

80A.01 REGULATION OF SECURITIES

CHAPTER 80A. REGULATION OF SECURITIES [NEW]

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80A.01 Sales and purchases

It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

[1973 c 451 s 1]

80A.02 Advisory activities

Subdivision 1. It is unlawful for any person who receives any consideration from another person primarily for advising the other person as to the value of securities or their purchase or sale, whether through the issuance of analyses or reports or otherwise:

- (a) to employ any device, scheme, or artifice to defraud the other person; or
- (b) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other person.

Subd. 2. It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract the terms of which are in contravention of such rules and regulations as the commissioner may prescribe as necessary or appropriate in the public interest or for the protection of investors.

Subd. 3. It is unlawful for any investment adviser to take or have custody of any securities or funds of any client in contravention of such rules and regulations as the commissioner may prescribe as necessary or appropriate in the public interest or for the protection of investors.

[1973 c 451 s 2]

80A.03 Unlawful activities

It is unlawful for any person to effect any transaction in, or to induce the purchase or sale of any security by means of any manipulative, deceptive or other fraudulent device or contrivance, including any fictitious quotation. The terms "manipulative, deceptive, or other fraudulent device or contrivance" shall include, but shall not be limited to, the following practices:

- (a) effecting any transaction in a security which involves no change in the beneficial ownership thereof, or entering any order or orders for the purchase or sale of any security with the knowledge that an order or orders of sub-

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stantially the same size, at substantially the same time, and at substantially the same price, for the sale or purchase of the security, have been or will be entered by or for the same or affiliated persons, for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security ;

(b) effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in the security or raising or depressing the price of the security, for the purpose of inducing the purchase or sale of the security by others ; or

(c) inducing the purchase or sale of any security by the circulation or dissemination of information to the effect that the price of the security will or is likely to rise or fall because of market operations of any one or more persons conducted for the purpose of raising or depressing the price of the security, if he is selling or offering to sell or purchasing or offering to purchase the security or is receiving a consideration, directly or indirectly, from any such person.

[1973 c 451 s 3]

80A.04 Licensing requirement

Subdivision 1. It is unlawful for any person to transact business in this state as a broker-dealer or agent unless he is licensed under this chapter.

Subd. 2. It is unlawful for any broker-dealer or issuer to employ an agent to represent him in this state unless the agent is licensed. The licensing of an agent is not effective during any period when he is not associated with a specified broker-dealer licensed under this chapter or a specified issuer. No agent shall at any time represent more than one broker-dealer or issuer, except that where broker-dealers affiliated by direct common control are licensed under this chapter, an agent may represent any such broker-dealer. When an agent begins or terminates his employment with a broker-dealer or issuer, or begins or terminates those activities which make him an agent, the agent as well as the broker-dealer or issuer shall promptly notify the commissioner.

Subd. 3. It is unlawful for any person to transact business in this state as an investment adviser unless he is so licensed or licensed as a broker-dealer under this chapter or unless his only clients in this state are persons to whom sales are exempted under section 80A.15, subdivision 2, clause (g).

Subd. 4. Every license shall expire on October 1 of each year unless an application for renewal has been received by the commissioner by September 1, except that during the 12 month period following August 1, 1973, the commissioner by rule or order may establish a schedule for license renewals. For this purpose the commissioner may adjust the license fee proportionately.

[1973 c 451 s 4]

80A.05 Licensing procedure

Subdivision 1. A broker-dealer, agent or investment adviser may obtain an initial or renewal license by filing with the commissioner an application together with a consent to service of process pursuant to section 80A.27, subdivision 7. The application shall be on a form prescribed by the commissioner and shall contain whatever information the commissioner requires concerning such matters as the applicant's form and place of organization, proposed method of doing business and financial condition, the qualifications and experience of the applicant, including, in the case of a broker-dealer or investment adviser, the qualifications and experience of any partner, officer, director or controlling person, any injunction or administrative order or conviction of a misdemeanor involving securities and any conviction of a felony. The commissioner may by order, with respect to any particular application, require the submission of information concerning any other matters which he determines are relevant to the application. The commissioner may by rule or or-

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der require an applicant for an initial license to publish an announcement of the application in one or more specified newspapers published in this state.

If no denial order is in effect, no proceeding is pending under section 80A.-07, and all of the requirements of this subdivision and subdivision 3 have been complied with, the licensing becomes effective 30 days after an application is filed. The commissioner may by rule or order specify an earlier effective date, and may by order defer the effective date until 30 days after the filing of any amendment. Licensing of a broker-dealer automatically constitutes licensing of any agent who is a partner, officer, or director, or a person occupying a similar status or performing similar functions.

Subd. 2. A licensed broker-dealer or investment adviser may file an application for licensing of a successor, whether or not the successor is then in existence, for the unexpired portion of the license. There shall be no filing fee.

Subd. 3. The commissioner may by rule prescribe standards of qualification with respect to training, experience and knowledge of the securities business and provide for examinations, which may be written or oral or both, to be taken by any class of or all applicants, as well as persons who represent or will represent an investment adviser, and the commissioner may by order require an examination of a licensed broker-dealer, agent or investment adviser for due cause.

Subd. 4. The commissioner may by rule require a minimum capital for broker-dealers and investment advisers and establish limitations on aggregate indebtedness of broker-dealers in relation to net capital.

Subd. 5. The commissioner may by rule require licensed broker-dealers, agents and investment advisers to post surety bonds in amounts up to \$25,000, and may by rule or order determine their conditions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond so required. No bond may be required of any broker-dealer whose net capital, which may be defined by rule, exceeds \$25,000. Every bond shall provide for suit thereon by any person who has a cause of action under section 80A.23 and, if the commissioner by rule or order requires, by any person who has a cause of action not arising under sections 80A.01 to 80A.31. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within three years after the sale or other act upon which it is based.

Subd. 6. The commissioner may by rule or order impose other conditions in connection with the issuance of licenses under this chapter as he deems appropriate in the public interest and for the protection of investors.

[1973 c 451 s 5]

80A.06 Post-licensing provisions

Subdivision 1. Every licensed broker-dealer and investment adviser shall make and keep all accounts, correspondence, memoranda, papers, books and other records which the commissioner by rule prescribes. All records required shall be preserved for three years unless the commissioner by rule prescribes otherwise for particular types of records. All required records shall be kept within the state or shall, at the request of the commissioner, be made available at any time for examination by him either in the principal office of the licensee or by production of exact copies thereof in this state.

Subd. 2. Every licensed broker-dealer and investment adviser shall file such reports as the commissioner by rule prescribes.

Subd. 3. If the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the licensee shall promptly file a correcting amendment unless notification of the correction has been given under section 80A.04, subdivision 2.

Subd. 4. The commissioner shall make periodic examinations, within or without this state, of the business and records of each licensed broker-dealer and investment adviser, at such times and in such scope as he determines. The examinations may be made without prior notice to the broker-dealer or

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investment adviser. For the purpose of avoiding unnecessary duplication of examinations, the commissioner, insofar as he deems it practicable in administering this subdivision, may cooperate with securities administrators of other states; the securities and exchange commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934.

Subd. 5. No investment adviser who shall recommend the purchase or sale of a security to a client, and no licensed broker-dealer acting as a broker-dealer for a customer in the purchase or sale of a security shall take or accept any remuneration or other thing of value from any person other than the client or customer in connection with such purchase or sale unless, prior to or contemporaneously with such recommendation in the case of an investment adviser and prior to or contemporaneously with the confirmation of the transaction in the case of a licensed broker-dealer so acting, written disclosure to the client or customer is made of the acceptance or intended acceptance of such remuneration or other thing of value and of the amount thereof. All charges made by an investment adviser for services and all charges by a licensed broker-dealer for services rendered by him as a broker-dealer or for advice with respect to securities shall be reasonable, and no such charges shall be based upon or measured by profits accrued or to accrue from transactions recommended or carried out by an investment adviser, or licensed broker-dealer. This subdivision shall not be construed to prohibit charges by an investment adviser based upon the total value of the assets under management averaged over a definite period, or as of definite dates, or taken as of a definite date, nor charges based upon the performance of the managed assets as compared to an established index in compliance with rules promulgated by the commissioner.

[1973 c 451 s 6]

80A.07 Denial, suspension and revocation of licenses

Subdivision 1. The commissioner may by order deny, suspend or revoke any license or may censure the licensee, if he finds (a) that the order is in the public interest and (b) that the applicant or licensee or, in the case of a broker-dealer or investment adviser, any partner, officer or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

(1) has filed an application for license which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) has willfully violated or failed to comply with any provision of this chapter or a predecessor law or the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or any rule under any of such statutes, or any order thereunder of which he has notice and to which he is subject;

(3) has been convicted, within the past ten years, of any misdemeanor involving a security or any aspect of the securities business, or any felony;

(4) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(5) is the subject of an order of the commissioner denying, suspending or revoking a license as a broker-dealer, agent or investment adviser;

(6) is the subject of an order entered within the past five years by the securities administrator of any other state or by the securities and exchange commission denying or revoking registration or license as a broker-dealer, agent or investment adviser, or is the subject of an order of the securities

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and exchange commission suspending or expelling him from a national securities exchange or association registered under the Securities Exchange Act of 1934, or is the subject of a United States post office fraud order; but the commissioner may not institute a revocation or suspension proceeding under this clause more than one year from the date of the order relied on, and may not enter an order under this clause on the basis of an order under another state law unless the order was based on facts which would currently constitute a ground for an order under this section;

(7) has engaged in dishonest or fraudulent practices in the securities business;

(8) has failed to maintain the minimum net capital or to comply with the limitation on aggregate indebtedness which the commissioner by rule prescribes;

(9) is not qualified on the basis of such factors as training, experience and knowledge of the securities business;

(10) has failed reasonably to supervise his agents if he is a broker-dealer or his employees if he is an investment adviser;

(11) has failed to pay the proper filing fee, but the commissioner shall vacate any such order when the deficiency has been corrected;

(12) has offered or sold securities in this state through any unlicensed agent; or

(13) has made any material misrepresentation to the commissioner, or upon request reasonably made by the commissioner, has withheld or concealed information from, or refused to furnish information to, the commissioner.

Subd. 2. The commissioner may not institute a suspension or revocation proceeding solely on the basis of a fact or transaction known to him when the license was issued unless the proceeding is instituted within the next 30 days after the issuance of the license.

Subd. 3. The commissioner may issue an order requiring a licensee or an applicant for a license to show cause why the license should not be revoked or the application denied. The order shall be calculated to give reasonable notice of the time and place for hearing thereon, and shall state the reasons for the entry of the order. The commissioner may by order summarily suspend a license pending final determination of any order to show cause. If a license is suspended pending final determination of an order to show cause, a hearing on the merits shall be held within 30 days of the issuance of the order of suspension. All hearings shall be conducted in accordance with the provisions of chapter 15. After the hearing, the commissioner shall enter an order making such disposition of the matter as the facts require. If the licensee or applicant fails to appear at a hearing of which he has been duly notified, such person shall be deemed in default and the proceeding may be determined against him upon consideration of the order to show cause, the allegations of which may be deemed to be true. The commissioner may adopt rules of procedure concerning all proceedings conducted pursuant to this subdivision.

Subd. 4. If the commissioner finds that any licensee or applicant is no longer in existence or has ceased to do business as a broker-dealer, agent or investment adviser, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator or guardian, or cannot be located after reasonable search, the commissioner may by order revoke the license or deny the application.

Subd. 5. Withdrawal from the status of a licensed broker-dealer, agent or investment adviser becomes effective 30 days after receipt of an application to withdraw or within such shorter period as the commissioner determines unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within 30 days after the application is filed. If a proceeding is pending or instituted, withdrawal becomes effective at such time

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and upon such conditions as the commissioner by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the commissioner may institute a revocation or suspension proceeding under subdivision 1, clause (b) within one year after withdrawal became effective and enter a revocation or suspension order as of the last date on which the license was in effect.

[1973 c 451 s 7]

80A.08 Registration requirement

It is unlawful for any person to offer or sell any security in this state unless (a) it is registered under sections 80A.01 to 80A.31 or (b) the security or transaction is exempted under section 80A.15.

[1973 c 451 s 8]

80A.09 Registration by notification

Subdivision 1. The following securities may be registered by notification:

(a) any industrial revenue bond, the interest on which is exempt from tax under section 290.08, subdivision 7; and

(b) any securities issued by a person organized exclusively for social, religious, educational, benevolent, fraternal, charitable, reformatory, athletic, chamber of commerce, trade, industrial development, or professional association purposes and not for pecuniary gain, and no part of the net earnings of which inures to the benefit of any private stockholder or individual; provided that no securities issued by any person offering and furnishing a burial service or funeral benefit, directly or indirectly for financial consideration, may be registered under this section.

Subd. 2. A registration statement under this section shall contain the consent to service of process required by section 80A.27, subdivision 7, and such additional information as the commissioner by rule or otherwise requires.

Subd. 3. If no stop order is in effect, no proceeding is pending under section 80A.13, and no order has been issued under subdivision 4, a registration statement under this section automatically becomes effective at 5:00 in the afternoon on the fifth full business day after the filing of the registration statement or the last amendment, or at such earlier time as the commissioner by order determines.

Subd. 4. The commissioner may by order require that any security otherwise permitted to be registered under this section be registered by qualification under section 80A.11 if he determines that registration by qualification is in the public interest and is necessary for the protection of investors.

[1973 c 451 s 9]

80A.10 Registration by coordination

Subdivision 1. Any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination.

Subd. 2. A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in section 80A.12 and the consent to service of process required by section 80A.27, subdivision 7;

(a) Two copies of the latest form of prospectus filed under the Securities Act of 1933;

(b) If the commissioner by rule or otherwise requires, a copy of the articles of incorporation and bylaws (or their substantial equivalent) currently in effect, a copy of any agreements with or among underwriters, a copy of any in-

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denture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(c) If the commissioner requests, any other information, or copies of any other documents, filed under the Securities Act of 1933; and

(d) An undertaking to forward all amendments to the federal prospectus, other than an amendment which merely delays the effective date of the registration statement, not later than the first business day after the day they are forwarded to or filed with the securities and exchange commission or such longer period as the commissioner permits.

Subd. 3. A registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied: (a) no stop order is in effect and no proceeding is pending under section 80A.13; (b) the registration statement has been on file with the commissioner for at least 20 days; and (c) a statement of the maximum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two full business days or such shorter period as the commissioner permits by rule or otherwise and the offering is made within those limitations. The registrant shall promptly notify the commissioner by telephone or telegram or similar electronic means of communication of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file an amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices and other matters dependent upon the offering price. Upon failure to receive the required notification with respect to the price amendment, the commissioner may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this subsection, if he promptly notifies the registrant by telephone or telegram or similar electronic means of communication (and promptly confirms by letter or telegram when he notifies by telephone) of the issuance of the order. If the registrant proves compliance with the requirements of this subdivision as to notice and price amendment, the stop order is void as of the time of its entry. The commissioner may by rule or otherwise waive either or both of the conditions specified in clauses (b) and (c). If the federal registration statement becomes effective before all the conditions in this subdivision are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the commissioner of the date when the federal registration statement is expected to become effective, the commissioner shall promptly advise the registrant by telephone or telegram or similar electronic means of communication, at the registrant's expense, whether all the conditions are satisfied and whether he then contemplates the institution of a proceeding under section 80A.13; but this advice by the commissioner does not preclude the institution of such a proceeding at any time.

[1973 c 451 s 10]

80A.11 Registration by qualification

Subdivision 1. Any security may be registered by qualification.

Subd. 2. A registration statement under this section shall contain the information specified in section 80A.12 and the consent to service of process required by section 80A.27, subdivision 7, and shall contain such further information and be accompanied by such further documents as the commissioner by rule or otherwise requires.

Subd. 3. A registration statement under this section becomes effective when the commissioner so orders.

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Subd. 4. The commissioner may by rule or order require as a condition of registration under this section that a prospectus containing any designated part of the information specified in subdivision 2 be sent or given to each person to whom an offer is made before or concurrently with (a) the first written offer made to him (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution, (b) the confirmation of any sale made by or for the account of any such person, (c) payment pursuant to any such sale, or (d) delivery of the security pursuant to any such sale, whichever first occurs.

[1973 c 451 s 11]

80A.12 Provisions applicable to registration generally

Subdivision 1. A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a licensed broker-dealer.

Subd. 2. Every registration statement shall specify (a) the amount of securities to be offered in this state; (b) the states in which a registration statement or similar document in connection with the offering has been or is to be filed; and (c) any adverse order, judgment or decree entered in connection with the offering by the regulatory authorities in each state or by any court or the securities and exchange commission.

Subd. 3. Any document filed under sections 80A.01 to 80A.31 or a predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

Subd. 4. The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.

Subd. 5. The commissioner may by rule or order require as a condition of registration by qualification or coordination (a) that any security issued within the past three years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and (b) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The commissioner may by rule or order determine the conditions of any escrow or impounding required hereunder, but he may reject a depository solely because of location in another state only if the offering is not being registered under the Securities Act of 1933 and the principal place of business of the registrant is in this state.

Subd. 6. The commissioner may by rule or order require as a condition of registration that any security registered by qualification or coordination be sold only on a specified form of subscription or sale contract, and that a signed or conformed copy of each contract be filed with the commissioner or preserved for any period up to three years specified in the rule or order.

Subd. 7. Every registration statement shall be effective, for the purpose of any non-issuer distribution until withdrawn, suspended or revoked. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any non-issuer transaction so long as the registration statement is effective. A registration statement may not be withdrawn for one year from its effective date if any securities of the same class are outstanding.

Subd. 8. So long as a registration statement is effective, the commissioner may by rule or order require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement, to disclose the progress of the offering and the use of any proceeds received therefrom, and to submit

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reports of sales. The commissioner may by rule or order require that the issuer distribute annual reports to its shareholders.

Subd. 9. A registration statement relating to a security issued by a face amount certificate company or a redeemable security issued by an open end management company or unit investment trust, as those terms are defined in the Investment Company Act of 1940, may be amended after its effective date so as to increase the securities specified as proposed to be offered. Such an amendment becomes effective when the commissioner so orders. Every person filing such an amendment shall pay a filing fee, calculated in the manner specified in section 80A.28 with respect to the additional securities proposed to be offered.

Subd. 10. So long as a registration statement is effective the issuer shall file an annual report in such form as the commissioner by rule prescribes. Every annual report shall be due on the 90th day following the end of the issuer's fiscal year, unless extended in writing for good cause by the commissioner. Failure to file the annual report within 30 days after its due date shall be deemed a request for withdrawal.

[1973 c 451 s 12]

80A.13 Denial, suspension and revocation of registration

Subdivision 1. The commissioner may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if he finds (a) that the order is in the public interest and (b) that

(1) the registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment under section 80A.12, subdivision 9, as of its effective date, or any report under section 80A.12, subdivision 8, is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) any provision of sections 80A.01 to 80A.31 or any rule, order, or condition lawfully imposed under sections 80A.01 to 80A.31 has been willfully violated in connection with the offering, by (i) the person filing the registration statement, (ii) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer, or (iii) any underwriter;

(3) the security registered or sought to be registered is the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering; but (i) the commissioner may not institute a proceeding against an effective registration statement under this clause more than one year from the date of the order or injunction relied on, and (ii) may not enter an order under this clause on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section;

(4) the issuer's enterprise or method of business includes or would include activities which are illegal where performed;

(5) the offering has worked or tended to work a fraud upon purchasers or would so operate;

(6) except with respect to securities which are being registered by notification, the terms of the securities are unfair and inequitable; provided, however, that the commissioner may not determine that an offering is unfair and inequitable solely on the grounds that the securities are to be sold at an excessive price where the offering price has been determined by arms length ne-

gotiation between nonaffiliated parties. The selling price of any security being sold by a broker-dealer licensed in this state shall be presumed to have been determined by arms length negotiation;

(7) when a security is sought to be registered by coordination there has been a failure to comply with the undertaking required by section 80A.10, subdivision 2, clause (d); or

(8) the applicant or registrant has failed to pay the proper filing fee; but the commissioner may enter only a denial order under this clause and he shall vacate any such order when the deficiency has been corrected.

The commissioner may not institute a stop order proceeding against an effective registration statement solely on the basis of a fact or transaction known to him when the registration statement became effective unless the proceeding is instituted within the next 30 days.

Subd. 2. The commissioner may issue an order requiring the person for whom a registration was made to show cause why the registration should not be revoked. The order shall be calculated to give reasonable notice of the time and place for hearing thereon, and shall state the reasons for the issuance of the order. The commissioner may by order summarily suspend a registration pending final determination of any order to show cause. If the registration is suspended pending final determination of an order to show cause, a hearing on the merits shall be held within 30 days of the issuance of the order or suspension. All hearings shall be conducted in accordance with the provisions of chapter 15. After the hearing, the commissioner shall enter an order making such disposition of the matter as the facts require. If the person for whom the registration was made fails to appear at a hearing of which he has been duly notified, such person shall be deemed in default and the proceeding may be determined against him upon consideration of the order to show cause, the allegations of which may be deemed to be true. The commissioner may adopt rules of procedure concerning all proceedings conducted pursuant to this subdivision.

[1973 c 451 s 13]

80A.14 Definitions

When used in sections 80A.01 to 80A.31, unless the context otherwise requires:

(a) "Affiliate" of another person means any person directly or indirectly controlling, controlled by, or under common control with such other person.

(b) "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include an individual who represents an issuer in:

(1) effecting transactions in a security exempted by section 80A.15, subdivision 1, clauses (a), (b), (c), (d), (e), (g), (h) or (j);

(2) effecting transactions exempted by section 80A.15, subdivision 2;

(3) effecting transactions with existing employees, partners or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state;

(4) effecting other transactions, if such individual is an officer or director of the issuer, no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state, and, upon application, such individual is specifically authorized by name in an order issued by the commissioner; or

(5) effecting transactions in securities registered by notification under section 80A.09 if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state.

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A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if he otherwise comes within this definition.

(c) "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for his own account. "Broker-dealer" does not include:

- (1) an agent;
- (2) an issuer;
- (3) a bank, savings institution or trust company, or

(4) a person who has no place of business in this state if he effects transactions in this state exclusively with or through (i) the issuers of the securities involved in the transactions, (ii) other broker-dealers, or (iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940¹, pension or profit sharing trusts, or other financial institutions or institutional buyers, or to broker-dealers, whether the purchaser is acting for itself or in some fiduciary capacity; or

(5) other persons not within the intent of this subsection whom the commissioner by rule or order designates.

(d) "Commissioner" means the commissioner of securities of the department of commerce.

(e) "Fraud," "deceit" and "defraud" are not limited to common law deceit.

(f) "Guaranteed" means guaranteed as to payment of principal and interest or principal and dividends.

(g) "Industrial revenue bond" means any obligation issued by a governmental unit (including the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing), other than a general obligation of a governmental unit having power to tax property or of an agency of the state of Minnesota, (1) which is issued as part of an issue, all or a major portion of the proceeds of which are to be used directly or indirectly in any trade or business carried on by any person who is not an exempt person, and (2) the payment of the principal or interest on which (under the terms of such obligation or any underlying arrangement) is, in whole or in major part, (i) secured by any interest in property used or to be used in a trade or business or in payment in respect of such property, or (ii) to be derived from payments in respect of property or borrowed money, used or to be used in a trade or business. For purposes of the preceding sentence, an exempt person is a governmental unit or an organization described in Minnesota Statutes 1971, Section 290.05, Subdivision 1, Clauses (h) and (i).

(h) "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:

- (1) a bank, savings institution or trust company;
- (2) a lawyer, accountant, engineer or teacher whose performance of these services is solely incidental to the practice of his profession;
- (3) a broker-dealer whose performance of these services is solely incidental to the conduct of his business as a broker-dealer and who receives no special compensation for them;

(4) a publisher of any bona fide newspaper, news magazine or business or financial publication of general, regular and paid circulation;

(5) a person whose advice, analyses or reports relate only to securities exempted by section 80A.15, subdivision 1, clause (a);

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(6) a person who has no place of business in this state if his only clients in this state are other investment advisers, broker-dealers or persons to whom sales are exempted under section 80A.15, subdivision 2, clause (g);

(7) such other persons not within the intent of this paragraph as the commissioner may by rule or order designate.

(i) "Issuer" means any person who issues or proposes to issue any security and any promoter who acts for an issuer to be formed, except:

(1) with respect to certificates of deposit or trust certificates, issuer means the person performing the act and assuming the duties of depositor, manager or trustee pursuant to the provisions of the trust or other instrument under which the security is issued;

(2) with respect to certificates of interest or participation in oil, gas or mining rights, titles or leases, issuer means the owner of any such right, title or lease, who creates fractional interest therein for the purposes of sale.

(j) "Nonissuer" means not directly or indirectly for the benefit of the issuer or an affiliate of the issuer.

(k) "Person" means an individual, corporation, a partnership, an association, a joint stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, a political subdivision of a government or any other entity.

(l) "Purchasing for investment" means a purchase made for investment and not for the purpose of resale. In determining whether securities have been purchased for investment, the length of the period for which the securities are held will be one of the factors considered. Securities held for two years after their purchase shall be conclusively deemed to have been purchased for investment.

(m)(1) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

(2) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(3) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and to have been offered and sold for value.

(4) A purported gift of assessable stock is considered to involve an offer and sale.

(5) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(6) The terms defined in this subsection do not include (i) any bona fide pledge or loans; (ii) any stock dividend, whether the corporation distributing the dividend is the issuer of the stock or not.

(n) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable shares; investment contract; voting trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas or mining right, title or lease or in payments out of production under such a right, title or lease; or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, temporary or interim certificate for, receipt for guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or for some other specified period.

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(o) "State" means any state, territory or possession of the United States, the District of Columbia and Puerto Rico.

[1973 c 451 s 14]

80A.15 Exemptions

Subdivision 1. The following securities are exempted from sections 80A.08 and 80A.16:

(a) Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state or any corporate or other instrumentality of one or more of the foregoing; but this exemption shall not include any industrial revenue bond.

(b) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any such province, any agency or corporate or other instrumentality of one or more of the foregoing, if the security is recognized as a valid obligation by the issuer or guarantor; but this exemption shall not include any revenue obligation payable solely from payments to be made in respect of property or money used under a lease, sale or loan arrangement by or for a nongovernmental industrial or commercial enterprise.

(c) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution or trust company organized under the laws of any state and subject to regulation in respect of the issuance or guarantee of its securities by a governmental authority of that state.

(d) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings and loan association, or any building and loan or similar association organized under the laws of any state and authorized to do business in this state.

(e) Any security issued or guaranteed by any federal credit union or any credit union, or similar association organized and supervised under the laws of this state.

(f) Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, or the Pacific Coast Stock Exchange; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing.

(g) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of such paper which is likewise limited, or any guarantee of such paper or of any such renewal which are not advertised for sale to the general public in newspapers or other publications of general circulation or otherwise, or by radio, television or direct mailing.

(h) Any interest in any employee's savings, stock purchase, pension, profit sharing or similar benefit plan, or a self-employed person's retirement plan.

(i) Any security issued or guaranteed by any railroad, other common carrier or public utility which is subject to regulation in respect to the issuance or guarantee of its securities by a governmental authority of the United States.

(j) Any interest in a common trust fund or similar fund maintained by a state bank or trust company organized and operating under the laws of Minnesota, or a national bank wherever located, for the collective investment and reinvestment of funds contributed thereto by such bank or trust company in its capacity as trustee, executor, administrator, or guardian; and any interest in a collective investment fund or similar fund maintained by such bank or trust company, or in a separate account maintained by an insurance com-

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pany, for the collective investment and reinvestment of funds contributed thereto by such bank, trust company or insurance company in its capacity as trustee or agent, which interest is issued in connection with an employee's savings, pension, profit sharing or similar benefit plan, or a self-employed person's retirement plan.

Subd. 2. The following transactions are exempted from sections 80A.08 and 80A.16:

(a) Any isolated sales, whether or not effected through a broker-dealer, provided that no person shall make more than five sales of securities of the same issuer pursuant to this exemption during any period of 12 consecutive months; provided further, that in the case of sales by an issuer, except sales of securities registered under the Securities Act of 1933 or exempted by section 3(b) of that act, the seller reasonably believes that all buyers are purchasing for investment.

(b) Any nonissuer distribution of an outstanding security if (1) either Moody's, Fitch's or Standard & Poor's Securities Manuals, or other recognized manuals approved by the commissioner contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date not more than 18 months prior to the date of such sale, and a profit and loss statement for the fiscal year preceding the date of such balance sheet, and (2) the issuer or its predecessor has been in active, continuous business operation for the five year period next preceding the date of sale, and (3) if the security has a fixed maturity or fixed interest or dividend provision, the issuer has not, within the three preceding fiscal years, defaulted in payment of principal, interest or dividends on any such securities.

(c) The execution of any orders by a licensed broker-dealer for the purchase or sale of any security, pursuant to an unsolicited offer to purchase or sell; provided that such broker-dealer acts as agent for the purchaser or seller, and has no direct material interest in the sale or distribution of such security, receives no commission, profit, or other compensation from any source other than the purchaser and seller and delivers to the purchaser and seller written confirmation of the transaction which clearly itemizes his commission, or other compensation.

(d) Any nonissuer sale of notes or bonds secured by a mortgage lien if the entire mortgage, together with all notes or bonds secured thereby, is sold to a single purchaser at a single sale.

(e) Any judicial sale, exchange, or issuance of securities made pursuant to an order of a court of competent jurisdiction.

(f) The sale, by a pledge holder, of a security pledged with him in good faith as collateral for a bona fide debt.

(g) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, pension or profitsharing trust, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity.

(h) Any sales by an issuer to such number of persons as, when aggregated with the number of persons to whom sales have been made pursuant to clauses (a) or (k), shall not exceed 25 persons in this state (other than those designated in clause (g) during any period of 12 consecutive months, whether or not any of the purchasers is then present in this state, if (1) the issuer reasonably believes that all of the buyers in this state (other than those designated in clause (g)) are purchasing for investment, and (2) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyer in this state (other than those designated in clause (g)), except reasonable and customary commissions paid by such issuer to a broker-dealer licensed under this chapter, and (3) the issuer has, ten days prior to any sale pursuant to this paragraph, supplied the commissioner with a statement of issuer on forms prescribed by the commissioner, containing the follow-

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ing information: (i) the name and address of the issuer, and the date and state of its organization; (ii) the number of units, price per unit, and a description of the securities to be sold; (iii) the amount of commissions to be paid and the persons to whom they will be paid; (iv) the names of all officers, directors and persons owning five percent or more of the equity of the issuer; (v) a brief description of the intended use of proceeds; (vi) a description of all sales of securities made by the issuer within the 12 month period next preceding the date of filing; and (vii) a copy of the investment letter, if any, intended to be used in connection with any sale. The commissioner may by rule or order as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase the number of offers and sales permitted, or waive the conditions in clauses (1), (2) or (3) with or without the substitution of a limitation or remuneration.

(i) Any offer (but not a sale) of a security for which a registration statement has been filed under both sections 80A.01 to 80A.31 and the Securities Act of 1933, if no stop order or refusal order is in effect and no public proceeding or examination looking toward such an order is pending under either act; and any offer of a security if the sale of such security is or would be exempt under this section. The commissioner may by rule exempt such other offers (but not sales) of securities for which a registration statement has been filed as he deems appropriate, consistent with the purposes of sections 80A.01 to 80A.31.

(j) The offer and sale by a cooperative association organized under chapter 308, of its securities when such securities are offered and sold only to its members, or when the purchase of such securities is necessary or incidental to establishing membership in such association, or when such securities are issued as patronage dividends.

(k) Any offer or sale of securities, including offers and sales pursuant to preorganization subscriptions for the securities of an issuer to be formed, by a corporation having its principal office in this state if, after giving effect thereto, the aggregate number of holders of all of the issuer's securities, all of whom shall have purchased for investment, does not exceed ten, exclusive of persons designated in clause (g), provided that no commission or other remuneration has been paid and no advertising has been published or circulated in connection with any such sale, and all sales are consummated within 30 days after commencement of business by the issuer. The commissioner may by rule or order increase the number of persons to whom sales may be made under this exemption.

(l) The issuance and delivery of any securities of one corporation to another corporation or its security holders in exchange for the acquisition by the issuer or a subsidiary of the issuer of all or substantially all of the assets of such other corporation, or in connection with a consolidation or merger of such corporation, provided, that the commissioner of securities has been furnished with a general description of the transaction and with such other information as he by rule prescribes not less than ten days prior to such issuance and delivery.

(m) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters.

(n) The distribution by a corporation of its or other securities to its own security holders as a stock dividend or as a dividend from earnings or surplus or as a liquidating distribution; or upon conversion of an outstanding convertible security; or pursuant to a stock split or reverse stock split.

(o) Any offer or sale of securities by an affiliate of the issuer thereof if: (1) a registration statement is in effect with respect to securities of the same class of such issuer and (2) such offer or sale has been exempted from registration by rule or order of the commissioner.

Subd. 3. The commissioner may issue an order requiring any person who claims the benefit of an exemption with respect to a specific security or transaction, to show cause why the exemption should not be revoked. The order shall be calculated to give reasonable notice of the time and place for hearing thereon, and shall state the reasons for the entry of the order. The commissioner may by order summarily suspend an exemption pending final determination of any order to show cause. If an exemption is suspended pending final determination of an order to show cause, a hearing on the merits shall be held within 30 days of the issuance of the order of suspension. All hearings shall be conducted in accordance with the provisions of chapter 15. After the hearing, the commissioner shall enter an order making such disposition of the matter as the facts require. If the person claiming the benefit of the exemption fails to appear at a hearing of which he has been duly notified, such person shall be deemed in default, and the proceeding may be determined against him upon consideration of the order to show cause, the allegations of which may be deemed to be true. The commissioner may adopt rules of procedure concerning all proceedings conducted pursuant to this subdivision.

Subd. 4. In any judicial or administrative proceeding under sections 80A.01 to 80A.31, the burden of proving an exemption or an exception from a definition is upon the person claiming it.

[1973 c 451 s 15]

80A.16 Filing of sales and advertising literature

The commissioner may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser unless the security or transaction is exempted by section 80A.15.

[1973 c 451 s 16]

80A.17 Misleading filings

It is unlawful for any person to make or cause to be made, in any document filed with the commissioner or in any proceeding under sections 80A.01 to 80A.31, other than a contested case hearing any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect or, in connection with such statement, to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

[1973 c 451 s 17]

80A.18 Unlawful representations concerning registration or exemption

Neither the fact that a registration statement or an application for a license has been filed nor the fact that a security is effectively registered or a person is licensed constitutes a finding by the commissioner that any document filed under this chapter is true, complete and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the commissioner has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security, or transaction. It is unlawful to make, or cause to be made, to any prospective purchaser, customer or client any representation inconsistent with the foregoing.

[1973 c 451 s 18]

80A.19 Administration

Subdivision 1. This chapter shall be administered by the commissioner of securities. The commissioner shall appoint two deputy commissioners and

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shall file with the secretary of state an order delegating authority to one of such deputy commissioners to exercise all of the rights and powers and perform all of the duties of the commissioner during the disability of the commissioner, his absence from the office or during a vacancy in the office of the commissioner pending the filling thereof as provided by law.

Subd. 2. It is unlawful for the commissioner or any of his officers or employees to use for personal benefit any information which is filed with or obtained by the commissioner and which is not a matter of public record. Nothing in this chapter authorizes the commissioner or any of his officers or employees to disclose information which is not a matter of public record except among themselves or when necessary or appropriate in a proceeding or investigation under this chapter. No provision of this chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any of his officers or employees.

Subd. 3. It shall be the duty of the commissioner biennially, on or before October 1, in each even numbered year, to prepare and file in the office of the governor a report for the preceding two fiscal years ending June 30 preceding the report, which shall contain a summary of all applications received, withdrawn, granted and denied; a summary of all registrations and licenses suspended, revoked or cancelled, a schedule of receipts and disbursements of the commissioner, and such other information as the commissioner considers material.

[1973 c 451 s 19]

80A.20 Investigations and subpoenas

Subdivision 1. The commissioner in his discretion:

(a) may make such public or private investigations within or without this state as he deems necessary to determine whether any person has violated or is about to violate this chapter or any rule or order hereunder, or to aid in the enforcement of this chapter or in the prescribing of rules and forms hereunder;

(b) may require or permit any person to file a statement in writing, under oath or otherwise as the commissioner determines, as to all the facts and circumstances concerning the matter being investigated;

(c) may publish information which is contained in any order issued by the commissioner;

(d) may hold hearings, upon reasonable notice, in respect of any matter arising out of the administration of this chapter;

(e) may conduct investigations and hold hearings for the purpose of compiling information with a view to recommending changes in this chapter to the legislature; and

(f) may require an issuer, broker-dealer or agent to report to him all sales of any specified security except securities exempted from registration under this chapter. Such reports shall be made within ten days after demand therefor by the commissioner and shall be open for public inspection only upon a court order. The commissioner shall not make known, in any manner not provided by law, any information contained in such reports.

Subd. 2. For the purpose of any investigation, hearing or proceeding under this chapter, the commissioner or any officer designated by him may administer oaths and affirmation, subpoena witnesses, compel their attendance, take evidence and require the production of any books, papers, correspondence, memoranda, agreements or other documents or records which the commissioner deems relevant or material to the inquiry.

Subd. 3. In case of contumacy by, or refusal to obey a subpoena issued to, any person, the district court, upon application by the commissioner, may issue to the person an order directing him to appear before the commissioner, or the officer designated by him, there to produce documentary evidence if so

ordered or to give evidence touching the matter under investigation or in question. Failure to obey the order of the court may be punished by the court as a contempt of court.

Subd. 4. No person is excused from attending and testifying or from producing any document or record before the commissioner, or in obedience to the subpoena of the commissioner or any officer designated by him, or in any proceeding instituted by the commissioner, on the ground that the testimony or evidence required of him may tend to incriminate him or subject him to a penalty or forfeiture; but no individual may be prosecuted or subjected to any penalty or forfeiture for or on account of a transaction, matter, or thing concerning which he is compelled, after claiming his privilege against self-incrimination, to testify or produce evidence, (documentary or otherwise), except that the individual testifying is not exempt from prosecution and punishment for perjury or contempt committed in testifying.

Subd. 5. The attorney general shall assign from his staff one or more assistant attorneys general who shall be attorney and counsel for the division of securities and the department of commerce, and shall have charge of and may conduct all prosecutions for or involving the violation of this chapter, and all other proceedings for the enforcement thereof.

Subd. 6. The bureau of criminal apprehension shall be at the service of the division of securities and the department of commerce and at the service of the assistant attorney general assigned thereto, for the purpose of detecting and apprehending any violators of this chapter and gathering evidence and otherwise aiding in the prosecution of such violators.

[1973 c 451 s 20]

80A.21 Cease and desist orders; injunctions; receivers

Subdivision 1. Whenever it appears to the commissioner that any person has engaged or is about to engage in any act or practice constituting a violation of this chapter or any rule or order hereunder:

(a) He shall have the power to issue and cause to be served upon such person an order requiring the person to cease and desist from violations of sections 80A.01 to 80A.31. The order shall be calculated to give reasonable notice of the time and place for hearing thereon and shall state the reasons for the entry of the order. A hearing shall be held not later than seven days after the issuance of the order after which and within 20 days of the date of the hearing the commissioner shall issue a further order vacating the cease and desist order or making it permanent as the facts require. All hearings shall be conducted in accordance with the provisions of chapter 15. If the person to whom a cease and desist order is issued fails to appear at the hearing after being duly notified, such person shall be deemed in default, and the proceeding may be determined against him upon consideration of the cease and desist order, the allegations of which may be deemed to be true. The commissioner may adopt rules of procedure concerning all proceedings conducted pursuant to this subdivision; and

(b) He may bring an action in the district court of the appropriate county to enjoin the acts or practices and to enforce compliance with sections 80A.01 to 80A.31 or any rule or order thereunder and he may refer the matter to the attorney general or the county attorney of the appropriate county. Upon a proper showing, a permanent or temporary injunction, restraining order or writ of mandamus shall be granted and a receiver may be appointed for the defendant or the defendant's assets. The court may not require the commissioner to post a bond.

Subd. 2. In any proceeding under the provisions of sections 80A.01 to 80A.31 in relation to injunction or receivership, the same may be brought on for hearing and disposition upon an order to show cause returnable upon not more than eight days notice to the defendant therein; and such cases shall have precedence over other cases upon the court calendar, and shall not be continued without the consent of the state of Minnesota, except upon good

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cause shown to the court, and then only for such reasonable length of time as may be necessary in the opinion of the court to protect the rights of the defendant party.

[1973 c 451 s 21]

80A.22 Criminal penalty

Subdivision 1. Any person who wilfully violates any provision of sections 80A.01 to 80A.31 except section 80A.17, or any rule or order under sections 80A.01 to 80A.31, of which he has notice, or who violates section 80A.17 knowing that the statement was false or misleading in any material respect, may be fined not more than \$5,000 or imprisoned not more than five years or both. Each of the acts specified shall constitute a separate offense and a prosecution or conviction for any one of such offenses shall not bar prosecution or conviction for any other offense.

Subd. 2. The commissioner may refer such evidence as is available concerning violations of sections 80A.01 to 80A.31 or of any rule or order hereunder to the attorney general or the county attorney of the appropriate county, who may, with or without any such reference, institute the appropriate criminal proceedings under sections 80A.01 to 80A.31. If referred to a county attorney, he shall within 90 days file with the commissioner a statement concerning any action taken, or, if no action has been taken, the reasons therefor.

Subd. 3. Nothing in sections 80A.01 to 80A.31 limits the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

[1973 c 451 s 22]

80A.23 Civil liabilities

Subdivision 1. Any person who sells a security in violation of sections 80A.08 or 80A.18, or of any condition imposed under section 80A.11, subdivision 4, or section 80A.12, subdivisions 5 and 6, is liable to the person purchasing the security from him, who may sue either in equity for rescission upon tender of the security or at law for damages if he no longer owns the security. In any action for rescission, the purchaser shall be entitled to recover the consideration paid for the security together with interest at the legal rate, costs, and reasonable attorney's fees, less the amount of any income received on the securities. In an action at law, damages shall be the consideration paid for the security together with interest at the legal rate to the date of disposition, costs, and reasonable attorney's fees, less the value of the security at the date of disposition.

Subd. 2. Any person who violates section 80A.01 in connection with the purchase or sale of any security shall be liable to any person damaged thereby who sold such security to him or to whom he sold such security, and any person who violates section 80A.03 in connection with the purchase or sale of any security shall be liable to any person damaged by the conduct prescribed by section 80A.03. Any person who violates section 80A.02 in connection with the purchase or sale of any security shall be liable to any investment advisory client of his who is damaged thereby. Damages in an action pursuant to this subdivision shall include the actual damages sustained plus interest from the date of payment or sale, costs and reasonable attorney's fees.

Subd. 3. Every person who directly or indirectly controls a person liable under subdivision 1 or 2, every partner, principal executive officer or director of such person, every person occupying a similar status or performing a similar function, every employee of such person who materially aids in the act or transaction constituting the violation, and every broker-dealer or agent who materially aids in the act or transaction constituting the violation, are also liable jointly and severally with and to the same extent as such person. There is contribution as in cases of contract among the several persons so liable.

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Subd. 4. No person shall be liable under subdivisions 1 to 3 who shall sustain the burden of proof that he did not know, and in the exercise of reasonable care could not have known, of the existence of facts by reason of which the liability is alleged to exist.

Subd. 5. Any tender specified in this section may be made at any time before entry of judgment. Tender by a purchaser shall require only notice of willingness to exchange the security for the amount computed pursuant to subdivision 1. Tender by a seller shall require only notice of willingness to pay the amount specified in exchange for the security. Any notice may be given by service as in civil actions or by certified mail to the last known address of the person liable.

Subd. 6. Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant.

Subd. 7. No person may commence an action under subdivision 1 more than three years after the sale upon which such action is based. No person may commence an action under subdivision 2 more than three years after the occurrence of the act or transaction constituting the violation.

Subd. 8. No purchaser may commence an action under subdivision 1 if, before suit is commenced, the purchaser has received a written offer to repurchase the security for cash payable on delivery of the security equal to the consideration paid, together with interest at the legal rate from the date of payment, less the amount of any income received thereon or, if the purchaser no longer owns the security, an offer to pay an amount in cash equal to the damages computed in accordance with subdivision 1 and the purchaser has failed to accept such offer in writing within 30 days of its receipt. No offer shall be effective to prevent suit under this section unless a duplicate copy thereof shall have been filed with the commissioner at least 20 days prior to its delivery to the offeree and the commissioner shall not have objected to the offer within that time. The offer shall be in the form and contain the information the commissioner by rule or order prescribes. If the offer is not performed in accordance with its terms, suit by the offeree under this section shall be permitted without regard to this subdivision.

Subd. 9. No person who has made or engaged in the performance of any contract in violation of any provision of this section or any rule or order hereunder or has acquired any purported rights under any such contract with knowledge of the facts by reason of which its making or performance was in violation may base any suit on such violation under the contract.

Subd. 10. Any condition, stipulation or provision binding any person to waive compliance with any provision of sections 80A.01 to 80A.31 or any rule or order hereunder in the purchase or sale of any security is void.

Subd. 11. The rights and remedies promulgated by sections 80A.01 to 80A.31 are in addition to any other right or remedy that may exist at law or in equity, but sections 80A.01 to 80A.31 do not create any cause of action not specified in this section or section 80A.05, subdivision 5. No civil cause of action may be based solely upon the failure of a broker-dealer or agent to comply with the requirements of section 80A.04, subdivisions 1 or 3, except a cause of action arising under section 80A.21.

[1973 c 451 s 23]

80A.24 Hearings and judicial review

Subdivision 1. Within 30 days after an order has been issued without a hearing, any interested party may apply to the commissioner for a hearing in respect to matters determined by the order, and a hearing shall be held, on a date fixed by the commissioner, within 30 days after the application is filed. After the hearing the commissioner may modify the order as he deems appropriate. Hearings shall be public unless the commissioner grants a request joined in by all parties that the hearing be conducted privately.

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Subd. 2. Orders of the commissioner shall be subject to judicial review under chapter 15, but orders originally issued without hearing may be reviewed only if the party seeking review has requested a hearing within the time provided by subdivision 1.

Subd. 3. As an alternative to subdivision 2, the supreme court, upon petition of any person aggrieved, may review by certiorari any final order of the commissioner upon which an administrative hearing has been held. The issuance of the writ shall not operate as a stay of proceedings unless specifically so ordered.

[1973 c 451 s 24]

80A.25 Rules, forms and orders

Subdivision 1. The commissioner may from time to time make, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of sections 80A.01 to 80A.31, including but not limited to rules and forms governing the conduct of business by broker-dealers, agents and investment advisers, registration statements, applications, and reports, and defining any terms, whether or not used in sections 80A.01 to 80A.31, insofar as the definitions are not inconsistent with the provisions of sections 80A.01 to 80A.31. For the purpose of rules and forms, the commissioner may classify securities, persons, and matters within his jurisdiction, and prescribe different requirements for different classes.

Subd. 2. No rule, form or order may be made, amended or rescinded unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of sections 80A.01 to 80A.31. In prescribing rules and forms the commissioner may cooperate with securities administrators of the other states and the securities and exchange commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statements, application, and reports wherever practicable.

Subd. 3. The commissioner may by rule or order prescribe (a) the form and content of financial statements required under sections 80A.01 to 80A.31, (b) the circumstances under which consolidated financial statements shall be filed, and (c) whether any required financial statements shall be certified by independent or certified public accountants. All financial statements shall be prepared in accordance with generally accepted accounting principles unless otherwise permitted by rule or order.

Subd. 4. All rules and forms of the commissioner shall be published.

Subd. 5. No provision of sections 80A.01 to 80A.31 imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the commissioner, notwithstanding that the rule, form, or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

[1973 c 451 s 25]

80A.26 Administrative files and opinions

Subdivision 1. A document is filed when it is received by the commissioner.

Subd. 2. The commissioner shall keep a register of all applications for registration and registration statements which are or have ever been effective, and all denial, suspension, or revocation orders which have ever been entered under this chapter and any predecessor laws. Any information contained in the register shall be a matter of public record.

Subd. 3. All information contained in or filed with any registration statement, application, or report, except such information as to which the commissioner, upon request and for good cause shown, grants confidential treatment, and except as to reports of sales provided for in section 80A.20, subdivision 1,

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clause (f), shall be a matter of public record and shall be made available to the public under such rules as the commissioner prescribes.

Subd. 4. Upon request and at such reasonable charges as he prescribes, the commissioner shall furnish to any person photostatic or other copies (certified under his seal of office if requested) of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified.

Subd. 5. The commissioner in his discretion may honor requests from interested persons for interpretive opinions.

[1973 c 451 s 26]

80A.27 Scope of sections 80A.01 to 80A.31 and service of process

Subdivision 1. Sections 80A.01; 80A.04, subdivision 1; 80A.08; 80A.18; and 80A.23, apply to persons who sell or offer to sell when (a) an offer to sell is made in this state or (b) an offer to buy is made and accepted in this state.

Subd. 2. Sections 80A.01; 80A.04, subdivision 1; 80A.18; and 80A.23, apply to persons who buy or offer to buy when (a) an offer to buy is made in this state, or (b) an offer to sell is made and accepted in this state.

Subd. 3. For the purpose of this section an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer (a) originates from this state or (b) is directed by the offeror to this state and received by the offeree in this state, but for the purpose of section 80A.08 an offer to sell which is not directed to or received by the offeree in this state is not made in this state.

Subd. 4. For the purpose of this section an offer to buy or to sell is accepted in this state when acceptance (a) is communicated to the offeror in this state and (b) has not previously been communicated to the offeror, orally or in writing outside of this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received by the offeror in this state.

Subd. 5. An offer to sell or to buy is not made in this state when (a) the publisher circulates or there is circulated on his behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this state, or which is published in this state but has had more than two thirds of its circulation outside this state during the past 12 months, or (b) a radio or television program originating outside this state is received in this state.

Subd. 6. Sections 80A.01 and 80A.04, subdivision 3, so far as investment advisers are concerned, and section 80A.03 so far as any person is concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

Subd. 7. Every applicant for registration under sections 80A.01 to 80A.31 and every issuer who proposes to offer a security in this state through any person acting on an agency basis in the common law sense shall file with the commissioner, in such form as he by rule prescribes, an irrevocable consent appointing the commissioner or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor, executor, or administrator which arises under sections 80A.01 to 80A.31 or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the consent. The consent need not be filed by a person who has filed a consent in connection with a previous registration or license which is then in effect. Service may be made by leaving a copy of the process in the office of the commissioner, but it is not effective unless (a) the plaintiff, who may be commissioner in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by

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registered mail to the defendant or respondent at his last address on file with the commissioner, and (b) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

Subd. 8. When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by sections 80A.01 to 80A.31 or any rule or order hereunder, and he has not filed a consent to service of process under subdivision 7 and personal jurisdiction over him cannot otherwise be obtained in this state, that conduct shall be considered equivalent to his appointment of the commissioner or his successor in office to be his attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against him or his successor executor or administrator which grows out of that conduct and which is brought under sections 80A.01 to 80A.31 or any rule or order hereunder, with the same force and validity as if served on him personally. Service may be made by leaving a copy of the process in the office of the commissioner, and it is not effective unless (a) the plaintiff, who may be the commissioner in a suit, action, or proceeding instituted by him, forthwith sends notice of the service and a copy of the process by registered mail to the defendant or respondent at his last known address or takes other steps which are reasonably calculated to give actual notice, and (b) the plaintiff's affidavit of compliance with this subsection is filed in the case on or before the return day of the process, if any, or within such further time as the court allows.

Subd. 9. When process is served under this section, the court, or the commissioner in a proceeding before him, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

[1973 c 451 s 27]

80A.28 Fees and expenses

Subdivision 1. There shall be a minimum filing fee of \$100 for every registration statement filed under sections 80A.09 to 80A.11. There shall be an additional fee of one tenth of one percent of the maximum aggregate offering price at which the registered securities are to be offered in this state, and the maximum filing fee shall in no case be more than \$300. If the registration statement relates to redeemable securities issued by an open end management company or unit investment trust, as defined in the Investment Company Act of 1940 ¹, the additional fee shall be one twentieth of one percent of the maximum aggregate offering price at which the registered securities are to be offered in this state, and there shall be no maximum fee. When a registration statement is withdrawn before the effective date or a pre-effective stop order is entered under section 80A.13, subdivision 1, all but the minimum fee shall be returned.

Subd. 2. Every applicant for an initial or renewal license shall pay a filing fee of \$200 in the case of a broker-dealer, \$50 in the case of an agent, and \$100 in the case of an investment adviser. When an application is denied or withdrawn, the filing fee shall be retained. A licensed agent who has terminated employment with one broker-dealer shall, before beginning employment with another broker-dealer, pay a transfer fee of \$20.

Subd. 3. Any amendment to an existing license or registration requiring an order of the commissioner, other than an amendment to a registration or an application for registration increasing the aggregate amount to be registered, shall require payment of an amendment fee of \$25. An amendment to an effective registration shall require the payment of a \$25 amendment fee, plus an additional fee calculated in accordance with subdivision 1. An amendment to an application for registration increasing the aggregate amount to be registered shall require the payment of the additional registration fee

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calculated in accordance with subdivision 1. The commissioner shall by rule designate those amendments which require an order of the commissioner.

Subd. 4. Every annual report shall be accompanied by a fee of \$100.

Subd. 5. The filing of any exemption for which notice is required to be given the commissioner under section 80A.15, subdivision 2, shall be accompanied by a fee of \$50.

Subd. 6. The filing of a rescission offer under section 80A.23, subdivision 8, shall be accompanied by the fees as calculated in subdivision 1.

Subd. 7. Every request for a written opinion from the commissioner concerning the availability of any exemption in section 80A.15, other than an exemption requiring presale notice to the commissioner, shall be accompanied by a fee of \$20.

Subd. 8. When the commissioner deems it necessary to incur any expense in connection with any application, registration or license, he shall have the power to require the interested person to make an advance deposit with the commissioner in an amount estimated as sufficient to cover such expense. All such deposits shall be covered into the state treasury and credited to the state securities commissioner's investigation fund, from which fund the commissioner shall have power to make disbursements to pay for expenses necessarily incurred in the investigation. Any unexpended portion shall be refunded. On field examinations made by the commissioner or an employee away from the office of the commissioner, a per diem of \$10 for each such person may be charged in addition to actual expenses. Where additional technical, expert, or special services are used, the actual cost of such services may be charged in addition to actual expenses.

Subd. 9. No filing for which a fee is required shall be deemed to be filed or given any effect until the proper fee is paid. All fees and charges collected by the commissioner shall be covered into the state treasury. When any person is entitled to a refund under this section, the commissioner shall certify to the state auditor the amount of the fee to be refunded to the applicant, and the auditor shall issue his warrant in payment thereof out of the fund to which such fee was credited in the manner provided by law. There is hereby appropriated to the person entitled to such refunds from the fund in the state treasury to which such fees were credited an amount to make such refunds and payments.

[1973 c 451 s 28]

80A.29 Sale of liquor warehouse receipts is sale of securities

The sale of warehouse receipts or other evidence of ownership for the storing of liquor during the aging or processing period of liquor is hereby declared to be a sale of securities subject to all of the provisions of sections 80A.01 to 80A.31 except section 80A.15. The sale of such warehouse receipts by broker-dealers and agents licensed under sections 80A.01 to 80A.31 is hereby authorized without such broker-dealers or agents having to procure a liquor license when such liquor is not to be imported nor shipped into this state, except as authorized by law. The provisions of sections 80A.01 to 80A.31 shall not apply to the sale of warehouse receipts to distillers, manufacturers, or wholesalers of liquor duly licensed as such in the state of Minnesota.

[1973 c 451 s 29]

80A.30 Registration of oil or gas lands or interest before sale

Subdivision 1. No person shall sell to any person in this state any lands represented to contain or to be a prospect for oil or gas, or any interest therein or thereunder, or in royalties therefrom, unless and until those lands, interests or royalties shall have been first registered under this chapter. Registration shall be made or denied in substantially the same manner and

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upon substantially the same grounds and conditions as are prescribed for the registration of securities by section 80A.11. The fees for registration shall be calculated in the same manner as the fees for registration of securities under section 80A.28, subdivision 1.

Subd. 2. This section shall not apply to any isolated sale not made or occurring in the course of repeated or successive sale; nor to any judicial sale or any transaction lawfully ordered, authorized, or approved by a court of competent jurisdiction in this state; nor to any sale to a bank or financial institution under the supervision of any instrumentality or officer of the United States or of the commissioner of banks or of the commissioner of insurance of this state, or a licensed broker-dealer. In any complaint, information or indictment charging a sale in violation of this section, it shall not be necessary to specifically name or identify persons other than the complainant to whom like sales have been made.

[1973 c 451 s 30]

80A.31 Statutory policy

Sections 80A.01 to 80A.31 shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it and to coordinate the interpretation of sections 80A.01 to 80A.31 with the related federal regulation.

[1973 c 451 s 31]

(NOTE: Laws 1973, Chapter 451, Section 32, reads as follows:

"Prior law exclusively governs all suits, actions, prosecutions, or proceedings which are pending or may be initiated on the basis of facts or circumstances occurring before August 1, 1973.

All effective registrations under prior law, all administrative orders relating to such registrations and all conditions imposed upon such registrations remain in effect so long as they would have remained in effect if this act had not been passed. They are considered to

have been filed, entered, or imposed under this act, but are governed by prior law.

Prior law applies in respect of any offer or sale made within one year after the effective date of this act pursuant to an offering begun in good faith before its effective date on the basis of an exemption available under prior law.

Judicial review of all administrative orders as to which review proceedings have not been instituted by the effective date of this act are governed by prior law.")

CHAPTER 80B. CORPORATE TAKE-OVERS [NEW]

Sec.
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80B.12 Application of corporate take-over law.
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80B.01 Definitions

Subdivision 1. When used in sections 80B.01 to 80B.13, unless the context otherwise requires, the following words shall have the meanings herein ascribed to them.

Subd. 2. "Affiliate" of a person means any person controlling, controlled by, or under common control with such person.

Subd. 3. "Associate" of a person means any person acting jointly or in concert with such person for the purpose of acquiring, holding or disposing of, or exercising any voting rights attached to the equity securities of an issuer.

Subd. 4. "Commissioner" means the commissioner of securities.

Subd. 5. "Equity security" means any stock or similar security; or any security convertible, with or without consideration, into such a security; or carrying any warrant or right to subscribe to or purchase such a security; or any such warrant or right; or any other security which the commissioner