

4 MCAR-1

1 Department of Commerce

2 Securities and Real Estate Division

3

4 Adopted Rules SDiv 2014 (Agent Bonding), SDiv 2030 (Cheap Stock)

5 and SDiv 2067 (Definitions), Relating to the Minnesota

6 Securities Act

7

8 Rules as Adopted

9 SDiv 2014 Bond requirements for investment advisors.

10 A. Amount. Any investment adviser who has custody of, or
11 discretionary authority over, any assets of any client shall
12 have first posted with the commissioner a surety bond in the
13 amount of \$25,000, on such form as the commissioner may
14 prescribe.

15 B. Alternative compliance. Any appropriate deposit of cash
16 or security shall be accepted in lieu of any bond required by
17 this section. An appropriate deposit requires, in the case of
18 deposited securities, that the securities have a market value
19 equal to 120 percent of the amount of the bond which would
20 otherwise be required, and represent an interest in, or debt of,
21 any of the persons whose securities are exempt from registration
22 under Minn. Stat. S 80A.15, subd. 1, clause (a), (b), (c), (d)
23 or (e). At no time shall the market value of the securities on
24 deposit be less than 105 percent of the amount of the required
25 bond. Any deposit of cash or securities under this paragraph
26 shall be made with an escrow agent, and under such terms and
27 conditions as the commissioner deems appropriate, and shall
28 remain with the depository for a period of three years after the
29 last securities transaction conducted by the licensee or the
30 effective date of any bond acquired by the licensee, whichever
31 first occurs. The commissioner shall allow an irrevocable
32 letter of credit in lieu thereof.

33 C. Nonapplication. SDiv 2014 A. does not apply to any
34 investment adviser who continuously maintains net capital of not
35 less than \$100,000.

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1 SDiv 2030 Cheap stock.

2 A. Quantity. The maximum quantity of cheap stock allowable,
3 expressed as a percentage of the total number of shares to be
4 outstanding after the proposed offering, shall be determined by
5 calculating the "fair value of equity investment" (SDiv 2029
6 (b)) as a percentage of "equity investment" (SDiv 2029 (c)) in
7 accordance with the following formulations:

8 1. If the percentage is ten percent or less, the maximum
9 quantity of cheap stock allowable shall be three times the
10 percentage.

11 2. If the percentage is greater than ten percent, the
12 maximum quantity of cheap stock allowable shall be two times the
13 percentage plus ten percent.

14 The maximum quantity of cheap stock allowable shall not
15 exceed 90 percent of the total number of shares to be
16 outstanding after the proposed offering.

17

18 Exhibit SDiv 2030 A.-1.

19 Maximum Amount of Cheap Stock Allowable
20 (as a percentage of the shares to be outstanding)

21

22 Fair Value of Equity Investment

| 23 | Divided by Equity Investment | Cheap Stock |
|----|------------------------------|-------------|
| 24 | 5% | 15% |
| 25 | 10% | 30% |
| 26 | 15% | 40% |
| 27 | 20% | 50% |
| 28 | 30% | 70% |
| 29 | 40% | 90% |
| 30 | 50% | 90% |

31 B. Definition. Cheap stock means securities:

32 1. Issued in consideration of property tangible or
33 intangible, or services, the value of which has not been
34 reasonably established, or

35 2. Issued at a price substantially less than the public
36 offering price of the securities and which cannot be justified

1 with reference to the existence of an active public market for
 2 such securities. Securities issued at a price substantially
 3 less than the public offering price of the securities means:

4 a. Securities issued for less than $66 \frac{2}{3}$ percent of
 5 the public offering price if the securities were issued less
 6 than one year prior to registration;

7 b. Securities issued for less than 50 percent of the
 8 public offering price if the securities were issued more than
 9 one year but less than two years prior to registration;

10 c. Securities issued for less than $33 \frac{2}{3}$ $33 \frac{1}{3}$
 11 percent of the public offering price if the securities were
 12 issued more than two years but less than three years prior to
 13 registration.

14 In the case of unexercised options, or other securities
 15 convertible into the same class of security as that proposed to
 16 be offered, the aggregate of the cash amount paid and the cash
 17 amount required to be paid pursuant to the conversion or
 18 exercise privilege shall be divided by the number of shares
 19 issuable upon conversion or exercise to determine whether the
 20 securities were "issued at a price substantially less than the
 21 public offering price."

22 C. Exclusions. Cheap stock does not include:

23 1. Securities which have been outstanding more than three
 24 years at the time of the proposed registration, provided that
 25 the issuer or its predecessors have been in active, continuous
 26 business operation for more than three years immediately prior
 27 to the proposed registration;

28 2. Securities of an issuer which had earnings during the
 29 fiscal year prior to registration or had earnings during two or
 30 of the three fiscal years prior to registration, as determined
 31 in accordance with generally accepted accounting principles,
 32 after taxes and excluding extraordinary income. For each fiscal
 33 year such earnings shall be in an amount equal to four or
 34 greater than four percent of the proposed public offering price
 35 on all outstanding shares of the same class at the date of
 36 application for registration; or

1 3. Securities previously issued pursuant to a
2 registration under Minn. Stat. ch. 80A.

3 SDiv 2067 Definitions. For purposes of this subchapter, the
4 -----
5 following terms mean:
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7 M. "Sponsor" - See SDiv 2058 (o).
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9 Relettering. Reletter SDiv 2067 (a)-(1) as SDiv 2067 A.-L. and
10 -----
11 SDiv 2067 (n) and (o) as SDiv 2067 N. and O.
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