

1 Department of Commerce

2

3 Adopted Permanent Rules Relating to Securities Offerings

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5 Rules as Adopted

6 2875.0115 SECURITIES GUARANTEED BY A GOVERNMENTAL UNIT OR
7 INSTRUMENTALITY.

8 Subpart 1. Definition of "guaranteed." For the purpose of
9 Minnesota Statutes, section 80A.15, subdivision 1, paragraph
10 (a), the term "guaranteed," when used with reference to a
11 security issued by the United States, any state, any political
12 subdivision of a state, or any corporate or other
13 instrumentality of one or more of the foregoing, shall include
14 any debt obligation which:

15 A. is a general obligation of the issuer, to which
16 the issuer has pledged to its full faith and credit (whether or
17 not the issuer has general taxing powers); or

18 B. the issuer is obligated to repay out of, and only
19 out of, public funds.

20 Subp. 2. Definition of "public funds." For the purposes of
21 this part, "public funds" means:

22 A. any money derived from:

23 (1) taxation;

24 (2) special assessments;

25 (3) revenues or other service charges derived by
26 the issuer from a public facility or enterprise owned and
27 operated by or on behalf of and under the control of the issuer;

28 (4) government grants or loans received by the
29 issuer; or

30 (5) the proceeds of any bond insurance, letter of
31 credit, line of credit, or other credit enhancement device
32 obtained by the issuer; or

33 B. any other money subject to the control of and
34 appropriation by the governing body of the issuer.

35 Except with respect to funds identified in item A, subitem



1 (4) or (5), public funds does not include money received by the
2 issuer from any person other than in the person's capacity as a
3 member of the general public.

4 2875.0116 NONISSUER TRANSACTIONS INVOLVING PREVIOUSLY EXEMPTED
5 SECURITIES.

6 Subpart 1. **Scope.** This part applies to any security which
7 was issued and exempt under Minnesota Statutes, section 80A.15,
8 subdivision 1, paragraph (a), prior to July 1, 1987, but which
9 is not exempt under the amended provisions of Minnesota
10 Statutes, section 80A.15, subdivision 1, paragraph (a), which
11 became effective July 1, 1987.

12 Subp. 2. **Nonissuer transactions.** Any security described
13 in subpart 1, shall be exempt for purposes of nonissuer
14 transactions effected on or after July 1, 1987, provided that
15 the nonissuer transaction does not constitute a public
16 distribution offering.

17 2875.3500 DIVIDEND AND INTEREST COVERAGE.

18 Subpart 1. [Unchanged.]

19 Subp. 2. **Debt securities.**

20 A. In connection with the offering of debentures,
21 notes, bonds, investment certificates, or similar
22 interest-bearing securities, (other than bonds or similar
23 interest-bearing securities issued by the United States, any
24 state, any political subdivision, or any corporate or other
25 instrumentality of one or more of those entities), whether
26 convertible or not, the cash flow of the issuer, computed in
27 accordance with generally accepted accounting principles,
28 exclusive of extraordinary income, for its last fiscal year
29 prior to the public offering, or the average of its last three
30 fiscal years prior to the public offering, shall be sufficient
31 to cover the interest, including that which is deferred and not
32 paid, on the securities proposed to be offered to the public.

33 B. In connection with the offering of bonds or
34 similar interest-bearing securities issued by the United States,
35 any state, any political subdivision of any state, or any

1 corporate or other instrumentality of one or more of those
2 entities, except those which are exempt from registration under
3 Minnesota Statutes, section 80A.15 or are rated in one of the
4 top four letter rating categories by Fitch Investors Service,
5 Inc., Standard and Poor's Corporation, or Moody's Investor
6 Services, Inc., the cash flow of the user or borrower of the
7 offering proceeds or, if a different entity, the cash flow of
8 the entity obligated to make payment of principal and interest
9 on the bonds or securities or obligated to make payments under a
10 lease, sale, loan, or guarantee arrangement sufficient to make
11 principal and interest payments on the bonds or securities,
12 computed in accordance with generally accepted accounting
13 principles, exclusive of extraordinary income, for its last
14 fiscal year prior to the public offering, or the average of its
15 last three fiscal years prior to the public offering, shall be
16 sufficient to cover the interest, including that which is
17 deferred and not paid, on the bonds or securities proposed to be
18 offered to the public. If the bonds or securities proposed to
19 be offered are unconditionally guaranteed, both as to payment of
20 interest and as to the repayment of principal, by an entity
21 other than the user or borrower of the proceeds, then the cash
22 flow of the guarantor shall be used in determining whether the
23 bonds or securities qualify for registration.

24 C. In connection with the offering of bonds or
25 similar interest-bearing securities issued by the state of
26 Minnesota, its political subdivisions, governmental agencies, or
27 corporate or other instrumentalities, if the cash flow
28 requirements of the previous paragraph are not satisfied, then
29 the application for registration must be accompanied by a
30 financial forecast, examined by an independent certified public
31 accountant who must express an opinion on the forecast. The
32 examination must be made in accordance with the Guide for
33 Prospective Financial Statements as promulgated by the American
34 Institute of Certified Public Accountants, and the financial
35 forecast must attest to the ability of the user or borrower of
36 the offering proceeds or other obligor to generate sufficient

1 cash flow, computed in accordance with generally accepted
2 accounting principles, exclusive of anticipated extraordinary
3 income, to cover interest on the securities proposed to be
4 offered to the public. Notwithstanding the foregoing, a
5 financial forecast will not be accepted as evidence of the
6 satisfaction of cash flow requirements if the user or borrower
7 of the offering proceeds or other obligor has had a material
8 default during the past three years in any required payment
9 under a lease or any payment of principal, interest, dividend,
10 or sinking fund installments on preferred stock or indebtedness
11 for borrowed money.

12 Subp. 3. [Unchanged.]

13 Subp. 4. [See Repealer.]

14 Subp. 5. [Unchanged.]

15 2875.3530 DEBT SECURITIES.

16 Subpart 1. Indenture. The indenture or other instrument
17 pursuant to which nonconvertible debt securities are proposed to
18 be issued should normally provide for the following:

19 A. a sinking fund provision or serial maturity
20 schedule whereby all or a reasonable portion of the issue is to
21 be retired in installment prior to maturity (the deferral of
22 sinking fund payments and the amount of the balloon payment at
23 maturity which will be permitted will depend upon the financial
24 condition and other circumstances of the issuer);

25 B. to D. [Unchanged.]

26 Subp. 2. [Unchanged.]

27 Subp. 3. Bonds issued by governmental entities. With
28 respect to bonds or similar interest-bearing securities issued
29 by the United States, any state, any political subdivision of
30 any state, or any corporate or other instrumentality of one or
31 more of those entities other than those which are exempt from
32 registration under Minnesota Statutes, section 80A.15, or are
33 rated in one of the top four letter rating categories by Fitch
34 Investors Service, Inc., Standard and Poor's Corporation, or
35 Moody's Investor Services, Inc., the protective provisions

1 specified in subpart 1 shall apply to the user or borrower of
2 the offering proceeds, or, if a different entity, the person
3 obligated to make payment of principal and interest on the bonds
4 or securities or obligated to make payments under a lease, sale,
5 loan, or guarantee arrangement sufficient to make principal and
6 interest payments on the bond or securities.

7 2875.3531 SECURITY INTEREST.

8 In connection with the offering of bonds or similar
9 interest-bearing securities issued by the United States, any
10 state, any political subdivision of any state, or any corporate
11 or other instrumentality of one or more of those entities, the
12 trustee must be granted, for the benefit of the bondholders or
13 security holders, a mortgage and security interest of first
14 priority in the facility to be constructed, land to be acquired,
15 and other real or personal property to which the offering
16 proceeds will be applied unless:

17 A. the securities are exempt from registration under
18 Minnesota Statutes, section 80A.15;

19 B. the securities are rated in one of the top four
20 letter rating categories by Fitch Investors Service, Inc.,
21 Standard and Poor's Corporation, or Moody's Investor Services,
22 Inc.; or

23 C. all of the following conditions are met:

24 (1) the cash flow requirements of part 2875.3500,
25 subpart 2, item B, are satisfied;

26 (2) if funds to make principal and interest
27 payments on the bonds or securities arise from appropriations by
28 the United States, any state, any political subdivision of any
29 state, or any corporate or other instrumentality of one or more
30 of those entities, the funds are not subject to the risk of
31 nonappropriation; and

32 (3) if funds to make principal and interest
33 payments on the bonds or securities arise under a lease
34 arrangement, the lease is not subject to termination or
35 nonrenewal prior to the maturity of the bonds or securities.

1 2875.3532 PROHIBITION; NONRECOURSE LOANS.

2 No part of the offering proceeds resulting from the sale of
3 bonds or similar interest-bearing securities issued by the
4 United States, any state, any political subdivision of any
5 state, or any corporate or other instrumentality of one or more
6 of those entities may be loaned to a person on a nonrecourse
7 basis.

8 This prohibition does not apply to bonds or similar
9 interest-bearing securities exempt from registration under
10 Minnesota Statutes, section 80A.15 or rated in one of the top
11 four letter rating categories by Fitch Investors Service, Inc.,
12 Standard and Poor's Corporation, or Moody's Investor Services,
13 Inc.

14 2875.3533 SUITABILITY STANDARD.

15 Except with respect to bonds or similar interest-bearing
16 securities exempt from registration under Minnesota Statutes,
17 section 80A.15 or those rated in one of the top four letter
18 rating categories by Fitch Investors Service, Inc., Standard and
19 Poor's Corporation, or Moody's Investor Services, Inc.,
20 purchasers of bonds or similar interest-bearing securities
21 issued by the United States, any state, any political
22 subdivision of any state, or any corporate or other
23 instrumentality of one or more of the foregoing, shall have a
24 minimum annual gross income of \$30,000 and a net worth of
25 \$30,000, or in the alternative, a net worth of \$75,000. Net
26 worth is determined exclusive of home, home furnishings, and
27 automobiles.

28 A purchaser will be considered to meet the standards in
29 this part if the purchaser has certified within the 24-month
30 period immediately preceding the purchase that the standards are
31 satisfied.

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33 REPEALER. Minnesota Rules, part 2875.3500, subpart 4, is
34 repealed.