

1 Department of Commerce  
2 Securities and Real Estate Division

3  
4 Adopted Amendment of Rules SDiv 2117 and SDiv 2118 which  
5 Implement and Interpret the Provisions of Minn. Stat. S 80A.15,  
6 subdivisions 2(g), and 2(h) Governing Exempt Transactions;  
7 Correcting a Cross Reference in Rule SDiv 2021(c)(4) and  
8 Clarifying Rule SDiv 2034(a)

9  
10 Rules as Adopted

11  
12 SDiv 2021.

13 (a) and (b) [Unchanged.]

14 (c) (1)-(3) [Unchanged.]

15 (4) ~~When upon proposal of merger and consolidation or~~  
16 ~~other organic change,~~ a depositor exercised his rights under  
17 Minnesota Statutes, section 302A.471, or until January 1, 1984,  
18 under Minnesota Statutes, sections 301.44 or 310.40, if, in the  
19 opinion of the commissioner, the proposed manner of sale of the  
20 escrowed shares does not tend to work fraud or inequity on other  
21 shareholders, present or proposed.

22 SDiv 2034 Commissions and Expenses.

23 (a) Selling expenses in connection with an offering of  
24 securities (whether such offering is sold entirely or partially  
25 within Minnesota) shall include underwriting discounts or  
26 commissions; the value of options or warrants excluding  
27 over-allotment options to acquire securities granted or proposed  
28 to be granted in connection with the offering to an underwriter,  
29 or its partners, officers, directors or shareholders, or  
30 otherwise as such underwriter may lawfully direct; finder's fees  
31 paid or to be paid in connection with the offering, whether such  
32 fees are paid by the issuer or an affiliate of the issuer; the  
33 value of the difference between the fair value at the time of  
34 issuance and the price paid for securities of the issuer issued  
35 within two years prior to the offering or proposed to be issued

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1 to an underwriter or any of its partners, officers, directors or  
 2 shareholders, to the extent such sales or issuances may be  
 3 deemed by the Commissioner to have been in lieu of commissions,  
 4 or material in the selection of an underwriter by the issuer, or  
 5 otherwise directly or indirectly connected with the offering;  
 6 and all other expenses directly or indirectly incurred in  
 7 connection with the offering, including nonaccountable expenses  
 8 of the underwriter, but excluding, however,

9 (1) attorneys' fees for services in connection with the  
 10 offer, sale and issuance of the securities and their  
 11 qualification for offer and sale under applicable laws and  
 12 regulations;

13 (2) charges of transfer agents, registrars, indenture  
 14 trustees, escrow holders, depositaries, auditors, accountants,  
 15 engineers, appraisers and other experts;

16 (3) cost of prospectuses, circulars and other documents  
 17 required to comply with such laws and regulations;

18 (4) other expenses incurred in connection with such  
 19 qualification and compliance with such laws and regulations;

20 (5) cost of authorizing and preparing the securities and  
 21 documents relating thereto, including issue taxes and stamps.

22 Selling expenses shall at all times be reasonable, and,  
 23 unless good cause for an exception is shown, shall not exceed  
 24 the following percentages for the specified types of companies  
 25 or securities based upon percentages of the aggregate offering  
 26 price:

- 27 (aa) Finance, mortgage and related companies.....10%
- 28 (bb) Bonds, notes, debentures and secured issuers.....10%
- 29 (cc) Common stocks.....15%
- 30 (dd) Preferred stocks and other stock senior to common  
 31 stock.....10%
- 32 (ee) Investment companies.....10%
- 33 (ff) REITS.....10%
- 34 (gg) Investment contracts.....10%

35 (b) and (c) [Unchanged.]

36 SDiv 2117.

1 Clarification of the term "financial institution or  
2 institutional buyer." The term "financial institution or  
3 institutional buyer" contained in Minnesota Statutes, section  
4 80A.15, subdivision 2, clause (g), includes but is not limited  
5 to: (1) a corporation with a class of equity securities  
6 registered under Section 12(g) of the Securities Exchange Act of  
7 1934, as amended, and (2) a person who is an "accredited  
8 investor" within the meaning of rule 501(a) adopted by the  
9 Securities Exchange Commission in Federal Register, volume 47,  
10 page 11262, to be codified as Code of Federal Regulations, title  
11 17, section 230.501 (a).

12 SDiv 2118.

13 (a) [Unchanged.]

14 (b) The limitation of 25 purchasers, other than those  
15 designated in (g), contained in Minnesota Statutes, section  
16 80A.15, subdivision 2, clause (h) is waived in connection with  
17 any distribution resulting in sales to not more than 35 persons  
18 in this state, other than those designated in Minnesota  
19 Statutes, section 80A.15, subdivision 2, paragraph (g), in  
20 connection with any offering being made in compliance with rule  
21 506 adopted by the Securities and Exchange Commission in Federal  
22 Register, volume 47, page 11266, to be codified as Code of  
23 Federal Regulations, title 17, section 230.506 or rules adopted  
24 under section 3(b) of the Securities Act of 1933, other than an  
25 exempt offering under Regulation A, if the offering is in  
26 compliance with these rules.

27 (c) The exemption contained in Minnesota Statutes, section  
28 80A.15, subdivision 2, clause (h) is withdrawn for any security  
29 representing an interest in or formed for the purpose of  
30 investing in any oil and gas venture, or any partnership, joint  
31 venture, group or association formed principally for the purpose  
32 of exploring for oil and gas or developing oil and gas reserves  
33 unless the security is sold in compliance with rule 506 adopted  
34 by the Securities and Exchange Commission in Federal Register,  
35 volume 47, page 11266, to be codified as Code of Federal  
36 Regulations, title 17, section 230.506.

1 (d) The exemption contained in Minnesota Statutes, section  
2 80A.15, subdivision 2, clause (h) is withdrawn for any security  
3 representing an interest in, or ~~formed~~ issued for the purpose of  
4 investing in, any animal breeding, animal feeding, animal  
5 leasing or similar venture, unless said security is sold in  
6 compliance with rule 506 adopted by the Securities and Exchange  
7 Commission in Federal Register, volume 47, page 11266, to be  
8 codified as Code of Federal Regulations, title 17, section  
9 230.506.

10 (e)-(k) [Unchanged.]

11 (1) The following factors should be considered in determining  
12 whether offers and sales should be integrated for purposes of  
13 the exemptions contained in Minnesota Statutes, section 80A.15,  
14 subdivision 2, clause (h) and SDiv 2118; whether:

15 (1) the sales are part of the single plan of financing;

16 (2) the sales involve issuance of the same class of  
17 securities;

18 (3) the sales have been made at or about the same time;

19 (4) the same type of consideration is received; and

20 (5) the sales are made for the same general purposes.