

CHAPTER 2875

DEPARTMENT OF COMMERCE

REGULATION OF SECURITIES

NOTE Pursuant to Laws of Minnesota 1983 chapter 289 section 114 this chapter of Minnesota Rules is to be administered by the commissioner of commerce

2875.0170 FINANCIAL INSTITUTION OR
INSTITUTIONAL BUYER
2875.0180 PERSONS TO WHOM SALES HAVE
BEEN MADE

2875.2470 EXEMPTIONS
2875.3050 COMMISSIONS AND EXPENSES

2875.0170 FINANCIAL INSTITUTION OR INSTITUTIONAL BUYER.

The term "financial institution or institutional buyer" contained in Minnesota Statutes, section 80A.15, subdivision 2, paragraph (g), includes but is not limited to a corporation with a class of equity securities registered under section 12(g) of the Securities Exchange Act of 1934, as amended; and a person who is an "accredited investor" within the meaning of rule 501(a) adopted by the Securities Exchange Commission in Federal Register, volume 47, page 11262, to be codified as Code of Federal Regulations, title 17, section 230.501 (a).

Statutory Authority: *MS s 80A.25*

History: *8 SR 1009*

2875.0180 PERSONS TO WHOM SALES HAVE BEEN MADE.

[For text of subpart 1, see M R. 1983]

Subp. 2. Limitation waiver. The limitation of 25 purchasers, other than those designated in subpart 3, item D, contained in Minnesota Statutes, section 80A.15, subdivision 2, paragraph (h) is waived in connection with any distribution resulting in sales to not more than 35 persons in this state, other than those designated in Minnesota Statutes, section 80A.15, subdivision 2, paragraph (g), in connection with any offering being made in compliance with rule 506 adopted by the Securities and Exchange Commission in Federal Register, volume 47, page 11266, to be codified as Code of Federal Regulations, title 17, section 230.506 or rules adopted under section 3(b) of the Securities Act of 1933, other than an exempt offering under Regulation A, if the offering is in compliance with these rules.

Subp 3. When exemptions withdrawn. Exemption withdrawals:

A. The exemption contained in Minnesota Statutes, section 80A.15, subdivision 2, paragraph (h) is withdrawn for any security representing an interest in, or formed for the purpose of investing in, any oil and gas venture, or any partnership, joint venture, group, or association formed principally for the purpose of exploring for oil and gas or developing oil and gas reserves unless the security is sold in compliance with rule 506 adopted by the Securities and Exchange Commission in Federal Register, volume 47, page 11266, to be codified as Code of Federal Regulations, title 17, section 230.506.

B. The exemption contained in Minnesota Statutes, section 80A.15, subdivision 2, paragraph (h) is withdrawn for any security representing an interest in, or issued for the purpose of investing in, any animal breeding, animal feeding, animal leasing, or similar venture, unless said security is sold in compliance with rule 506 adopted by the Securities and Exchange Commission in Federal Register, volume 47, page 11266, to be codified as Code of Federal Regulations, title 17, section 230.506.

[For text of subp 3 items C to G, see M.R. 1983]

[For text of subp 4, see M.R. 1983]

Subp. 5.4. **Integrating sales and offers; factors considered.** The following factors should be considered in determining whether offers and sales should be integrated for purposes of the exemptions contained in Minnesota Statutes, section 80A.15, subdivision 2, paragraph (h) and this part:

- A. whether the sales are part of the single plan of financing;
- B. whether the sales involve issuance of the same class of securities;
- C. whether the sales have been made at or about the same time;
- D. whether the same type of consideration is received; and
- E. whether the sales are made for the same general purposes.

Statutory Authority: *MS s 80A.15 subd 2; 80A.25*

History: *8 SR 1009*

2875.2430 EXEMPTIONS.

The commissioner in his discretion may remove the conditions and restrictions imposed by this chapter from any part or all of the escrowed shares when he deems such removal justifiable or when he deems that the circumstances under which the conditions and restrictions were imposed no longer exist. Events warranting a consideration of the circumstances with regard to the foregoing determination include, but are not limited to, the following:

[For text of items A to C, see M.R. 1983]

D. when a depositor exercised his rights under Minnesota Statutes, section 302A.471, or until January 1, 1984, under Minnesota Statutes, sections 301.44 or 310.40, if, in the opinion of the commissioner, the proposed manner of sale of the escrowed shares does not tend to work fraud or inequity on other shareholders, present or proposed.

Statutory Authority: *MS s 80A.12 subd 5; 80A.25*

History: *8 SR 1009*

2875.3050 COMMISSIONS AND EXPENSES.

Subpart 1. **Inclusions and exclusions.** Selling expenses in connection with an offering of securities, whether such offering is sold entirely or partially within Minnesota, shall include underwriting discounts or commissions; the value of options or warrants excluding overallotment options to acquire securities granted or proposed to be granted in connection with the offering to an underwriter, or its partners, officers, directors, or shareholders, or otherwise as such underwriter may lawfully direct; finder's fees paid or to be paid in connection with the offering, whether such fees are paid by the issuer or an affiliate of the issuer; the value of the difference between the fair value at the time of issuance and the price paid for securities of the issuer issued within two years prior to the offering or proposed to be issued to an underwriter or any of its partners, officers, directors, or shareholders, to the extent such sales or issuances may be deemed by the commissioner to have been in lieu of commissions, or material in the selection of an underwriter by the issuer, or otherwise directly or indirectly connected with the offering; and all other expenses directly or indirectly incurred in connection with the offering, including nonaccountable expenses of the underwriter, but excluding, however:

A. attorneys' fees for services in connection with the offer, sale, and issuance of the securities and their qualification for offer and sale under applicable laws and regulations;

B. charges of transfer agents, registrars, indenture trustees, escrow holders, depositaries, auditors, accountants, engineers, appraisers, and other experts;

C. cost of prospectuses, circulars, and other documents required to comply with such laws, rules, and regulations;

D. other expenses incurred in connection with such qualification and compliance with such laws, rules, and regulations; and

E. cost of authorizing and preparing the securities and documents relating thereto, including issue taxes and stamps.

Subp. 1a. **Reasonable selling expenses.** Selling expenses shall at all times be reasonable, and, unless good cause for an exception is shown, shall not exceed the following percentages for the specified types of companies or securities based upon percentages of the aggregate offering price:

- A. finance, mortgage, and related companies, ten percent;
- B. bonds, notes, debentures, and secured issuers, ten percent;
- C. common stocks, 15 percent;
- D. preferred stocks and other stock senior to common stock, ten percent;
- E. investment companies, ten percent;
- F. REITS, ten percent; and
- G. investment contracts, ten percent.

[For text of subps 2 to 4, see M.R. 1983]

Statutory Authority: MS s 80A.11 subd 4; 80A.25

History: 8 SR 1009