

1 Department of Commerce

2

3 Adopted Permanent Rules Relating to Sales of Securities

4

5 Rules as Adopted

6 2875.0145 REGULATION D.

7 "Regulation D" as used in Minnesota Statutes, section
8 80A.15, subdivision 2, paragraph (h), and in this chapter means
9 regulation D promulgated by the Securities and Exchange
10 Commission, Code of Federal Regulations, title 17, sections
11 230.501 to 230.508, as amended effective April 19, 1989.

12 2875.0146 RULE 701.

13 "Rule 701" as used in this chapter means rule 701
14 promulgated by the Securities and Exchange Commission, Code of
15 Federal Regulations, title 17, section 239.701, effective May
16 20, 1988.

17 2875.0150 ISOLATED SALES.

18 Subpart 1. **Up to ten sales.** Up to ten sales of securities
19 of an issuer in any 12 consecutive months shall be exempted by
20 Minnesota Statutes, section 80A.15, subdivision 2, clause (a),
21 provided, that in the case of sales by an issuer except sales of
22 securities registered under the Securities Act of 1933 or
23 exempted by section 3(b) of that act, the seller reasonably
24 believes that all buyers are purchasing for investment.

25 Subp. 2. **Computation.** For the purpose of computing the
26 number of sales that have been made, or will have been made upon
27 completion of a proposed offering pursuant to Minnesota
28 Statutes, section 80A.15, subdivision 2, clause (a):

29 A. to C. [Unchanged.]

30 D. the sales to any "accredited investor" within the
31 meaning of rule 501(a) of regulation D shall be excluded.

32 Subp. 3. and 4. [Unchanged.]

33 2875.0160 RECOGNIZED MANUALS APPROVED BY COMMISSIONER.

34 "Recognized manuals approved by the commissioner," as that

1 term is used in Minnesota Statutes 1978, section 80A.15,
2 subdivision 2, clause (b), are limited to the following:

3 A. Standard & Poor's Corporation Records;

4 B. Moody's Industrial Manual and Industrial News
5 Reports;

6 C. Moody's Bank & Finance Manual and Bank & Finance
7 News Reports;

8 D. Moody's Transportation Manual and Transportation
9 News Reports;

10 E. Moody's Public Utility Manual and Public Utility
11 News Reports;

12 F. Moody's OTC Industrial Manual and OTC Industrial
13 News Reports;

14 G. Moody's International Manual.

15 Provided that the issuer, as of the date of the balance
16 sheet required by Minnesota Statutes, section 80A.15,
17 subdivision 2, clause (b)(1), had a net worth of at least
18 \$250,000 and had at least 200 shareholders.

19 2875.0170 FINANCIAL INSTITUTION OR INSTITUTIONAL BUYER.

20 The term "financial institution or institutional buyer"
21 contained in Minnesota Statutes, sections 80A.14, subdivision 4,
22 clause (5), and 80A.15, subdivision 2, paragraph (g), and the
23 term "institutional investors" contained in Minnesota Statutes,
24 section 80A.04, subdivision 3, includes but is not limited to a
25 corporation with a class of equity securities registered under
26 section 12(b) or 12(g) of the Securities Exchange Act of 1934,
27 as amended; and a person who is an "accredited investor" within
28 the meaning of rule 501(a) of regulation D.

29 2875.0180 PERSONS TO WHOM SALES HAVE BEEN MADE.

30 Subpart 1. **Computing.** For the purpose of calculating the
31 number of persons to whom sales have been made, or will have
32 been made upon completion of a proposed offering pursuant to
33 Minnesota Statutes, section 80A.15, subdivision 2, clause (h),
34 the calculation shall follow the rules for calculation in rule
35 501(e) of regulation D.

1 Clients of an investment adviser, customers of a
2 broker-dealer, or persons with similar relationships shall be
3 considered to be separate purchasers regardless of the amount of
4 discretion given to the investment adviser, broker-dealer, bank
5 trust department, or other person to act on behalf of the
6 client, customer, or trust.

7 Subp. 2a. **Sales to 35 persons.** The number of persons to
8 whom sales may be made pursuant to the exemption contained in
9 Minnesota Statutes, section 80A.15, subdivision 2, paragraph (h)
10 is increased to 35 persons if the sales are made in compliance
11 with regulation D or rule 701.

12 Subp. 3. **When exemptions withdrawn.** Exemption withdrawals:

13 A. The exemption contained in Minnesota Statutes,
14 section 80A.15, subdivision 2, paragraph (h) is withdrawn for
15 any security representing an interest in, or formed for the
16 purpose of investing in, any oil and gas venture, or any
17 partnership, joint venture, group, or association formed
18 principally for the purpose of exploring for oil and gas or
19 developing oil and gas reserves unless the security is sold in
20 compliance with rule 506 of regulation D.

21 B. The exemption contained in Minnesota Statutes,
22 section 80A.15, subdivision 2, paragraph (h) is withdrawn for
23 any security representing an interest in, or issued for the
24 purpose of investing in, any animal breeding, animal feeding,
25 animal leasing, or similar venture, unless said security is sold
26 in compliance with rule 506 of regulation D.

27 C. to G. [Unchanged.]

28 Subp. 4. and 5. [Unchanged.]

29 2875.0400 SCOPE AND APPLICATION.

30 Subpart 1. **Generally.** Rules are divided into separate
31 areas, based upon the type of security involved. However, parts
32 2875.3000 to 2875.3120 shall apply to all securities, and should
33 be followed in all instances unless they are inconsistent with
34 another part in the appropriate area for the type of security
35 proposed to be registered. In that instance, the area

1 requirements will apply. This part and parts 2875.3000 to
2 2875.7280 shall not apply to securities or transactions exempted
3 by Minnesota Statutes 1978, section 80A.15, subdivision 1 or 2,
4 as amended, nor shall they apply to securities registered by
5 notification.

6 A. Equity securities regulation, parts 2875.3000 to
7 2875.3120;

8 B. Senior securities regulation, parts 2875.3500 to
9 2875.3540;

10 C. Investment companies regulation, parts 2875.3900
11 to 2875.4330;

12 D. Real estate limited partnerships, parts 2875.4500
13 to 2875.5280;

14 E. Oil and gas programs, parts 2875.5600 to
15 2875.5780;

16 F. Cattle feeding programs, parts 2875.6100 to
17 2875.6260;

18 G. Real estate investment trusts, parts 2875.7100 to
19 2875.7280; and

20 H. Commodity pool guidelines, parts 2875.8100 to
21 2875.8450, and 2875.9900 to 2875.9970.

22 Subp. 2. **Scope of rules pertaining to real estate limited**
23 **partnerships.** Rules pertaining to real estate partnerships
24 shall be applied to real estate partnerships and, to the extent
25 practical, to limited partnerships to which no other specific
26 rules apply. Particularly, such nonreal estate limited
27 partnerships shall meet the standards provided in parts
28 2875.4510 to 2875.4550, 2875.5000 to 2875.5120 and 2875.5140 to
29 2875.5280. With respect to the remaining rules, parts 2875.4560
30 to 2875.4610 and part 2875.5135, variance from the established
31 standards may be permitted provided that the variance is
32 justified and provides investor protection equal to that
33 afforded by the rules.

34 2875.0410 EFFECTIVE DATE OF INCORPORATIONS BY REFERENCE.

35 Unless otherwise indicated, whenever a reference is made in

1 this chapter to a federal or state statute, rule, decision, or
2 opinion, the reference shall be deemed to refer to the version
3 of the statute, rule, decision, or opinion as of December 1,
4 1980.

5 2875.0960 FINANCIAL STATEMENTS.

6 Subpart 1. **Content.** Whenever in these rules financial
7 statements of an issuer or other person are required by a
8 particular part or form without further description, the
9 requirement refers to a balance sheet as of a date within 135
10 days before the date of the application, and profit and loss
11 statements for each of the three fiscal years preceding the date
12 of the balance sheet and for the period, if any, between the
13 close of the last of these fiscal years and the date of the
14 balance sheet. The balance sheet as of a date within 135 days
15 before the date of the application need not be audited.
16 However, if the balance sheet is not audited and the application
17 is for a registration, there shall be filed in addition an
18 audited balance sheet as of the end of the person's last fiscal
19 year. If the last fiscal year ended within 90 days of the date
20 of the application, there shall be filed an audited balance
21 sheet as of the end of the person's next preceding fiscal year.
22 The income statements and statement of changes in financial
23 position shall be audited up to the date of the last audited
24 balance sheet filed, if any.

25 Subp. 2. **Delays.** If amendments or other delays cause the
26 financial statements described in subpart 1 to become more than
27 134 days old as of the effective date of the registration
28 statement, then updated financial statements as of a date within
29 135 days of the effective date shall be filed if the company has
30 no established record of earnings or is currently showing losses
31 or a weak financial condition. If the company has an
32 established record of earnings and is in sound financial
33 condition, a paragraph containing later information as to sales,
34 net income, and financial condition may be added in lieu of
35 updating the financial statements, in the discretion of the

1 commissioner. However, in no case shall the financial
2 statements be more than six months old as of the effective date
3 of the registration statement. If a delay carries beyond the
4 end of the fiscal year, and by applying due diligence the
5 registrant and accountant can have the audit completed before
6 the effective date, certified statements should be filed as of
7 the end of the fiscal year.

8 2875.1010 INVESTMENT ADVISORY CONTRACTS.

9 Subpart 1. [Unchanged.]

10 Subp. 1a. **Exception.** Subpart 1, item A, does not apply to
11 an investment advisory contract that provides for compensation
12 to the investment adviser on the basis of a share of the capital
13 gains upon, or the capital appreciation of, the funds, or any
14 portion of the funds, of a client if all the conditions in items
15 A to D are satisfied, or if the condition specified in item E is
16 satisfied.

17 A. to D. [Unchanged.]

18 E. The client entering into the contract subject to this
19 subpart is a person specified in Minnesota Statutes, section
20 80A.04, subdivision 3, or other institutional investor as
21 designated by rule or order of the commissioner under Minnesota
22 Statutes, section 80A.04, subdivision 3.

23 Subp. 2. [Unchanged.]

24 2875.3030 OPTIONS, WARRANTS, AND CHEAP STOCK TO UNDERWRITERS.

25 Options, warrants, and cheap stock issued to underwriters
26 or other persons as compensation, in whole or in part, for the
27 sale of securities, shall meet all of the following criteria:

28 A. and B. [Unchanged.]

29 C. Neither the exercise of the options or warrants,
30 nor the resale, transfer, or assignment (except as provided in
31 item D) of any cheap stock may be accomplished for a period of
32 one year from the effective date of the registration statement.

33 D. During the one-year period following the effective
34 date of the registration statement, the securities shall be
35 nontransferable except by will, pursuant to the laws of descent

1 and distribution, or pursuant to the operation of laws,
2 provided, however, the securities may be transferred without
3 payment therefor to:

4 (1) partners of the underwriter if the
5 underwriter is a partnership;

6 (2) persons who are both officers and
7 shareholders of the underwriter if the underwriter is a
8 corporation; or

9 (3) employees of the underwriter.

10 E. to J. [Unchanged.]

11 2875.3050 COMMISSIONS AND EXPENSES.

12 Subpart 1. [Unchanged.]

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

18 A. finance, mortgage, and related companies, ten
19 percent;

20 B. bonds, notes, debentures, and secured issuers, ten
21 percent;

22 C. common stocks, 15 percent;

23 D. preferred stocks and other stock senior to common
24 stock, 15 percent;

25 E. investment companies, ten percent;

26 F. REITS, ten percent; and

27 G. investment contracts, ten percent.

28 Subp. 2. to 4. [Unchanged.]

29 2875.7100 DEFINITIONS.

30 Subpart 1. to 3. [Unchanged.]

31 Subp. 4. **Real estate investment trust (REIT).** "Real
32 estate investment trust (REIT)" means a corporation, trust, or
33 association, other than a real estate syndication, that is
34 engaged primarily in investing in equity interests in real
35 estate, including fee ownership and leasehold interests, or in

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1 loans secured by real estate or both.