions:

(1) If the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of the agent in its prospectus;

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(2) A class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934, and has been so registered for the three years immediately preceding the offering date;

(3) Neither the issuer nor a significant subsidiary has had a material default during the last seven years, or for the period of the issuer's existence if less than seven years, in the payment of (i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money, or (ii) rentals under leases with terms of three years or more;

(4) The issuer has had consolidated net income, before extraordinary items and the cumulative effect of accounting changes, of at least \$1,000,000 in four of its last five fiscal years including its last fiscal year; and if the offering is of interest bearing securities, has had for its last fiscal year, net income, before deduction for income taxes and depreciation, of at least 1-1/2 times the issuer's annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. For the purposes of this clause "last fiscal year" means the most recent year for which audited financial statements are available, provided that such statements cover a fiscal period ended not more than 15 months from the commencement of the offering;

(5) If the offering is of stock or shares other than preferred stock or shares, the securities have voting rights and the rights include (i) the right to have at least as many votes per share, and (ii) the right to vote on at least as many general corporate decisions, as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law; and

(6) If the offering is of stock or shares, other than preferred stock or shares, the securities are owned beneficially or of record, on any date within six months prior to the commencement of the offering, by at least 1,200 persons, and on that date there are at least 750,000 such shares outstanding with an aggregate market value, based on the average bid price for that day, of at least \$3,750,000. In connection with the determination of the number of persons who are beneficial owners of the stock or shares of an issuer, the issuer or broker-dealer may rely in good faith for the purposes of this clause upon written information furnished by the record owners.

(l) Any certificate of indebtedness sold or issued for investment, other than a certificate of indebtedness pledged as a security for a loan made contemporaneously therewith, by an industrial loan and thrift company.

Sec. 7. Minnesota Statutes 1980, Section 80A.15, Subdivision 2, is amended to read:

Subd. 2. The following transactions are exempted from sections 80A.08 and 80A.16:

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(a) Any isolated sales, whether or not effected through a broker-dealer, provided that no person shall make more than five sales of securities of the same issuer pursuant to this exemption during any period of 12 consecutive months; provided further, that in the case of sales by an issuer, except sales of securities registered under the Securities Act of 1933 or exempted by section 3(b) of that act, (1) the seller reasonably believes that all buyers are purchasing for investment, and (2) the securities are not advertised for sale to the general public in newspapers or other publications of general circulation or otherwise, or by radio, television, or direct mailing.

(b) Any nonissuer distribution of an outstanding security if (1) either Moody's, Fitch's or Standard & Poor's Securities Manuals, or other recognized manuals approved by the commissioner contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date not more than 18 months prior to the date of ~~such~~ the sale, and a profit and loss statement for the fiscal year preceding the date of ~~such~~ the balance sheet, and (2) the issuer or its predecessor has been in active, continuous business operation for the five year period next preceding the date of sale, and (3) if the security has a fixed maturity or fixed interest or dividend provision, the issuer has not, within the three preceding fiscal years, defaulted in payment of principal, interest or dividends on ~~any such~~ the securities.

(c) The execution of any orders by a licensed broker-dealer for the purchase or sale of any security, pursuant to an unsolicited offer to purchase or sell; provided that ~~such~~ the broker-dealer acts as agent for the purchaser or seller, and has no direct material interest in the sale or distribution of ~~such~~ the security, receives no commission, profit, or other compensation from any source other than the purchaser and seller and delivers to the purchaser and seller written confirmation of the transaction which clearly itemizes his commission, or other compensation.

(d) Any nonissuer sale of notes or bonds secured by a mortgage lien if the entire mortgage, together with all notes or bonds secured thereby, is sold to a single purchaser at a single sale.

(e) Any judicial sale, exchange, or issuance of securities made pursuant to an order of a court of competent jurisdiction.

(f) The sale, by a pledge holder, of a security pledged with him in good faith as collateral for a bona fide debt.

(g) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profitsharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity.

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(h) Any sales by an issuer to ~~such~~ the number of persons as, when aggregated with the number of persons to whom sales have been made pursuant to clauses (a) or (k), shall not exceed 25 persons in this state (other than those designated in clause (g)) during any period of 12 consecutive months, whether or not any of the purchasers is then present in this state, if (1) the issuer reasonably believes that all of the buyers in this state (other than those designated in clause (g)) are purchasing for investment, and (2) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state (other than those designated in clause (g)), except reasonable and customary commissions paid by ~~such~~ the issuer to a broker-dealer licensed under this chapter, and (3) the issuer has, ten days prior to any sale pursuant to this paragraph, supplied the commissioner with a statement of issuer on forms prescribed by the commissioner, containing the following information: (i) the name and address of the issuer, and the date and state of its organization; (ii) the number of units, price per unit, and a description of the securities to be sold; (iii) the amount of commissions to be paid and the persons to whom they will be paid; (iv) the names of all officers, directors and persons owning five percent or more of the equity of the issuer; (v) a brief description of the intended use of proceeds; (vi) a description of all sales of securities made by the issuer within the 12 month period next preceding the date of filing; and (vii) a copy of the investment letter, if any, intended to be used in connection with any sale. The commissioner may by rule or order as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase the number of offers and sales permitted, or waive the conditions in clauses (1), (2) or (3) with or without the substitution of a limitation or remuneration.

(i) Any offer (but not a sale) of a security for which a registration statement has been filed under ~~both~~ sections 80A.01 to 80A.31 ~~and the Securities Act of 1933~~, if no stop order or refusal order is in effect and no public proceeding or examination looking toward ~~such~~ an order is pending ~~under either act~~; and any offer of a security if the sale of ~~such~~ the security is or would be exempt under this section. The commissioner may by rule exempt ~~such other~~ offers (but not sales) of securities for which a registration statement has been filed as he deems appropriate, consistent with the purposes of sections 80A.01 to 80A.31.

(j) The offer and sale by a cooperative association organized under chapter 308, of its securities when ~~such~~ the securities are offered and sold only to its members, or when the purchase of ~~such~~ the securities is necessary or incidental to establishing membership in such association, or when such securities are issued as patronage dividends.

(k) Any offer or sale of securities, including offers and sales pursuant to preorganization subscriptions for the securities of an issuer to be formed, by a corporation having its principal office in this state if, after giving effect thereto,

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the aggregate number of holders of all of the issuer's securities, all of whom shall have purchased for investment, does not exceed ten, exclusive of persons designated in clause (g), provided that no commission or other remuneration has been paid and no advertising has been published or circulated in connection with ~~any such~~ the sale, and all sales are consummated within 30 days after commencement of business by the issuer. The commissioner may by rule or order increase the number of persons to whom sales may be made under this exemption.

(l) The issuance and delivery of any securities of one corporation to another corporation or its security holders in exchange for the acquisition by the issuer or a subsidiary of the issuer of all or substantially all of the assets of ~~such~~ the other corporation, or in connection with a consolidation or merger of ~~such~~ the corporation, provided, that the commissioner of securities and real estate has been furnished with a general description of the transaction and with ~~such~~ other information as he by rule prescribes not less than ten days prior to ~~such~~ the issuance and delivery.

(m) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters.

(n) The distribution by a corporation of its or other securities to its own security holders as a stock dividend or as a dividend from earnings or surplus or as a liquidating distribution; or upon conversion of an outstanding convertible security; or pursuant to a stock split or reverse stock split.

(o) Any offer or sale of securities by an affiliate of the issuer thereof if: (1) a registration statement is in effect with respect to securities of the same class of ~~such~~ the issuer and (2) ~~such~~ the offer or sale has been exempted from registration by rule or order of the commissioner.

Sec. 8. Minnesota Statutes 1980, Section 80A.16, is amended to read:

80A.16 FILING OF SALES AND ADVERTISING LITERATURE.

The commissioner may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser or broker-dealer unless the security or transaction is exempted by section 80A.15.

Sec. 9. Minnesota Statutes 1980, Section 80A.21, Subdivision 1, is amended to read:

Subdivision 1. Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule or order hereunder:

Changes or additions are indicated by underline, deletions by ~~strikeout~~.

(a) He shall have the power to issue and cause to be served upon such the person an order requiring the person to cease and desist from violations of sections 80A.01 to 80A.31. The order shall be calculated to give reasonable notice of the rights of the person to request a hearing thereon and shall state the reasons for the entry of the order. A hearing shall be held not later than seven days after the request for ~~such~~ the hearing is received by the commissioner after which and within 20 days of the date of the hearing the commissioner shall issue a further order vacating the cease and desist order or making it permanent as the facts require. If no hearing is requested within 30 days of service of the order, the order will become final and will remain in effect until it is modified or vacated by the commissioner. All hearings shall be conducted in accordance with the provisions of chapter 15. If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, ~~such~~ the person shall be deemed in default, and the proceeding may be determined against him upon consideration of the cease and desist order, the allegations of which may be deemed to be true. The commissioner may adopt rules of procedure concerning all proceedings conducted pursuant to this subdivision; and

(b) He may bring an action in the district court of the appropriate county to enjoin the acts or practices and to enforce compliance with sections 80A.01 to 80A.31 or any rule or order thereunder and he may refer the matter to the attorney general or the county attorney of the appropriate county. Upon a proper showing, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted and a receiver may be appointed for the defendant or the defendant's assets. The court may not require the commissioner to post a bond.

Sec. 10. Minnesota Statutes 1980, Section 80A.28, Subdivision 1, is amended to read:

Subdivision 1. (a) There shall be a ~~minimum~~ filing fee of \$100 for every ~~registration statement filed under sections 80A.09 to 80A.11~~ application for registration. There shall be an additional fee of one-tenth of one percent of the maximum aggregate offering price at which the registered securities are to be offered in this state, and the maximum ~~filing fee~~ combined fees shall ~~in no case be more than~~ not exceed \$300.

(b) If the registration statement relates to redeemable securities issued by an open end management company or unit investment trust, as defined in the Investment Company Act of 1940, ~~the~~ there shall be a filing fee of \$100 for every application for registration. There shall be an additional fee shall be of one-twentieth of one percent of the maximum aggregate offering price at which the registered securities are to be offered in this state, and there shall be no maximum fee. There shall be no maximum fee for securities registered pursuant to this clause.

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(c) When a an application for registration statement is withdrawn before the effective date or a pre-effective stop order is entered under section 80A.13, subdivision 1, all but the minimum \$100 filing fee shall be returned. If an application to register securities is denied, the total of all fees received shall be retained.

Sec. 11. Minnesota Statutes 1980, Section 80A.28, Subdivision 2, is amended to read:

Subd. 2. Every applicant for an initial or renewal license shall pay a filing fee of \$200 in the case of a broker-dealer, \$50 in the case of an agent, and \$100 in the case of an investment adviser. The licensing of an agent who is a primary officer, partner, or director of a licensed broker-dealer shall not be subject to the filing fees of this subdivision. When an application is denied or withdrawn, the filing fee shall be retained. A licensed agent who has terminated employment with one broker-dealer shall, before beginning employment with another broker-dealer, pay a transfer fee of \$20.

Sec. 12. Minnesota Statutes 1980, Section 80A.28, Subdivision 3, is amended to read:

Subd. 3. Any amendment to an existing license or registration requiring an order of the commissioner, ~~other than an amendment to a registration of an application for registration increasing the aggregate amount to be registered,~~ shall require payment of an amendment fee of \$25. An amendment to an effective registration shall require the payment of a \$25 amendment fee, plus an additional fee calculated in accordance with subdivision 1. ~~An amendment to an application for registration increasing the aggregate amount to be registered shall require the payment of the additional registration fee calculated in accordance with subdivision 1.~~ If the amendment increases the aggregate amount of securities to be registered, there shall be an additional fee calculated in accordance with subdivision 1, provided the maximum additional fees, if applicable, have not previously been paid. The commissioner shall by rule designate those amendments which require an order of the commissioner.

Sec. 13. Minnesota Statutes 1980, Section 80A.28, Subdivision 4, is amended to read:

Subd. 4. Every annual report required by section 80A.12, subdivision 10, shall be accompanied by a fee of \$100.

Sec. 14. Minnesota Statutes 1980, Section 80A.28, Subdivision 7, is amended to read:

Subd. 7. Every request for a written opinion from the commissioner ~~concerning the availability of any exemption in section 80A.15, other than an exemption requiring presale notice to the commissioner,~~ shall be accompanied by a fee of ~~\$20~~ \$50.

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Sec. 15. Minnesota Statutes 1980, Section 80A.28, is amended by adding a subdivision to read:

Subd. 7a. If securities of an issuer are sold in this state in excess of the quantity registered, the excess securities may be registered by paying a filing fee of \$100, and an additional fee in the amount of three times that which is prescribed under subdivision 1, for the excess securities to be registered. There shall be no maximum combined fees under this subdivision, notwithstanding the limitation set forth in subdivision 1, clause (a).

Registration of the excess securities shall be effective retroactively to the date of sale.

Sec. 16. Minnesota Statutes 1980, Section 80A.30, Subdivision 2, is amended to read:

Subd. 2. This section shall not apply to any isolated sale not made or occurring in the course of repeated or successive sale; nor to any judicial sale or any transaction lawfully ordered, authorized, or approved by a court of competent jurisdiction in this state; nor to any sale to a bank or financial institution under the supervision of any instrumentality or officer of the United States or of the commissioner of banks or of the commissioner of insurance of this state, or a licensed broker-dealer; nor to any sale made in compliance with the provisions of section 80A.15, subdivision 2, clause (h). In any complaint, information or indictment charging a sale in violation of this section, it shall not be necessary to specifically name or identify persons other than the complainant to whom like sales have been made.

Sec. 17. **EFFECTIVE DATE.**

Subdivision 1. Section 1 is effective January 1, 1982. For the 15 month period following October 1, 1981, the commissioner may adjust the license fee proportionately.

Subd. 2. Sections 2 to 16 are effective the day following final enactment.

Approved May 8, 1981

CHAPTER 141 — H.F.No. 739

An act relating to local government; regulating the tax levy of the joint recreation and park board of the city of Hibbing and Independent School District 701; amending Laws 1971, Chapter 573, Section 2.

Changes or additions are indicated by underline, deletions by ~~strikeout~~.