

CHAPTER 80A

REGULATION OF SECURITIES

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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.

History: 1973 c 451 s 1

80A.02 PROHIBITED ACTIVITIES.

Subdivision 1. **Advisory activities and principal transactions.** (a) It is unlawful for any person who receives, directly or indirectly, any consideration from another primarily for advising the other as to the value of securities or their purchase or sale:

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

(b) It is unlawful for an investment adviser to knowingly sell any security to or purchase any security from a client while acting as principal for the person's own account or knowingly effect any sale or purchase of any security for the account of a client while acting as broker for one other than the client, unless the person discloses to the client in writing before the execution of the transaction the capacity in which the person is acting and obtains the consent of the client to the transaction.

Subd. 1a. **Solicitation activities.** In the solicitation of advisory clients, it is unlawful for any person to make any untrue statements of material facts, or, in light of the circumstances under which they are made, to omit to state material facts necessary in order to make the statements made not misleading.

Subd. 2. **Contract activities.** 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 rules the commissioner prescribes as necessary or appropriate in the public interest or for the protection of investors.

Subd. 3. **Activities as custodian of certain funds.** It is unlawful for any investment adviser to take or have custody of any securities or funds of any client in contravention of

rules the commissioner prescribes as necessary or appropriate in the public interest or for the protection of investors.

History: 1973 c 451 s 2; 1983 c 284 s 1; 1986 c 444; 1997 c 222 s 9

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 substantially 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 the person circulating or disseminating the information is selling or offering to sell or purchasing or offering to purchase the security or is receiving a consideration, directly or indirectly, from any person to whom the information is circulated or disseminated.

History: 1973 c 451 s 3; 1986 c 444

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 licensed under this chapter.

Subd. 2. It is unlawful for any broker-dealer or issuer to employ an agent as a representative in this state unless the agent is licensed. The licensing of an agent is not effective during any period when the agent 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 the broker-dealer. When an agent begins or terminates employment with a broker-dealer or issuer, or begins or terminates those activities which make that person an agent, the agent as well as the broker-dealer or issuer shall promptly notify the commissioner or the commissioner's designated representative.

Subd. 3. It is unlawful for any person to transact business in this state as an investment adviser unless that person is so licensed or licensed as a broker-dealer under this chapter or unless: (1) that person's only clients in this state are investment companies as defined in the Investment Company Act of 1940, other investment advisers, broker-dealers, banks, trust companies, savings associations, federal covered advisers insurance companies, corporations with a class of equity securities registered under section 12(b) or 12(g) of the Securities Exchange Act of 1934, small business investment companies, and government agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional buyers; or (2) that person has no place of business in this state and during the preceding 12-month period has had fewer than six clients who are residents of this state.

Subd. 4. Every license or notice filing expires on December 31 of each year unless an application for renewal has been received by the commissioner by November 15.

Subd. 5. Except with respect to advisers whose only clients are those described in subdivision 3, it is unlawful for a federal covered adviser to conduct advisory business in this state unless the person complies with section 80A.05, subdivision 1a.

History: 1973 c 451 s 4; 1981 c 140 s 1; 1983 c 284 s 2,3; 1986 c 444; 1995 c 202 art 1 s 25; 1997 c 222 s 10-12; 3Sp1997 c 3 s 4

80A.041 EXEMPTION.

A real estate broker or agent licensed under chapter 82 who arranges for the sale of a contract for deed is exempt from the license requirement of section 80A.04 if the real estate broker or agent receives no compensation in addition to the brokerage commission or fee and represents the seller, buyer, lessor, or lessee in the sale, lease, or exchange of the subject property

History: 1992 c 555 art 1 s 1

80A.05 LICENSING PROCEDURE.

Subdivision 1. **Broker-dealer, agent, or investment adviser.** A broker-dealer, agent, or investment adviser may obtain an initial or renewal license by filing with the commissioner or a designee 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 the commissioner determines are relevant to the application. The commissioner may by rule or order 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.

An application that is incomplete will be considered withdrawn if no activity occurs with respect to the application for a period of 120 days. Notwithstanding section 80A.28, subdivision 1, paragraph (c), no part of the filing fee shall be returned if a registration statement is withdrawn according to this subdivision.

Subd. 1a. **Federal covered advisers.** Except with respect to federal covered advisers whose only clients are those described in section 80A.04, subdivision 3, clause (2), a federal covered adviser shall file with the commissioner, before acting as a federal covered adviser in this state, all documents required by the commissioner that have been filed with the Securities and Exchange Commission. Notwithstanding any other provision of this section, until October 10, 1999, the commissioner may require the registration of any federal covered investment adviser who has failed to promptly pay the fees required by section 80A.28 after being notified in writing by the commissioner of the nonpayment or underpayment of such fees. A person shall be considered to have promptly paid such fees if the fees are remitted to the commissioner within 15 days following the receipt of written notification from the commissioner.

Subd. 2. **Successors.** 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. **Examination and training; rulemaking.** 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. Financial requirements; rulemaking. The commissioner may by rule require a minimum capital for broker-dealers, subject to the limitations of section 15 of the Securities Act of 1934, and establish minimum financial requirements for investment advisers, subject to the limitations of section 222 of the Investment Advisers Act of 1940 which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over the funds or securities and those investment advisers who do not.

Subd. 5. Surety bonds; rulemaking. The commissioner may by rule require licensed broker-dealers, agents and investment advisers who have custody of or discretionary authority over client funds or securities, to post surety bonds in amounts as the commissioner may prescribe subject to the limitations of section 15 of the Securities Exchange Act of 1934 for broker-dealers and section 222 of the Investment Advisers Act of 1940 for investment advisers 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 the amounts required by the commissioner. 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. General authority of commissioner. The commissioner may by rule or order impose other conditions in connection with the issuance of licenses under this chapter as the commissioner deems appropriate in the public interest and for the protection of investors.

History: 1973 c 451 s 5; 1981 c 140 s 2; 1986 c 444; 1996 c 439 art 2 s 2; 1997 c 222 s 13-15

80A.06 POSTLICENSING 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 by rule or order, except as provided by section 15 of the Securities Act of 1934 in the case of a broker-dealer and section 222 of the Investment Advisers Act of 1940 in the case of an investment adviser. 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 the commissioner 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 or order prescribes except as provided in section 15 of the Securities Exchange Act of 1934 in the case of a broker-dealer and section 222 of the Investment Advisers Act of 1940 in the case of an investment adviser

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 or federal covered adviser shall within 30 days 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 the commissioner determines. The examinations may be made without prior notice to the broker-dealer or investment adviser. For the purpose of avoiding unnecessary duplication of examinations, the commissioner, insofar as the commissioner 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. (a) Except as otherwise provided in paragraph (b), 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 the purchase or sale unless, prior to or contemporaneously with the 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 the remuneration or other thing of value and of the amount of it. All charges made by an investment adviser for services and all charges by a licensed broker-dealer for services rendered as a broker-dealer or for advice with respect to securities shall be reasonable, and except in compliance with rules adopted by the commissioner, no 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 adopted by the commissioner.

(b) Disclosure of payment received by a licensed investment advisor or licensed broker-dealer for directing order flow need not comply with paragraph (a) if the disclosure is made in compliance with rules governing disclosure of payments for directing order flow adopted by the securities and exchange commission.

History: 1973 c 451 s 6; 1986 c 444; 1987 c 336 s 9; 1995 c 148 s 1; 1996 c.439 art 2 s 3; 1997 c 222 s 16-18.

80A.07 DENIAL, SUSPENSION, AND REVOCATION OF LICENSES.

Subdivision 1. **General grounds.** The commissioner may by order deny, suspend, or revoke any license or may censure the licensee, if the commissioner 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 any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or order under any of these statutes, of which that person has notice and 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 and exchange commission suspending or expelling that person 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. 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

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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 agents, investment adviser representatives, or employees to assure their compliance with this chapter;

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

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

(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;

(14) has failed to reasonably supervise agents, investment adviser representatives, or employees if that person has assumed or has been designated to carry out the supervisory procedures of the broker-dealer or investment adviser; or

(15) has failed, within 20 business days after receiving written instructions from a customer, to do any of the following:

(a) transfer or deliver securities that have been purchased;

(b) transfer or deliver any free credit balances reflecting completed transactions; or

(c) transfer or deliver a customer's account securities positions and balances to another broker-dealer.

This clause shall not serve as a basis for denial, suspension, or revocation of a broker-dealer's or agent's license if: (i) the transfer or delivery is between broker-dealers and meets the rules and requirements established by the New York Stock Exchange with regard to the transfer or delivery; or (ii) the delivery of securities to a customer cannot be accomplished within 20 business days, and the broker-dealer or agent has notified the customer in writing of the inability to deliver the securities and the reasons for the nondelivery within 20 business days of receiving the customer's written instructions.

Subd. 1a. Investment adviser representatives. The commissioner, by order, shall censure or place limitations on the activities of any investment adviser representative or person seeking to become an investment adviser representative, or suspend or bar any person from being an investment adviser representative, if the commissioner finds, after notice and opportunity for hearing, that the censure, placing of limitations, suspension, or bar is in the public interest and that the person has committed or omitted any act or omission enumerated in subdivision 1. It shall be unlawful for any person as to whom an order suspending or barring that person from being an investment adviser representative is in effect willfully to become, or to be, associated with an investment adviser without the consent of the commissioner, and it shall be unlawful for any investment adviser to permit this person to become, or remain, an investment adviser representative without the consent of the commissioner, if the investment adviser knew, or in the exercise of reasonable care, should have known of the order.

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

Subd. 3. Order to show cause. 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, or in the case of an investment adviser representative or person seeking to become an investment adviser representative, summarily suspend or bar that person from acting in that capacity, 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 14. After the hearing, the commissioner shall enter an order making a disposition of the matter as the facts require. If the licensee or applicant fails to appear at a hearing of which that person has been duly notified, the person shall be deemed in default and the proceeding may be determined against that person 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. Specific grounds. 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. Withdrawals. 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 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 two years after withdrawal became effective and enter a revocation or suspension order as of the last date on which the license was in effect.

History: 1973 c 451 s 7; 1977 c 33 s 1, 1981 c 140 s 3; 1982 c 424 s 130; 1983 c 284 s 4-6; 1986 c 444; 1987 c 336 s 10; 1995 c 11 s 1

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 or (c) it is a federal covered security.

History: 1973 c 451 s 8; 1997 c 222 s 19

80A.09 REGISTRATION BY NOTIFICATION.

Subdivision 1. The following securities may be registered by notification: 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 the commissioner determines that registration by qualification is in the public interest and is necessary for the protection of investors

Subd. 5. Withdrawal. A registration statement that is incomplete will be considered withdrawn if no activity occurs with respect to the application for a period of 120 days. Not-

withstanding section 80A.28, subdivision 1, paragraph (c), no part of the filing fee shall be returned if a registration statement is withdrawn according to this subdivision.

History: 1973 c 451 s 9; 1983 c 284 s 7; 1985 c 210 art 1 s 2; 1986 c 444; 1987 c 336 s 11; 1996 c 439 art 2 s 4

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 indenture 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 the commissioner promptly notifies the registrant by telephone or telegram or similar electronic means of communication (and promptly confirms by letter or telegram when the commissioner 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 the commissioner 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.

Subd. 4. **Withdrawal.** A registration statement that is pending effectiveness will be considered withdrawn if no activity occurs with respect to the application for a period of 120 days. Notwithstanding section 80A.28, subdivision 1, paragraph (c), no part of the filing fee shall be returned if a registration statement is withdrawn according to this subdivision.

History: 1973 c 451 s 10; 1985 c 251 s 2; 1986 c 444; 1996 c 439 art 2 s 5

80A.11 REGISTRATION BY QUALIFICATION.

Subdivision 1. **Authority.** Any security may be registered by qualification.

Subd. 2. **Contents.** 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. **When effective.** A registration statement under this section becomes effective when the commissioner so orders.

Subd. 4. **Condition of registration.** 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 that person (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 that person 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.

Subd. 5. **Withdrawal.** A registration statement that is pending effectiveness will be considered withdrawn if no activity occurs with respect to the application for a period of 120 days. Notwithstanding section 80A.28, subdivision 1, paragraph (c), no part of the filing fee shall be returned if a registration statement is withdrawn according to this subdivision.

History: 1973 c 451 s 11; 1986 c 444; 1996 c 439 art 2 s 6

80A.115 SMALL CORPORATE OFFERING REGISTRATION.

Subdivision 1. **Filing requirements.** A security meeting the conditions set forth in this section may be registered by filing a small corporate offering registration form otherwise known as a form U-7 adopted by the North American Securities Administrators Association as a uniform state securities registration form.

Subd. 2. **Availability.** Registration under this section is available only to the issuer of the securities and not to an affiliate of that issuer or to any other person for resale of the issuer's securities. The issuer must be a corporation organized under the laws of one of the states or possessions of the United States. Registration under this section is not available to any of the following issuers:

- (1) an issuer that engages in or proposes to engage in the business of petroleum exploration or production or mining or other extractive industries;
- (2) an investment company, including a mutual fund;
- (3) an issuer subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934;
- (4) a direct participation program;
- (5) a development stage company that either has no specific business plan or purpose or has indicated that its business plan is to engage in a merger or acquisition with an unidentified company or companies or other entity or person; and
- (6) an issuer seeking to register a debt offering unless the commissioner finds that the issuer has demonstrated a reasonable ability to service the debt.

Subd. 3. **Disqualification.** (a) An issuer is disqualified from registration under this section if the issuer or any of its officers, directors, ten-percent stockholders, promoters, or any selling agents of the securities to be offered, or any officer, director, or partner of the selling agent:

(1) has filed a registration statement that is the subject of a currently effective registration stop order entered under a federal or state securities law within five years before the filing of the small corporate offering registration application;

(2) has been convicted within five years before the filing of the small corporate offering registration application of a felony or misdemeanor in connection with the offer, purchase, or sale of a security or a felony involving fraud or deceit, including, but not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(3) is currently subject to a state administrative enforcement order or judgment entered by a state securities administrator or the securities and exchange commission within five years before the filing of the small corporate offering registration application, or is subject to a federal or state administrative enforcement order or judgment in which fraud or deceit, including, but not limited to, making untrue statements of material facts or omitting to state material facts, was found and the order or judgment was entered within five years before the filing of the small corporate offering registration application;

(4) is currently subject to an order, judgment, or decree of a court of competent jurisdiction temporarily restraining or enjoining, or is subject to an order, judgment, or decree of a court of competent jurisdiction, permanently restraining or enjoining the party from engaging in or continuing any conduct or practice in connection with the purchase or sale of any security or involving the making of a false filing with a state or with the securities and exchange commission entered within five years before the filing of the small corporate offering registration application; or

(5) is subject to a state's administrative enforcement order, or judgment that prohibits, denies, or revokes the use of an exemption for registration in connection with this offer, purchase, or sale of securities.

Clauses (1) to (4) do not apply if the person subject to the disqualification is duly licensed or registered to conduct securities-related business in the state in which the administrative order or judgment was entered against the person or if the dealer employing the party is licensed or registered in this state and the form BD filed in this state discloses the order, conviction, judgment, or decree relating to the person.

(b) No person disqualified under this subdivision may act in any capacity other than that for which the person is licensed or registered. A disqualification under this subdivision is automatically waived if the state securities administrator or federal agency that created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances to deny the registration.

Subd. 4. Conditions. In order to register under this section, all of the following conditions must be satisfied:

(1) the offering price for common stock and the exercise price, if the securities offered are options, warrants, or rights for common stock, and the conversion price if the securities are convertible into common stock must be equal to or greater than \$5 per share; and

(2) the aggregate offering price of the securities offered, within or outside this state, may not exceed \$1,000,000 less the aggregate offering price of all securities sold within the 12 months before the start of and during the offering of the securities under securities and exchange commission Rule 504 in reliance on an exemption under section 3(b) of the Securities Act of 1933. The issuer may not split its common stock, or declare a stock dividend for two years after effectiveness of the registration, except that in connection with a subsequent public offering, the issuer may upon application and consent of the commissioner take this action.

Subd. 5. Contents of registration form. The small corporate offering registration form (form U-7) must comply with and contain all exhibits required by the Instructions for Use of Form U-7 as adopted by the North American Securities Administrators Association. The registration must include financial statements prepared in accordance with generally accepted accounting principles. An issuer that has not conducted significant operations shall provide statements of receipts and disbursements in lieu of statements of income. Interim financial statements may be unaudited. All other financial statements shall be audited by independent certified public accountants. Financial statements may be unaudited if reviewed by independent certified public accountants in accordance with the accounting and review

service standards promulgated by the American Institute of Certified Public Accountants and:

(1) the issuer has not previously sold securities through an offering involving the general solicitation of prospective investors by means of advertising, mass mailings, public meetings, cold call telephone solicitation, or any other method directed toward the public;

(2) the issuer has not been previously required under federal or state securities laws to provide audited financial statements in connection with any sale of its securities; and

(3) the aggregate amount of all previous sales of securities by the issuer, exclusive of debt financing with banks and similar commercial lenders does not exceed \$1,000,000.

Subd. 6 Stop orders. The commissioner may in the commissioner's discretion issue a stop order for any of the following additional reasons:

(1) the issuer's principal place of business is not in this state or in North Dakota, South Dakota, Iowa, or Wisconsin;

(2) at least 50 percent of the issuer's full-time employees are not located in this state or in North Dakota, South Dakota, Iowa, or Wisconsin; or

(3) at least 80 percent of the net proceeds of the offering are not going to be used in connection with the operations of the issuer in this state or in North Dakota, South Dakota, Iowa, or Wisconsin.

Subd. 7 Suitability. The commissioner may, in the commissioner's discretion, require investors in a particular offering to meet suitability standards relating to annual gross income, net worth, or other factors to determine the suitability of the investment for the investor.

Subd. 8 Financial reporting requirements. The issuer shall deliver to investors on an annual basis financial statements prepared in accordance with generally accepted accounting principles.

Subd. 9 Effective date. A registration statement under this section becomes effective when the commissioner so orders.

History: 1997 c 197 s 1

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 three 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 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

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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 nonissuer 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 nonissuer 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 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.

Subd. 11. Within two business days after receipt of an order of the commissioner withdrawing, suspending, or revoking effectiveness of an issuer's registration statement, the issuer must notify all persons making a market in the issuer's securities of the termination of the effectiveness of the registration statement. Failure to provide this notice may result in the imposition of a civil penalty not to exceed \$2,000 per violation

Subd. 12. **Coordinated registration.** The commissioner may enter into cooperative and reciprocal agreements with members of a national securities regulatory organization composed of securities administrators of this and other states to participate in a coordinated review of securities offerings in lieu of conducting the commissioner's own review

History: 1973 c 451 s 12; 1981 c 140 s 4; 1986 c 444; 1987 c 336 s 12; 1997 c 222 s 20

80A.122 FEDERAL COVERED SECURITIES.

Subdivision 1. **18(b)(2) filings.** The commissioner may, by rule or otherwise, require the filing of any or all of the following documents with respect to a federal covered security under section 18(b)(2) of the Securities Act of 1933

(1) prior to the initial offer of a federal covered security in this state, all documents that are part of a current federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, together with a fee and a consent to service of process;

(2) after the initial offer of a federal covered security in this state, all documents that are part of an amendment to a current federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, which must be filed concurrently with the commissioner;

(3) notices that increase the aggregate amount of securities offered or sold in this state, together with the fee.

Subd. 2. **18(b)(4)(d) filings.** With respect to a security that is a federal covered security under section 18(b)(4)(D) of the Securities Act of 1933, the commissioner, by rule or other-

wise, may require the issuer to file a notice on form D of the Securities and Exchange Commission, together with a fee and a consent to service of process no later than 15 days after the first sale of the covered security in this state.

Subd. 3. **18(b)(3) or (4) filings.** The commissioner, by rule or otherwise, may require the filing of any document filed with the Securities and Exchange Commission under the Securities Act of 1933 with respect to a federal covered security under section 18(b)(3) or (4) of the Securities Act of 1933 together with the fee.

Subd. 4. **Registration.** Notwithstanding any other provision of this section, until October 10, 1999, the commissioner may require registration of a federal covered security for which the fees required by section 80A.28 have not been promptly paid after the issuer of such securities has been notified in writing by the commissioner of the nonpayment or underpayment of such fees. An issuer shall be considered to have promptly paid such fees if the fees are remitted to the commissioner within 15 days following the receipt of written notification from the commissioner.

Subd. 5. **Stop orders.** The commissioner may issue a stop order suspending the offer and sale of a federal covered security, except a federal covered security under section 18(b)(1) of the Securities Act of 1933, if the commissioner finds that: (1) the order is in the public interest; and (2) there is a failure to comply with any condition established under this section.

Subd. 6. **Commissioner's waiver.** The commissioner may, by rule or otherwise, waive any or all of the provisions of this section.

History: 1997 c 222 s 21

80A.125 PROHIBITION; NONRECOURSE LOANS.

No part of the offering proceeds resulting from the sale of bonds or similar interest-bearing securities issued by the United States, any state, any political subdivision of any state, or any corporate or other instrumentality of one or more of those entities may be loaned to a person on a nonrecourse basis. This prohibition does not apply to bonds or similar interest-bearing securities:

- (1) exempt from registration under section 80A.15;
- (2) rated in one of the top four letter rating categories by Fitch Investors Service, Inc., Standard and Poor's Corporation, or Moody's Investor Services, Inc.; or
- (3) issued to provide housing facilities with respect to which low income tax credits are to be obtained.

History: 1993 c 271 s 1

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 the commissioner 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 negotiation 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);

(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 shall vacate any such order when the deficiency has been corrected; or

(9) the offering of securities sought to be registered is not firmly underwritten and (i) the minimum amount of proceeds from the sale of the securities is not more than \$500,000, and (ii) the maximum amount of proceeds is more than 200 percent of the minimum amount of proceeds required to go forward with the offering.

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 the commissioner 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 14. 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 the person has been duly notified, such person shall be deemed in default and the proceeding may be determined against the person 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.

History: 1973 c 451 s 13; 1982 c 424 s 130; 1985 c 251 s 3; 1986 c 358 s 3; 1986 c 444

80A.14 DEFINITIONS.

Subdivision 1. **Terms.** When used in sections 80A.01 to 80A.31, the terms defined in this section have the meanings given them unless the context otherwise requires.

Subd. 2. **Affiliate.** "Affiliate" of another person means any person directly or indirectly controlling, controlled by, or under common control with the other person.

Subd. 3. **Agent.** "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:

- (a) an individual who represents an issuer in:

- (1) effecting transactions in a security exempted by section 80A.15, subdivision 1;
 - (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 the 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, the individual is specifically authorized by name in an order issued by the commissioner;
 - (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, or
 - (6) effecting transactions in a federal covered security as described in sections 18(b)(3) and 18(b)(4) of the Securities Act of 1933; or
- (b) an individual who represents a broker-dealer in effecting transactions in the state limited to those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934.

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 that person otherwise comes within this definition.

Subd. 4. **Broker-dealer.** "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for that person's own account. "Broker-dealer" does not include:

- (1) an agent;
- (2) an issuer;
- (3) a trust company; or
- (4) a bank, savings institution, savings association, credit union:
 - (i) acting for the account of others, provided that such activities are conducted in compliance with such rules as may be adopted by the commissioner;
 - (ii) acting for its own account; or
 - (iii) acting in a fiduciary capacity pursuant to the powers and privileges described by sections 48.36 to 48.49 or United States Code, title 12, section 92(a);
- (5) a person who has no place of business in this state if that person 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 1940, or other financial institutions or institutional buyers, or to broker-dealers, whether the purchaser is acting for itself or in some fiduciary capacity; or
- (6) other persons not within the intent of this subsection whom the commissioner by rule or order designates

Subd. 5. **Commissioner.** "Commissioner" means the commissioner of commerce.

Subd. 5a. **Federal covered adviser.** "Federal covered adviser" means a person who is: (1) registered under section 203 of the Investment Act of 1940; or (2) is excluded from the definition of "investment adviser" under section 202(a)(11).

Subd. 5b. **Federal covered security.** "Federal covered security" means a security that is a covered security under section 18(b) of the Securities Act of 1933 or regulations adopted under that act.

Subd. 6. **Fraud, deceit, defraud.** "Fraud," "deceit" and "defraud" are not limited to common law deceit.

Subd. 7. **Guaranteed.** "Guaranteed" means guaranteed as to payment of principal and interest or principal and dividends.

Subd. 8. [Repealed, 1996 c 439 art 2 s 18]

Subd. 8a. **Institutional buyer.** For the purposes of sections 80A.04, subdivision 3; 80A.14, subdivision 4, clause (5); and 80A.15, subdivision 2, paragraph (g), "institutional

buyer” includes, but is not limited to; a corporation with a class of equity securities registered under section 12(b) or 12(g) of the Securities Exchange Act of 1934, as amended, a “qualified institutional buyer” within the meaning of rule 144A, and an “accredited investor” within the meaning of rule 501(a) of regulation D.

Subd. 9. Investment adviser. “Investment adviser” means any person who, for compensation, engages in the business of advising others, either directly or through publications, writings or electronic means, 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, credit union, or trust company;
- (2) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of that person’s profession,
- (3) a broker–dealer whose performance of these services is solely incidental to the conduct of the business as a broker–dealer and who receives no special compensation for them;
- (4) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client; or
- (5) other persons not within the intent of this subdivision as the commissioner may by rule or order designate.

Subd. 9a. Investment adviser representative. “Investment adviser representative” means any partner, officer, or director of an investment adviser, or any person performing similar functions, or any person, directly or indirectly, controlling or controlled by an investment adviser, including any employee of an investment adviser who provides investment advice to clients.

Subd. 10. Investment metal. “Investment metal” means any object which contains gold, silver, platinum, indium, chromium, or germanium, or any other metal which the commissioner may specify by rule upon a showing that such other metal is being purchased and sold by the public as an investment.

Subd. 11. Investment gem. “Investment gem” means any gem which the commissioner may specify by rule upon a showing that the gem is being purchased and sold by the public as an investment.

Subd. 12. Investment metal contract. “Investment metal contract” or “investment gem contract” means:

- (i) a sale of an investment metal or investment gem in which the seller or an affiliate of the seller retains possession of the investment metal or investment gem; or
- (ii) a contract of purchase or sale which provides for the future delivery of an investment metal or investment gem, or any option to purchase or option to sell such a contract; or
- (iii) a sale of an investment metal or investment gem pursuant to a contract known to the trade as a margin account, margin contract, leverage account, or leverage contract.

“Investment metal contract” or “investment gem contract” shall not include.

(i) the sale of an investment metal or investment gem where the seller has reasonable grounds to believe that the investment metal or investment gem is being acquired for manufacturing, commercial or industrial purposes; or

(ii) the sale, or contract for the future purchase or sale, of jewelry, art objects or other manufactured or crafted goods other than bullion or bulk sales of coins; or

(iii) the sale of an investment metal or investment gem where full payment is made to the seller, and delivery of the investment metal or investment gem is made to the purchaser, or to a bank, savings institution, trust company, broker–dealer, or safe deposit company designated by the purchaser, within 20 days of the date of purchase, if the bank, savings institution, trust company, broker–dealer, or safe deposit company is located within this state, and is, where required, licensed under the laws of this state; provided that a safe deposit company accepting such delivery may not be an affiliate of the seller; or

(iv) any futures contracts traded on a commodities exchange registered under the Federal Commodity Futures Trading Commission Act of 1974.

Subd. 13. **Issuer.** "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.

Subd. 14. **Nonissuer.** "Nonissuer" means not directly or indirectly for the benefit of the issuer or an affiliate of the issuer.

Subd. 15. **Person.** "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.

Subd. 16. **Purchasing for investment.** "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.

Subd 17. **Sale, sell.** (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 subdivision 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.

Subd. 18. **Security.** (a) "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; investment metal contract or investment gem 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 the 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:

(1) 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; or

(2) stock of a closely held corporation offered or sold pursuant to a transaction in which 100 percent of the stock of that corporation is sold as a means to effect the sale of the business of the corporation if the transaction has been negotiated on behalf of all purchasers, and if all purchasers have access to inside information regarding the corporation before consummating the transaction.

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(b) A security that is offered and sold pursuant to section 4(5) of the Securities Act of 1933 or that is a "mortgage related security" (as defined in section 3(a)(41) of the Securities Exchange Act of 1934) is not a security exempt from registration under section 80A.15, subdivision 1, paragraph (a), in the same manner as obligations issued or guaranteed as to principal and interest by the United States or its agencies or instrumentalities. This provision specifically overrides the preemption of state law contained in section 106(c) of the Secondary Mortgage Market Enhancement Act of 1984, Public Law Number 98-440.

Subd. 19. **State.** "State" means any state, territory or possession of the United States, the District of Columbia and Puerto Rico.

Subd. 20. **Qualified charity.** "Qualified charity" means an organization that is described in section 501(c)(3) of the Internal Revenue Code and that is not a private foundation as described in section 509 of the Internal Revenue Code.

Subd. 21. **Internal Revenue Code.** "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, United States Code, title 26, section 1 et seq

Subd. 22. **Pooled income fund.** "Pooled income fund" means a trust that meets the requirements of a pooled income fund as defined in section 642(C)(5) of the Internal Revenue Code, provided that the remainder beneficiary is a qualified charity.

Subd. 23. **Charitable remainder trust.** "Charitable remainder trust" means a trust that meets the requirements of either a charitable remainder annuity trust or a charitable remainder unitrust as defined in section 664 of the Internal Revenue Code, provided that the remainder beneficiary is a qualified charity.

Subd. 24. **Charitable lead trust.** "Charitable lead trust" means a trust that meets the requirements of a charitable lead trust as described in section 170(F)(2) of the Internal Revenue Code, provided that the lead beneficiary is a qualified charity.

Subd. 25. **Charitable gift annuity.** "Charitable gift annuity" means an annuity that meets the requirements of a charitable gift annuity as defined in section 501(m)(5) of the Internal Revenue Code.

History: 1973 c 451 s 14; 1975 c 371 s 1; 1980 c 516 s 2; 1981 c 140 s 5; 1983 c 284 s 8-10; 1983 c 289 s 114 subd 1; 1984 c 552 s 4; 1984 c 655 art 1 s 92, 1985 c 248 s 70; 1986 c 358 s 4; 1986 c 444; 1987 c 336 s 13; 1989 c 209 art 1 s 8, 1993 c 257 s 39,40; 1995 c 11 s 2; 1995 c 202 art 1 s 25; 1996 c 439 art 2 s 7-12; 1997 c 222 s 22-26

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 agency or corporate or other instrumentality of one or more of the foregoing; but this exemption does not apply to a security issued by any of the foregoing that is payable solely from payments to be received in respect of property or money used under a lease, sale, or loan arrangement by or for a nongovernmental industrial or commercial enterprise. Pursuant to section 106(c) of the Secondary Mortgage Market Enhancement Act of 1984, Public Law Number 98-440, this exemption does not apply to a security that is offered or sold pursuant to section 106(a)(1) or (2) of that act.

(b) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any 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 association, or any savings association 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, the Pacific Stock Exchange, or the Chicago Board Options 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. This exemption does not apply to second tier listings on any of the exchanges in this paragraph.

(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 the paper which is likewise limited, or any guarantee of the paper or of any 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 the 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 the bank or trust company, or in a separate account maintained by an insurance company, for the collective investment and reinvestment of funds contributed thereto by the 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.

(k) Any security which meets all of the following conditions:

(1) If the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of the agent in its prospectus;

(2) A class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934, and has been so registered for the three years immediately preceding the offering date;

(3) Neither the issuer nor a significant subsidiary has had a material default during the last seven years, or for the period of the issuer's existence if less than seven years, in the payment of (i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money, or (ii) rentals under leases with terms of three years or more;

(4) The issuer has had consolidated net income, before extraordinary items and the cumulative effect of accounting changes, of at least \$1,000,000 in four of its last five fiscal years including its last fiscal year; and if the offering is of interest bearing securities, has had for its last fiscal year, net income, before deduction for income taxes and depreciation, of at least 1-1/2 times the issuer's annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. For the purposes of this clause "last fiscal year" means the most recent year for which audited financial statements are available, provided that such statements cover a fiscal period ended not more than 15 months from the commencement of the offering;

(5) If the offering is of stock or shares other than preferred stock or shares, the securities have voting rights and the rights include (i) the right to have at least as many votes per share,

and (ii) the right to vote on at least as many general corporate decisions, as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law; and

(6) If the offering is of stock or shares, other than preferred stock or shares, the securities are owned beneficially or of record, on any date within six months prior to the commencement of the offering, by at least 1,200 persons, and on that date there are at least 750,000 such shares outstanding with an aggregate market value, based on the average bid price for that day, of at least \$3,750,000. In connection with the determination of the number of persons who are beneficial owners of the stock or shares of an issuer, the issuer or broker-dealer may rely in good faith for the purposes of this clause upon written information furnished by the record owners

(l) Any certificate of indebtedness sold or issued for investment, other than a certificate of indebtedness pledged as a security for a loan made contemporaneously therewith, and any savings account or savings deposit issued, by an industrial loan and thrift company.

(m) Any security designated or approved for designation upon notice of issuance on the NASDAQ/National Market System; any other security of the same issuer that is of senior or substantially equal rank; any security called for by subscription rights or warrants so designated or approved; or any warrant or right to purchase or subscribe to any of the securities referred to in this paragraph; provided that the National Market System provides the commissioner with notice of any material change in its designation requirements. The commissioner may revoke this exemption if the commissioner determines that the designation requirements are not enforced or are amended in a manner that lessens protection to investors

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

(a) Any sales, whether or not effected through a broker-dealer, provided that:

(1) no person shall make more than ten sales of securities of the same issuer pursuant to this exemption, exclusive of sales according to clause (2), 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, (i) the seller reasonably believes that all buyers are purchasing for investment, and (ii) the securities are not advertised for sale to the general public in newspapers or other publications of general circulation or otherwise, or by radio, television, electronic means or similar communications media, or through a program of general solicitation by means of mail or telephone; and

(2) no issuer shall make more than 25 sales of its securities according to this exemption, exclusive of sales pursuant to clause (1), during any period of 12 consecutive months, provided further, that the issuer meets the conditions in clause (1) and, in addition meets the following additional conditions: (i) files with the commissioner, ten days before a sale according to this clause, a statement of issuer on a form prescribed by the commissioner; and (ii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyers in this state in connection with a sale according to this clause except reasonable and customary commissions paid by the issuer to a broker-dealer licensed under this chapter.

(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 the sale, and a profit and loss statement for the fiscal year preceding the date of the 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 the 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 the broker-dealer acts as agent for the purchaser or seller, and has no direct material interest in the sale or distribution of the 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 the 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 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, 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) An offer or sale of securities by an issuer made in reliance on the exemptions provided by Rule 505 or 506 of Regulation D promulgated by the Securities and Exchange Commission, Code of Federal Regulations, title 17, sections 230.501 to 230.508, subject to the conditions and definitions provided by Rules 501 to 503 of Regulation D, if the offer and sale also satisfies the conditions and limitations in clauses (1) to (10).

(1) The exemption under this paragraph is not available for the securities of an issuer if any of the persons described in Rule 252(c) to (f) of Regulation A promulgated by the Securities and Exchange Commission, Code of Federal Regulations, title 17, sections 230.251 to 230.263:

(i) has filed a registration statement that is the subject of a currently effective order entered against the issuer, its officers, directors, general partners, controlling persons, or affiliates, according to any state's law within five years before the filing of the notice required under clause (5), denying effectiveness to, or suspending or revoking the effectiveness of, the registration statement;

(ii) has been convicted, within five years before the filing of the notice required under clause (5), of a felony or misdemeanor in connection with the offer, sale, or purchase of a security or franchise, or a felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(iii) is subject to an effective administrative order or judgment entered by a state securities administrator within five years before the filing of the notice required under clause (5), that prohibits, demeans, or revokes the use of an exemption from securities registration, that prohibits the transaction of business by the person as a broker-dealer or agent, or that is based on fraud, deceit, an untrue statement of a material fact, or an omission to state a material fact; or

(iv) is subject to an order, judgment, or decree of a court entered within five years before the filing of the notice required under clause (5), temporarily, preliminarily, or permanently restraining or enjoining the person from engaging in or continuing any conduct or practice in connection with the offer, sale, or purchase of a security, or the making of a false filing with a state.

A disqualification under paragraph (h) involving a broker-dealer or agent is waived if the broker-dealer or agent is or continues to be licensed in the state in which the administrative order or judgment was entered against the person or if the broker-dealer or agent is or continues to be licensed in this state as a broker-dealer or agent after notifying the commissioner of the act or event causing disqualification.

The commissioner may waive a disqualification under paragraph (h) upon a showing of good cause that it is not necessary under the circumstances that use of the exemption be denied.

A disqualification under paragraph (h) may be waived if the state securities administrator or agency of the state that created the basis for disqualification has determined, upon a showing of good cause, that it is not necessary under the circumstances that an exemption from registration of securities under the state's laws be denied.

It is a defense to a violation of paragraph (h) based upon a disqualification if the issuer sustains the burden of proof to establish that the issuer did not know, and in the exercise of reasonable care could not have known, that a disqualification under paragraph (h) existed.

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(2) This exemption must not be available to an issuer with respect to a transaction that, although in technical compliance with this exemption, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in paragraph (h).

(3) No commission, finder's fee, or other remuneration shall be paid or given, directly or indirectly, for soliciting a prospective purchaser, unless the recipient is appropriately licensed, or exempt from licensure, in this state as a broker-dealer.

(4) Nothing in this exemption is intended to or should be in any way construed as relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of the securities law of Minnesota.

(5) The issuer shall file with the commissioner a notice on form D as adopted by the Securities and Exchange Commission according to Regulation D, Code of Federal Regulations, title 17, section 230.502. The notice must be filed not later than 15 days after the first sale in this state of securities in an offering under this exemption. Every notice on form D must be manually signed by a person duly authorized by the issuer and must be accompanied by a consent to service of process on a form prescribed by the commissioner.

(6) A failure to comply with a term, condition, or requirement of paragraph (h) will not result in loss of the exemption for an offer or sale to a particular individual or entity if the person relying on the exemption shows that: (i) the failure to comply did not pertain to a term, condition, or requirement directly intended to protect that particular individual or entity, and the failure to comply was insignificant with respect to the offering as a whole; and (ii) a good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of paragraph (h), except that, where an exemption is established only through reliance upon this provision, the failure to comply shall nonetheless constitute a violation of section 80A.08 and be actionable by the commissioner.

(7) The issuer, upon request by the commissioner, shall, within ten days of the request, furnish to the commissioner a copy of any and all information, documents, or materials furnished to investors or offerees in connection with the offer and sale according to paragraph (h).

(8) Neither compliance nor attempted compliance with the exemption provided by paragraph (h), nor the absence of an objection or order by the commissioner with respect to an offer or sale of securities undertaken according to this exemption, shall be considered to be a waiver of a condition of the exemption or considered to be a confirmation by the commissioner of the availability of this exemption.

(9) The commissioner may, by rule or order, increase the number of purchasers or waive any other condition of this exemption.

(10) The determination whether offers and sales made in reliance on the exemption set forth in paragraph (h) shall be integrated with offers and sales according to other paragraphs of this subdivision shall be made according to the integration standard set forth in Rule 502 of Regulation D promulgated by the Securities and Exchange Commission, Code of Federal Regulations, title 17, section 230.502. If not subject to integration according to that rule, offers and sales according to paragraph (h) shall not otherwise be integrated with offers and sales according to other exemptions set forth in this subdivision.

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

(j) The offer and sale by a cooperative organized under chapter 308A or under the laws of another state, of its securities when the securities are offered and sold only to its members, or when the purchase of the securities is necessary or incidental to establishing membership in the cooperative, or when such securities are issued as patronage dividends. This paragraph applies to a cooperative organized under the laws of another state only if the cooperative has filed with the commissioner a consent to service of process under section 80A.27, subdivision 7, and has, not less than ten days prior to the issuance or delivery, furnished the commis-

sioner with a written general description of the transaction and any other information that the commissioner requires by rule or otherwise.

(l) The issuance and delivery of any securities of one corporation to another corporation or its security holders in connection with a merger, exchange of shares, or transfer of assets whereby the approval of stockholders of the other corporation is required to be obtained, provided, that the commissioner has been furnished with a general description of the transaction and with other information as the commissioner by rule prescribes not less than ten days prior to the 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 the issuer and (2) the offer or sale has been exempted from registration by rule or order of the commissioner.

(p) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if: (1) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; and (2) the commissioner has been furnished with a general description of the transaction and with other information as the commissioner may by rule prescribe no less than ten days prior to the transaction.

(q) Any nonissuer sales of any security, including a revenue obligation, issued by the state of Minnesota or any of its political or governmental subdivisions, municipalities, governmental agencies, or instrumentalities.

(r) Any transaction as to which the commissioner by rule or order finds that registration is not necessary in the public interest and for the protection of investors

(s) An offer or sale of a security issued in connection with an employee's stock purchase, savings, option, profit sharing, pension, or similar employee benefit plan, if the following conditions are met:

(1) the issuer, its parent corporation or any of its majority-owned subsidiaries offers or sells the security according to a written benefit plan or written contract relating to the compensation of the purchaser; and

(2) the class of securities offered according to the plan or contract, or if an option or right to purchase a security, the class of securities to be issued upon the exercise of the option or right, is registered under section 12 of the Securities Exchange Act of 1934, or is a class of securities with respect to which the issuer files reports according to section 15(d) of the Securities Exchange Act of 1934; or

(3) the issuer fully complies with the provisions of Rule 701 as adopted by the Securities and Exchange Commission, Code of Federal Regulations, title 12, section 230.701.

The issuer shall file not less than ten days before the transaction, a general description of the transaction and any other information that the commissioner requires by rule or otherwise or, if applicable, a Securities and Exchange Form S-8. Annually, within 90 days after the end of the issuer's fiscal year, the issuer shall file a notice as provided with the commissioner.

(t) Any sale of a security of an issuer that is a pooled income fund, a charitable remainder trust, or a charitable lead trust that has a qualified charity as the only charitable beneficiary.

(u) Any sale by a qualified charity of a security that is a charitable gift annuity if the issuer has a net worth, otherwise defined as unrestricted fund balance, of not less than \$300,000 and either. (1) has been in continuous operation for not less than three years; or (2) is a successor or affiliate of a qualified charity that has been in continuous operation for not less than three years.

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 14. 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 the person has been duly notified, such person shall be deemed in default, and the proceeding may be determined against the person 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.

A notice filing that is incomplete is considered withdrawn if no activity occurs with respect to the notice filing for a period of 120 days.

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.

History: 1973 c 451 s 15; 1976 c 2 s 43; 1979 c 228 s 1; 1980 c 503 s 4; 1980 c 516 s 2; 1981 c 140 s 6,7; 1982 c 424 s 130; 1983 c 252 s 14; 1984 c 552 s 5; 1985 c 251 s 4; 1986 c 358 s 5,6; 1986 c 444; 1987 c 336 s 14,15; 1989 c 173 s 1; 1989 c 206 s 1; 1989 c 356 s 6; 1993 c 271 s 2; 1994 c 642 s 5; 1995 c 202 art 1 s 25; 1996 c 439 art 2 s 13-15; 1997 c 222 s 27,28

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 or broker-dealer unless: (1) the security or transaction is exempted by section 80A.15; or (2) the security is a federal covered security.

History: 1973 c 451 s 16; 1981 c 140 s 8; 1997 c 222 s 29

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.

History: 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.

History: 1973 c 451 s 18

80A.19 ADMINISTRATION.

Subdivision 1. This chapter shall be administered by the commissioner of commerce.

Subd. 2. It is unlawful for the commissioner or any of the commissioner's 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 the commissioner's 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 the commissioner's 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 canceled, a schedule of receipts and disbursements of the commissioner, and such other information as the commissioner considers material.

History: 1973 c 451 s 19; 1980 c 516 s 2; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 1987 c 336 s 16

80A.20 [Repealed, 1987 c 336 s 47]

80A.21 [Repealed, 1987 c 336 s 47]

80A.22 CRIMINAL PENALTY.

Subdivision 1. Any person who willfully 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 that person 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 \$10,000 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, the county attorney 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.

History: 1973 c 451 s 22; 1984 c 628 art 3 s 1; 1986 c 444

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 80A.12, subdivisions 5 and 6, is liable to the person purchasing the security, who may sue either in equity for rescission upon tender of the security or at law for damages if that person 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 that person or to whom that person 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 invest-

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ment advisory client 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.

Subd. 4. No person shall be liable under subdivisions 1 to 3 who shall sustain the burden of proof that the person 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, subdivision 1 or 3, except a cause of action arising under section 45 027

History: 1973 c 451 s 23; 1986 c 444; 1987 c 336 s 17

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 the commissioner deems appropriate. Hearings shall be public unless the commissioner grants a request joined in by all parties that the hearing be conducted privately.

Subd. 2. Orders of the commissioner shall be subject to judicial review under chapter 14, 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. [Repealed, 1982 c 501 s 26; 1983 c 247 s 219]

History: 1973 c 451 s 24; 1982 c 424 s 130; 1986 c 444

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 the commissioner's 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.

History: 1973 c 451 s 25; 1986 c 444

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 45.027, subdivision 1, clause (7), 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 the commissioner prescribes, the commissioner shall furnish to any person photostatic or other copies (certified under the 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 may honor requests from interested persons for interpretive opinions.

History: 1973 c 451 s 26; 1986 c 444; 1987 c 336 s 18

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 the publisher's 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 the commissioner by rule prescribes, an irrevocable consent appointing the commissioner or a successor in office to be the attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against that person or a 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 in compliance with section 45.028, subdivision 2.

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 has not filed a consent to service of process under subdivision 7 and personal jurisdiction cannot otherwise be obtained in this state, that conduct shall be considered equivalent to an appointment of the commissioner or a successor in office to be the attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against that person or a 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 va-

lidity as if served personally. Service under this section shall be made in compliance with section 45.028, subdivision 2.

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

History: 1973 c 451 s 27; 1978 c 674 s 60; 1986 c 444; 1992 c 564 art 2 s 10,11

80A.28 FEES AND EXPENSES.

Subdivision 1. (a) There shall be a filing fee of \$100 for every application for registration or notice filing. There shall be an additional fee of one-tenth of one percent of the maximum aggregate offering price at which the securities are to be offered in this state, and the maximum combined fees shall not exceed \$300.

(b) When an application for registration is withdrawn before the effective date or a pre-effective stop order is entered under section 80A.13, subdivision 1, all but the \$100 filing fee shall be returned. If an application to register securities is denied, the total of all fees received shall be retained.

(c) Where a filing is made in connection with a federal covered security under section 18(b)(2) of the Securities Act of 1933, there is a fee of \$100 for every initial filing. If the filing is made in connection with redeemable securities issued by an open end management company or unit investment trust, as defined in the Investment Company Act of 1940, there is an additional fee of 1/20 of one percent of the maximum aggregate offering price at which the securities are to be offered in this state. If the filing is made in connection with redeemable securities issued by such a company or trust, there is no maximum fee for securities filings made according to this paragraph. If the filing is made in connection with any other federal covered security under Section 18(b)(2) of the Securities Act of 1933, there is an additional fee of one-tenth of one percent of the maximum aggregate offering price at which the securities are to be offered in this state, and the combined fees shall not exceed \$300.

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 \$25. The fee for a filing made according to section 80A.05, subdivision 1a, is \$100.

Subd. 3. Any amendment to an existing license or registration requiring an order of the commissioner shall require payment of an amendment fee of \$25. If the amendment increases the aggregate amount of securities to be registered, there shall be an additional fee calculated in accordance with subdivision 1, provided the maximum additional fees, if applicable, have not previously been paid. The commissioner shall by rule designate those amendments which require an order of the commissioner.

Subd. 4. Every annual report required by section 80A.12, subdivision 10, 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 shall be accompanied by a fee of \$50.

Subd. 7a. If securities of an issuer are sold in this state in excess of the quantity registered, the excess securities may be registered by paying a filing fee of \$100, and an additional fee in the amount of three times that which is prescribed under subdivision 1, for the excess securities to be registered. There shall be no maximum combined fees under this subdivision, notwithstanding the limitation set forth in subdivision 1, clause (a).

Registration of the excess securities shall be effective retroactively to the date of sale.

Subd. 8. When the commissioner deems it necessary to incur any expense in connection with any application, registration or license, the commissioner shall have the power to re-

quire 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 commissioner of commerce'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 commissioner of finance the amount of the fee to be refunded to the applicant, and the commissioner of finance shall issue a 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.

History: 1973 c 451 s 28; 1973 c 492 s 14; 1981 c 140 s 10-15; 1982 c 475 s 1; 1983 c 289 s 114 subd 1; 1984 c 655 art 1 s 92; 1986 c 444; 1992 c 513 art 3 s 27; 1997 c 222 s 30,31; 1998 c 331 s 37

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.

History: 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 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 commerce of this state, or a licensed broker-dealer; nor to any sale made in compliance with the provisions of section 80A.15, subdivision 2, clause (g) or (h). 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.

History: 1973 c 451 s 30; 1981 c 140 s 16; 1984 c 552 s 6

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.

History: 1973 c 451 s 31