

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

**NOTE:** This section is repealed by Laws 2006, chapter 196, article 1, section 51, effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

### 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

**NOTE:** This section is repealed by Laws 2006, chapter 196, article 1, section 51, effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

### 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 con-

trivance, 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

**NOTE:** This section is repealed by Laws 2006, chapter 196, article 1, section 51, effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

#### 80A.04 LICENSING.

**Subdivision 1. Requirement.** 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. Agent license.** 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.

A broker-dealer or investment adviser is affiliated by direct common control when 80 percent or more of the equity of each broker-dealer or investment adviser is beneficially owned by the same person or group of persons.

**Subd. 3. Investment adviser license.** 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 as described in section 80A.14, subdivision 9, clause (3), 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. Renewal.** 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. **Federal covered adviser limitations.** 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; 2000 c 483 s 37,38

**NOTE:** This section is repealed by Laws 2006, chapter 196, article 1, section 51, effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

#### 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

**NOTE:** This section is repealed by Laws 2006, chapter 196, article 1, section 51, effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

#### 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

**NOTE:** This section is repealed by Laws 2006, chapter 196, article 1, section 51, effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

## 80A.06 POSTLICENSING PROVISIONS.

Subdivision 1. **Record keeping.** 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. **Reports.** 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. **Correcting amendments.** 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. Examinations.** 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. Remuneration and charges.** (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 adviser 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

**NOTE:** This section is repealed by Laws 2006, chapter 196, article 1, section 51, effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

## 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 Com-

modity 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, or any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, 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 or any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, suspending, barring, 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 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; 2000 c 483 s 39

**NOTE:** This section is repealed by Laws 2006, chapter 196, article 1, section 51, effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.



**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

**NOTE:** This section is repealed by Laws 2006, chapter 196, article 1, section 51, effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

**80A.09 REGISTRATION BY NOTIFICATION.**

Subdivision 1. **Authority.** 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. **Contents.** 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. **When effective.** 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. **Condition of registration.** 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. 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 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

**NOTE:** This section is repealed by Laws 2006, chapter 196, article 1, section 51, effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

**80A.10 REGISTRATION BY COORDINATION.**

Subdivision 1. **Authority.** 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. **Contents.** 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) one copy 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. When effective.** 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; 2000 c 483 s 40

NOTE: This section is repealed by Laws 2006, chapter 196, article 1, section 51, effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

## 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

**NOTE:** This section is repealed by Laws 2006, chapter 196, article 1, section 51, effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

### 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 \$1 per share;

(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;

(3) unless an issuer or its predecessors have demonstrated profitable operations for two of the three fiscal years prior to registration, determined in accordance with generally accepted accounting principles, after taxes and excluding extraordinary items, the fair value of the equity investment, as defined by the commissioner by rule, of such issuer shall be at least five percent of the equity investment, as defined by the commissioner by rule, that would result from the sale of all the securities proposed to be offered; and

(4) the maximum quantity of cheap stock, as defined by the commissioner by rule, allowable, expressed as a percentage of the total number of shares to be outstanding after the proposed offering, shall be determined by calculating the fair value of equity investment as a percentage of equity investment in accordance with the following formulations. If the percentage is 20 percent or less, the maximum quantity of cheap stock allowable shall be 50 percent. If the percentage is greater than 20 percent, the maximum quantity of cheap stock allowable shall be two times the percentage plus ten percent. The maximum quantity of cheap stock allowable shall not exceed 90 percent of the total number of shares to be outstanding after the proposed offering.

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.** If no stop order is in effect and no proceeding is pending under section 80A.13, a registration statement under this section becomes effective automatically at 5:00 p.m. on the 20th full business day after the filing of the registration statement or the last amendment of it, or at such earlier time as the commissioner by order determines.

**History:** 1997 c 197 s 1; 1999 c 103 s 1,2

**NOTE:** This section is repealed by Laws 2006, chapter 196, article 1, section 51, effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

## 80A.12 PROVISIONS APPLICABLE TO REGISTRATION GENERALLY.

Subdivision 1. **Filing.** 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. **Contents.** 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. **Incorporations by reference.** 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. **Permitted omissions.** The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.

Subd. 5. **Conditions; registration by qualification or coordination; escrow or impounding.** 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. **Conditions; registration by qualification or coordination; contract requirements.** The commissioner may by rule or order require as a condition of registration that any security registered by qualification or coordination be sold only on a specified form of subscription or sale contract, and that a signed or conformed copy of each contract be filed with the commissioner or preserved for any period up to three years specified in the rule or order.

Subd. 7. **Effective date.** 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. **Periodic reports.** 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. **Certain investment companies; amendments.** 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. **Annual report.** 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. **Withdrawal, suspension, or revocation notice.** 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

**NOTE:** This section is repealed by Laws 2006, chapter 196, article 1, section 51, effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

### 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 otherwise, 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. 4a. **Expiration.** (a) A filing made in connection with the securities of an open-end investment company under subdivision 1 expires the next June 30 unless renewed. To renew a notice filing, an issuer shall:

(1) before expiration of a current notice filing, file with the commissioner the documents specified by the commissioner under subdivision 1, clause (2), together with any fees required by section 80A.28, subdivision 1, paragraph (c); and

(2) no later than September 1 following expiration, file a sales report for the prior fiscal year with the commissioner specifying:

(i) the registered sales;

(ii) the actual sales; and

(iii) the balance that could be sold without an additional filing under section 80A.28, subdivision 1, paragraph (c).

(b) No portion of the unsold balance of shares indicated on the issuer's sales report may be lawfully sold in this state in connection with a renewed notice filing until fees have been paid to renew the shares.

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; 2000 c 488 art 2 s 3

**NOTE:** This section is repealed by Laws 2006, chapter 196, article 1, section 51, effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

### 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

**NOTE:** This section is repealed by Laws 2006, chapter 196, article 1, section 51, effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

### 80A.13 DENIAL, SUSPENSION AND REVOCATION OF REGISTRATION.

Subdivision 1. **Stop order.** 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 arm's-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 arm's-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. Order to show cause.** 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

**NOTE:** This section is repealed by Laws 2006, chapter 196, article 1, section 51, effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

#### 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 "quali-

fied 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.** (a) “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.

(b) “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 or other entity distributing the dividend is the issuer of the stock or not; or (iii) a dividend on equity distributed by a cooperative organized under chapter 308B.

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

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purchasers have access to inside information regarding the corporation before consummating the transaction.

(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 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; 2003 c 105 art 2 s 1

**NOTE:** This section is repealed by Laws 2006, chapter 196, article 1, section 51, effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

## 80A.15 EXEMPTIONS.

Subdivision 1. **Securities exempted.** 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 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. Transactions exempted.** 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 in Minnesota 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; or

(2) no issuer shall make more than 25 sales of its securities in Minnesota 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 pre-

ceding 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, denies, 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, 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.

(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, of-

fers 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 commissioner 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. For purposes of this paragraph, a corporation includes a cooperative organized under chapter 308B, and the approval of stockholders applies to members of such a cooperative.

(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. For purposes of this paragraph, a corporation includes a cooperative organized under chapter 308B, and the term "stock" applies to interests in such a cooperative.

(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:

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(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.

(v) The offer and sale by a cooperative organized under chapter 308B of its securities when the securities are offered and sold only to its existing members or when the purchase of the securities is necessary or incidental to establishing patron membership in the cooperative, or when such securities are issued as patronage dividends. This paragraph applies when securities are issued as patronage dividends or otherwise only when:

(1) the issuer, prior to the completion of the sale of such securities, provides each offeree or purchaser disclosure materials, which to the extent material to an understanding of the issuer, its business, and the securities being offered substantially meet the disclosure conditions and limitations found in rule 502(b) of regulation D promulgated by the Securities and Exchange Commission, Code of Federal Regulations, title 17, section 230.502; and

(2) within 15 days after the completion of the first sale in each offering completed in reliance upon this exemption, the cooperative has filed with the commissioner a consent to service of process under section 80A.27, subdivision 7, and has furnished the commissioner with a written general description of the transaction and any other information that the commissioner requires by rule or otherwise.

A cooperative may, at or about the same time as offers or sales are being completed in reliance upon this exemption from registration and as part of a common plan of financing, offer or sell its securities in reliance upon any other exemption from registration available under this chapter. The offer or sale of securities in reliance upon this paragraph shall not be considered or deemed a part of or be integrated with any offer or sale of securities conducted by the cooperative in reliance upon any other exemption from registration available under this chapter, nor shall offers or sales of securities by the cooperative in reliance upon any other exemption from registration available under this chapter be considered or deemed a part of or be integrated with any offer or sale conducted by the cooperative in reliance upon this paragraph.

**Subd. 3. Revocation; order to show cause.** 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 sus-

pending 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. Burden of proof.** 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; 1999 c 137 s 4; 2000 c 350 s 15; 2000 c 379 s 1; 2000 c 483 s 41; 2003 c 105 art 2 s 2

**NOTE:** This section is repealed by Laws 2006, chapter 196, article 1, section 51, effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

#### 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

**NOTE:** This section is repealed by Laws 2006, chapter 196, article 1, section 51, effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

#### 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

**NOTE:** This section is repealed by Laws 2006, chapter 196, article 1, section 51, effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

#### 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 trans-

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action. 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

**NOTE:** This section is repealed by Laws 2006, chapter 196, article 1, section 51, effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

## 80A.19 ADMINISTRATION.

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

Subd. 2. **Information regulation.** 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. **Biennial report.** 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

**NOTE:** This section is repealed by Laws 2006, chapter 196, article 1, section 51, effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

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

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

## 80A.22 CRIMINAL PENALTY.

Subdivision 1. **False or misleading statements.** 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. **Referral to attorney general.** 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. **Other crimes.** 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

**NOTE:** This section is repealed by Laws 2006, chapter 196, article 1, section 51, effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

**80A.23 CIVIL LIABILITIES.**

Subdivision 1. **Registration-related actions.** 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. **Sales and purchase actions.** 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 investment 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. **Joint and several liability of others.** 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. **Liability exception.** 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. **Tender.** 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. **Survival of action.** Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant.

Subd. 7. **Limitation on actions.** 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. **Offer to prevent suit.** 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 ac-

cordance with its terms, suit by the offeree under this section shall be permitted without regard to this subdivision.

**Subd. 9. Conduct-related action restrictions.** 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. Compliance waivers void.** 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. Other actions.** 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

**NOTE:** This section is repealed by Laws 2006, chapter 196, article 1, section 51, effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

## 80A.24 HEARINGS AND JUDICIAL REVIEW.

**Subdivision 1. Application and conduct of hearing.** 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. Reviewability of orders.** 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

**NOTE:** This section is repealed by Laws 2006, chapter 196, article 1, section 51, effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

## 80A.25 RULES, FORMS AND ORDERS.

**Subdivision 1. Commissioner's general authority.** 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. Scope of authority.** 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 Secu-

rities 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. **Financial statements.** 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. **Publishing of rules and forms.** All rules and forms of the commissioner shall be published.

Subd. 5. **Good faith exception to liability.** 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

**NOTE:** This section is repealed by Laws 2006, chapter 196, article 1, section 51, effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

#### 80A.26 ADMINISTRATIVE FILES AND OPINIONS.

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

Subd. 2. **Register.** 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. **Classification of information.** 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. **Copying.** 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. **Interpretive opinions.** 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

**NOTE:** This section is repealed by Laws 2006, chapter 196, article 1, section 51, effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

#### 80A.27 SCOPE OF SECTIONS 80A.01 TO 80A.31 AND SERVICE OF PROCESS.

Subdivision 1. **Sales.** 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. **Purchases.** 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. **Offers made.** 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



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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. **Offers accepted.** 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. **Offers not made in state.** 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. **Application of certain sales and licensing restrictions.** 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. **Consent to service of process.** 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. **Appointment of commissioner to receive process.** 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 validity as if served personally. Service under this section shall be made in compliance with section 45.028, subdivision 2.

Subd. 9. **Authority to grant continuance.** 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

**NOTE:** This section is repealed by Laws 2006, chapter 196, article 1, section 51, effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

## 80A.28 FEES AND EXPENSES.

Subdivision 1. **Registration or notice filing fee.** (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 annual fee of 1/20 of one percent of the maximum aggregate offering price at which the securities are to be offered in this state during the notice filing period. The fee must be paid at the time of the initial filing and thereafter in connection with each renewal no later than July 1 of each year and must be sufficient to cover the shares the issuer expects to sell in this state over the next 12 months. If during a current notice filing the issuer determines it is likely to sell shares in excess of the shares for which fees have been paid to the commissioner, the issuer shall submit an amended notice filing to the commissioner under section 80A.122, subdivision 1, clause (3), together with a fee of 1/20 of one percent of the maximum aggregate offering price of the additional shares. Shares for which a fee has been paid, but which have not been sold at the time of expiration of the notice filing, may not be sold unless an additional fee to cover the shares has been paid to the commissioner as provided in this section and section 80A.122, subdivision 4a. 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. Beginning with fiscal year 2001 and continuing each fiscal year thereafter, as of the last day of each fiscal year, the commissioner shall determine the total amount of all fees that were collected under this paragraph in connection with any filings made for that fiscal year for securities of an open-end investment company on behalf of a security that is a federal covered security pursuant to section 18(b)(2) of the Securities Act of 1933. To the extent the total fees collected by the commissioner in connection with these filings exceed \$25,000,000 in a fiscal year, the commissioner shall refund, on a pro rata basis, to all persons who paid any fees for that fiscal year, the amount of fees collected by the commissioner in excess of \$25,000,000. No individual refund is required of amounts of \$100 or less for a fiscal year.

**Subd. 2. License application and renewal filing fee.** 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. Amendment fee.** 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. Annual report fee.** Every annual report required by section 80A.12, subdivision 10, shall be accompanied by a fee of \$100.

**Subd. 5. Exemption filing fee.** 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. Rescission offer filing fee.** 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. Written opinion request fee.** Every request for a written opinion from the commissioner shall be accompanied by a fee of \$50.

Subd. 7a. **Excess securities registration filing fee.** 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. **Expense deposits.** 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 require the interested person to make an advance deposit with the commissioner in an amount estimated as sufficient to cover such expense. All such deposits shall be covered into the state treasury and credited to the state 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. **Generally.** 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; 2000 c 488 art 2 s 4

**NOTE:** This section is repealed by Laws 2006, chapter 196, article 1, section 51, effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

## 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

**NOTE:** This section is repealed by Laws 2006, chapter 196, article 1, section 51, effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

## 80A.30 REGISTRATION OF OIL OR GAS LANDS OR INTEREST BEFORE SALE.

Subdivision 1. **Generally.** 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. Exception.** 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

**NOTE:** This section is repealed by Laws 2006, chapter 196, article 1, section 51, effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

### 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

**NOTE:** This section is repealed by Laws 2006, chapter 196, article 1, section 51, effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

## GENERAL PROVISION

### 80A.40 SECTION 101; SHORT TITLE.

This chapter may be cited as the Uniform Securities Act (2002).

**History:** 2006 c 196 art 1 s 1

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 1, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

### 80A.41 SECTION 102; DEFINITIONS.

In this chapter, unless the context otherwise requires:

(1) "Administrator" means the commissioner of commerce.

(2) "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect purchases or sales of the issuer's securities. But a partner, officer, or director of a broker-dealer or issuer, or an individual having a similar status or performing similar functions is an agent only if the individual otherwise comes within the term. The term does not include an individual excluded by rule adopted or order issued under this chapter.

(3) "Bank" means:

(A) a banking institution organized under the laws of the United States;

(B) a member bank of the Federal Reserve System;

(C) any other banking institution, whether incorporated or not, doing business under the laws of a state or of the United States, a substantial portion of the business of which consists of receiving deposits or exercising fiduciary powers similar to those permitted to be exercised by national banks under the authority of the Comptroller of the Currency pursuant to Section 1 of Public Law 87-722 (12 U.S.C. Section 92a), and which is supervised and examined by a state or federal agency having supervision over banks, and which is not operated for the purpose of evading this chapter; and

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(D) a receiver, conservator, or other liquidating agent of any institution or firm included in subparagraph (A), (B), or (C).

(4) "Broker-dealer" means a person engaged in the business of effecting transactions in securities for the account of others or for the person's own account. The term does not include:

(A) an agent;

(B) an issuer;

(C) a depository institution; provided such activities are conducted in accordance with such rules as may be adopted by the administrator;

(D) an international banking institution; or

(E) a person excluded by rule adopted or order issued under this chapter.

(5) "Depository institution" means:

(A) a bank; or

(B) a savings institution, trust company, credit union, or similar institution that is organized or chartered under the laws of a state or of the United States, authorized to receive deposits, and supervised and examined by an official or agency of a state or the United States if its deposits or share accounts are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law. The term does not include:

(i) an insurance company or other organization primarily engaged in the business of insurance;

(ii) a Morris Plan bank; or

(iii) an industrial loan company that is not an "insured depository institution" as defined in section 3(c)(2) of the Federal Deposit Insurance Act, United States Code, title 12, section 1813(c)(2), or any successor federal statute.

(6) "Federal covered investment adviser" means a person registered under the Investment Advisers Act of 1940.

(7) "Federal covered security" means a security that is, or upon completion of a transaction will be, a covered security under Section 18(b) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)) or rules or regulations adopted pursuant to that provision.

(8) "Filing" means the receipt under this chapter of a record by the administrator or a designee of the administrator.

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

(10) "Guaranteed" means guaranteed as to payment of all principal and all interest.

(11) "Institutional investor" means any of the following, whether acting for itself or for others in a fiduciary capacity:

(A) a depository institution or international banking institution;

(B) an insurance company;

(C) a separate account of an insurance company;

(D) an investment company as defined in the Investment Company Act of 1940;

(E) a broker-dealer registered under the Securities Exchange Act of 1934;

(F) an employee pension, profit-sharing, or benefit plan if the plan has total assets in excess of \$10,000,000 or its investment decisions are made by a named fiduciary, as defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution, or an insurance company;

(G) a plan established and maintained by a state, a political subdivision of a state, or an agency or instrumentality of a state or a political subdivision of a state for the benefit of its employees, if the plan has total assets in excess of \$10,000,000 or its investment decisions are made by a duly designated public official or by a named fiduciary, as defined in the Employee

Retirement Income Security Act of 1974, that is a broker-dealer registered under the Securities Exchange Act of 1934, an investment adviser registered or exempt from registration under the Investment Advisers Act of 1940, an investment adviser registered under this chapter, a depository institution, or an insurance company;

(H) a trust, if it has total assets in excess of \$10,000,000, its trustee is a depository institution, and its participants are exclusively plans of the types identified in subparagraph (F) or (G), regardless of the size of their assets, except a trust that includes as participants self-directed individual retirement accounts or similar self-directed plans;

(I) an organization described in Section 501(c)(3) of the Internal Revenue Code (26 U.S.C. Section 501(c)(3)), corporation, Massachusetts trust or similar business trust, limited liability company, or partnership, not formed for the specific purpose of acquiring the securities offered, with total assets in excess of \$10,000,000;

(J) a small business investment company licensed by the Small Business Administration under Section 301(c) of the Small Business Investment Act of 1958 (15 U.S.C. Section 681(c)) with total assets in excess of \$10,000,000;

(K) a private business development company as defined in Section 202(a)(22) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(22)) with total assets in excess of \$10,000,000;

(L) a federal covered investment adviser acting for its own account;

(M) a "qualified institutional buyer" as defined in Rule 144A(a)(1), other than Rule 144A(a)(1)(i)(H), adopted under the Securities Act of 1933 (17 C.F.R. 230.144A);

(N) a "major U.S. institutional investor" as defined in Rule 15a-6(b)(4)(i) adopted under the Securities Exchange Act of 1934 (17 C.F.R. 240.15a-6);

(O) any other person, other than an individual, of institutional character with total assets in excess of \$10,000,000 not organized for the specific purpose of evading this chapter; or

(P) any other person specified by rule adopted or order issued under this chapter;

(12) "Insurance company" means a company organized as an insurance company whose primary business is writing insurance or reinsuring risks underwritten by insurance companies and which is subject to supervision by the insurance commissioner or a similar official or agency of a state.

(13) "Insured" means insured as to payment of all principal and all interest.

(14) "International banking institution" means an international financial institution of which the United States is a member and whose securities are exempt from registration under the Securities Act of 1933.

(15) "Investment adviser" means a person that, for compensation, engages in the business of advising others, either directly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. The term includes a financial planner or other person that, as an integral component of other financially related services, provides investment advice to others for compensation as part of a business or that holds itself out as providing investment advice to others for compensation. The term does not include:

(A) an investment adviser representative;

(B) a lawyer, accountant, engineer, or teacher whose performance of investment advice is solely incidental to the practice of the person's profession;

(C) a broker-dealer or its agents whose performance of investment advice is solely incidental to the conduct of business as a broker-dealer and that does not receive special compensation for the investment advice;

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

(E) a federal covered investment adviser;

(F) a bank or savings institution;

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(G) any other person that is excluded by the Investment Advisers Act of 1940 from the definition of investment adviser; or

(H) any other person excluded by rule adopted or order issued under this chapter.

(16) "Investment adviser representative" means an individual employed by or associated with an investment adviser or federal covered investment adviser and who makes any recommendations or otherwise gives investment advice regarding securities, manages accounts or portfolios of clients, determines which recommendation or advice regarding securities should be given, provides investment advice or holds herself or himself out as providing investment advice, receives compensation to solicit, offer, or negotiate for the sale of or for selling investment advice, or supervises employees who perform any of the foregoing. The term does not include an individual who:

(A) performs only clerical or ministerial acts;

(B) is an agent whose performance of investment advice is solely incidental to the individual acting as an agent and who does not receive special compensation for investment advisory services;

(C) is employed by or associated with a federal covered investment adviser, unless the individual has a "place of business" in this state as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-3a) and is

(i) an "investment adviser representative" as that term is defined by rule adopted under Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-3a); or

(ii) not a "supervised person" as that term is defined in Section 202(a)(25) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(25)); or

(D) is excluded by rule adopted or order issued under this chapter.

(17) "Issuer" means a person that issues or proposes to issue a security, subject to the following:

(A) The issuer of a voting trust certificate, collateral trust certificate, certificate of deposit for a security, or share in an investment company without a board of directors or individuals performing similar functions is the person performing the acts and assuming the duties of depositor or manager pursuant to the trust or other agreement or instrument under which the security is issued.

(B) The issuer of an equipment trust certificate or similar security serving the same purpose is the person by which the property is or will be used or to which the property or equipment is or will be leased or conditionally sold or that is otherwise contractually responsible for assuring payment of the certificate.

(C) The issuer of a fractional undivided interest in an oil, gas, or other mineral lease or in payments out of production under a lease, right, or royalty is the owner of an interest in the lease or in payments out of production under a lease, right, or royalty, whether whole or fractional, that creates fractional interests for the purpose of sale.

(18) "Nonissuer transaction" or "nonissuer distribution" means a transaction or distribution not directly or indirectly for the benefit of the issuer.

(19) "Offer to purchase" includes an attempt or offer to obtain, or solicitation of an offer to sell, a security or interest in a security for value. The term does not include a tender offer that is subject to Section 14(d) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78n(d)).

(20) "Person" means an individual; corporation; business trust; estate; trust; partnership; limited liability company; association; joint venture; government; governmental subdivision, agency, or instrumentality; public corporation; or any other legal or commercial entity.

(21) "Place of business" of a broker-dealer, an investment adviser, or a federal covered investment adviser means:

(A) an office at which the broker-dealer, investment adviser, or federal covered investment adviser regularly provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients; or

(B) any other location that is held out to the general public as a location at which the broker-dealer, investment adviser, or federal covered investment adviser provides brokerage or investment advice or solicits, meets with, or otherwise communicates with customers or clients.

(22) "Predecessor Act" means Minnesota Statutes 2002, sections 80A.01 to 80A.31.

(23) "Price amendment" means the amendment to a registration statement filed under the Securities Act of 1933 or, if an amendment is not filed, the prospectus or prospectus supplement filed under the Securities Act of 1933 that 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.

(24) "Principal place of business" of a broker-dealer or an investment adviser means the executive office of the broker-dealer or investment adviser from which the officers, partners, or managers of the broker-dealer or investment adviser direct, control, and coordinate the activities of the broker-dealer or investment adviser.

(24a) "Purchaser" does not include:

(A) any relative, spouse, or relative of the spouse of a purchaser who has the same principal residence as the purchaser;

(B) any trust or estate in which a purchaser and any of the persons related to him as specified in Regulation D, Rule 501(e)(1)(i) or (e)(1)(ii) collectively have more than 50 percent of the beneficial interest (excluding contingent interests);

(C) any corporation or other organization of which a purchaser and any of the persons related to the purchaser as specified in Regulation D, Rule 501(e)(1)(i) or (e)(1)(ii) collectively are beneficial owners of more than 50 percent of the equity securities (excluding directors' qualifying shares) or equity interests; and

(D) any accredited investor as defined by Regulation D, Rule 501(3).

A corporation, partnership, or other entity must be counted as one purchaser. If, however, that entity is organized for the specific purpose of acquiring the securities offered and is not an accredited investor, then each beneficial owner of equity securities or equity interests in the entity shall count as a separate purchaser for all provisions of Regulation D, except to the extent provided in Regulation D, Rule 501(e)(1).

A noncontributory employee benefit plan within the meaning of Title I of the Employee Retirement Income Security Act of 1974 shall be counted as one purchaser where the trustee makes all investment decisions for the plan.

(25) "Record," except in the phrases "of record," "official record," and "public record," means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(26) "Sale" includes every contract of sale, contract to sell, or disposition of, a security or interest in a security for value, and "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a security for value.

(A) A 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.

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

(C) A sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer and a sale or offer of a security that gives the holder a present or future right or privilege to convert the security into another security of the same or another issuer, are each considered to include an offer of the other security.

(27) "Securities and Exchange Commission" means the United States Securities and Exchange Commission.

(28) "Security" means a note; stock; treasury stock; security future; bond; debenture; evidence of indebtedness; certificate of interest or participation in a profit-sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable



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share; investment contract; voting trust certificate; certificate of deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put, call, straddle, option, or privilege on a security, certificate of deposit, or group or index of securities, including an interest therein or based on the value thereof; put, call, straddle, option, or privilege entered into on a national securities exchange relating to foreign currency; or, in general, an interest or instrument commonly known as a "security"; or a 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. The term:

(A) includes both a certificated and an uncertificated security;

(B) does not include an insurance or endowment policy or annuity contract under which an insurance company promises to pay a fixed or variable sum of money either in a lump sum or periodically for life or other specified period;

(C) does not include an interest in a contributory or noncontributory pension or welfare plan subject to the Employee Retirement Income Security Act of 1974;

(D) includes as an "investment contract" an investment in a common enterprise with the expectation of profits to be derived primarily from the efforts of a person other than the investor and a "common enterprise" means an enterprise in which the fortunes of the investor are interwoven with those of either the person offering the investment, a third party, or other investors;

(E) includes as an "investment contract," among other contracts, an interest in a limited partnership and a limited liability company and an investment in a viatical settlement or similar agreement; and

(F) does not include any equity interest of a closely held corporation or other entity with not more than 35 holders of the equity interest of such entity offered or sold pursuant to a transaction in which 100 percent of the equity interest of such entity is sold as a means to effect the sale of the business of the entity if the transaction has been negotiated on behalf of all purchasers and if all purchasers have access to inside information regarding the entity before consummating the transaction.

(29) "Self-regulatory organization" means a national securities exchange registered under the Securities Exchange Act of 1934, a national securities association of broker-dealers registered under the Securities Exchange Act of 1934, a clearing agency registered under the Securities Exchange Act of 1934, or the Municipal Securities Rulemaking Board established under the Securities Exchange Act of 1934.

(30) "Sign" means, with present intent to authenticate or adopt a record:

(A) to execute or adopt a tangible symbol; or

(B) to attach or logically associate with the record an electronic symbol, sound, or process.

(31) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

(32) "Associated with" with respect to a person means any partner, officer, director, or manager of such person or any person occupying a similar status or performing similar functions or any person directly or indirectly controlling, controlled by, or in common control with, such person, but does not include a person whose primary duties are ministerial or clerical.

**History:** 2006 c 196 art 1 s 2

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 2, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

## 80A.42 SECTION 103; REFERENCES TO FEDERAL STATUTES.

"Securities Act of 1933" (15 U.S.C. Section 77a et seq.), "Securities Exchange Act of 1934" (15 U.S.C. Section 78a et seq.), "Public Utility Holding Company Act of 1935" (15

U.S.C. Section 79 et seq.), “Investment Company Act of 1940” (15 U.S.C. Section 80a–1 et seq.), “Investment Advisers Act of 1940” (15 U.S.C. Section 80b–1 et seq.), “Employee Retirement Income Security Act of 1974” (29 U.S.C. Section 1001 et seq.), “National Housing Act” (12 U.S.C. Section 1701 et seq.), “Commodity Exchange Act” (7 U.S.C. Section 1 et seq.), “Internal Revenue Code” (26 U.S.C. Section 1 et seq.), “Securities Investor Protection Act of 1970” (15 U.S.C. Section 78aaa et seq.), “Securities Litigation Uniform Standards Act of 1998” (112 Stat. 3227), “Small Business Investment Act of 1958” (15 U.S.C. Section 661 et seq.), and “Electronic Signatures in Global and National Commerce Act” (15 U.S.C. Section 7001 et seq.) mean those statutes and the rules and regulations adopted under those statutes, as in effect on the date of enactment of this chapter, or as later amended.

**History:** 2006 c 196 art 1 s 3

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 3, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

### 80A.43 SECTION 104; REFERENCES TO FEDERAL AGENCIES.

A reference in this chapter to an agency or department of the United States is also a reference to a successor agency or department.

**History:** 2006 c 196 art 1 s 4

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 4, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

### 80A.44 SECTION 105; ELECTRONIC RECORDS AND SIGNATURES.

This chapter modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act, but does not modify, limit, or supersede Section 101(c) of that act (15 U.S.C. Section 7001(c)) or authorize electronic delivery of any of the notices described in Section 103(b) of that act (15 U.S.C. Section 7003(b)). This chapter authorizes the filing of records and signatures, when specified by provisions of this chapter or by a rule adopted or order issued under this chapter, in a manner consistent with Section 104(a) of that act (15 U.S.C. Section 7004(a)).

**History:** 2006 c 196 art 1 s 5

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 5, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

## EXEMPTION FROM REGISTRATION OF SECURITIES

### 80A.45 SECTION 201; EXEMPT SECURITIES.

The following securities are exempt from the requirements of sections 80A.49 through 80A.54 and 80A.71:

(1) a security, including a revenue obligation or a separate security as defined in Rule 131 (17 C.F.R. 230.131) adopted under the Securities Act of 1933, issued, insured, or guaranteed by the United States; by a state; by a political subdivision of a state; by a public authority, agency, or instrumentality of one or more states; by a political subdivision of one or more states or by a person controlled or supervised by and acting as an instrumentality of the United States under authority granted by Congress; or a certificate of deposit for any of the foregoing;

(2) a security issued, insured, or guaranteed by a foreign government with which the United States maintains diplomatic relations, or any of its political subdivisions, if the security is recognized as a valid obligation by the issuer, insurer, or guarantor;

(3) a security issued by and representing or that will represent an interest in or a direct obligation of, or be guaranteed by:

(A) an international banking institution;

(B) a banking institution organized under the laws of the United States; a member bank of the Federal Reserve System; or a depository institution a substantial portion of the busi-

ness of which consists or will consist of receiving deposits or share accounts that are insured to the maximum amount authorized by statute by the Federal Deposit Insurance Corporation, the National Credit Union Share Insurance Fund, or a successor authorized by federal law or exercising fiduciary powers that are similar to those permitted for national banks under the authority of the Comptroller of Currency pursuant to Section 1 of Public Law 87-722 (12 U.S.C. Section 92a); or

(C) any other depository institution, unless by rule or order the administrator proceeds under section 80A.48;

(4) a security issued by and representing an interest in, or a debt of, or insured or guaranteed by, an insurance company authorized to do business in this state;

(5) a security issued or guaranteed by a railroad, other common carrier, public utility, or public utility holding company that is:

(A) regulated in respect to its rates and charges by the United States or a state;

(B) regulated in respect to the issuance or guarantee of the security by the United States, a state, Canada, or a Canadian province or territory; or

(C) a public utility holding company registered under the Public Utility Holding Company Act of 1935 or a subsidiary of such a registered holding company within the meaning of that act;

(6) a federal covered security specified in Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)) or by rule adopted under that provision or a security listed or approved for listing on another securities market specified by rule under this chapter; a put or a call option contract; a warrant; a subscription right on or with respect to such securities; or an option or similar derivative security on a security or an index of securities or foreign currencies issued by a clearing agency registered under the Securities Exchange Act of 1934 and listed or designated for trading on a national securities exchange, a facility of a national securities exchange, or a facility of a national securities association registered under the Securities Exchange Act of 1934 or an offer or sale, of the underlying security in connection with the offer, sale, or exercise of an option or other security that was exempt when the option or other security was written or issued; or an option or a derivative security designated by the Securities and Exchange Commission under Section 9(b) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78i(b));

(7) a security issued by a person organized and operated exclusively for religious, educational, benevolent, fraternal, charitable, social, athletic, or reformatory purposes, or as a chamber of commerce, and not for pecuniary profit, no part of the net earnings of which inures to the benefit of a private stockholder or other person, or a security of a company that is excluded from the definition of an investment company under Section 3(c)(10)(B) of the Investment Company Act of 1940 (15 U.S.C. Section 80a-3(c)(10)(B)); except that with respect to the offer or sale, an issuer of such a note, bond, debenture, or other evidence of indebtedness is required to file a notice specifying the material terms of the proposed offer or sale and copies of any proposed sales and advertising literature to be used together with the fee required by section 80A.65 and provided that this exemption shall be effective if the administrator does not disallow the exemption in writing within 15 days following the date of the notice filing.

**History:** 2006 c 196 art 1 s 6

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 6, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

## 80A.46 SECTION 202; EXEMPT TRANSACTIONS.

The following transactions are exempt from the requirements of sections 80A.49 through 80A.54 and 80A.71:

(1) isolated nonissuer transactions, consisting of sale to not more than ten purchasers in Minnesota during any period of 12 consecutive months, whether effected by or through a broker-dealer or not;

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(2) a nonissuer transaction by or through a broker-dealer registered, or exempt from registration under this chapter, and a resale transaction by a sponsor of a unit investment trust registered under the Investment Company Act of 1940, in a security of a class that has been outstanding in the hands of the public for at least 90 days, if, at the date of the transaction:

(A) the issuer of the security is engaged in business, the issuer is not in the organizational stage or in bankruptcy or receivership, and the issuer is not a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(B) the security is sold at a price reasonably related to its current market price;

(C) the security does not constitute the whole or part of an unsold allotment to, or a subscription or participation by, the broker-dealer as an underwriter of the security or a redistribution;

(D) a nationally recognized securities manual or its electronic equivalent designated by rule adopted or order issued under this chapter or a record filed with the Securities and Exchange Commission that is publicly available contains:

(i) a description of the business and operations of the issuer;

(ii) the names of the issuer's executive officers and the names of the issuer's directors, if any;

(iii) an audited balance sheet of the issuer as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had an audited balance sheet, a pro forma balance sheet for the combined organization; and

(iv) an audited income statement for each of the issuer's two immediately previous fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case of a reorganization or merger when each party to the reorganization or merger had audited income statements, a pro forma income statement; and

(E) any one of the following requirements is met:

(i) the issuer of the security has a class of equity securities listed on a national securities exchange registered under Section 6 of the Securities Exchange Act of 1934 or designated for trading on the National Association of Securities Dealers Automated Quotation System;

(ii) the issuer of the security is a unit investment trust registered under the Investment Company Act of 1940;

(iii) the issuer of the security, including its predecessors, has been engaged in continuous business for at least three years; or

(iv) the issuer of the security has total assets of at least \$2,000,000 based on an audited balance sheet as of a date within 18 months before the date of the transaction or, in the case of a reorganization or merger when the parties to the reorganization or merger each had such an audited balance sheet, a pro forma balance sheet for the combined organization;

(3) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security of a foreign issuer that is a margin security defined in regulations or rules adopted by the Board of Governors of the Federal Reserve System;

(4) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in an outstanding security if the guarantor of the security files reports with the Securities and Exchange Commission under the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C. Sections 78m or 78o(d));

(5) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter in a security that:

(A) is rated at the time of the transaction by a nationally recognized statistical rating organization in one of its four highest rating categories; or

(B) has a fixed maturity or a fixed interest or dividend, if:

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(i) a default has not occurred during the current fiscal year or within the three previous fiscal years or during the existence of the issuer and any predecessor if less than three fiscal years, in the payment of principal, interest, or dividends on the security; and

(ii) the issuer is engaged in business, is not in the organizational stage or in bankruptcy or receivership, and is not and has not been within the previous 12 months a blank check, blind pool, or shell company that has no specific business plan or purpose or has indicated that its primary business plan is to engage in a merger or combination of the business with, or an acquisition of, an unidentified person;

(6) a nonissuer transaction by or through a broker-dealer registered or exempt from registration under this chapter effecting an unsolicited order or offer to purchase;

(7) a nonissuer transaction executed by a bona fide pledgee without the purpose of evading this chapter;

(8) a nonissuer transaction by a federal covered investment adviser with investments under management in excess of \$100,000,000 acting in the exercise of discretionary authority in a signed record for the account of others;

(9) a transaction in a security, whether or not the security or transaction is otherwise exempt, in exchange for one or more bona fide outstanding securities, claims, or property interests, or partly in such exchange and partly for cash, if the terms and conditions of the issuance and exchange or the delivery and exchange and the fairness of the terms and conditions have been approved by the administrator after a hearing;

(10) a transaction between the issuer or other person on whose behalf the offering is made and an underwriter, or among underwriters;

(11) a transaction in a note, bond, debenture, or other evidence of indebtedness secured by a mortgage or other security agreement if:

(A) the note, bond, debenture, or other evidence of indebtedness is offered and sold with the mortgage or other security agreement as a unit;

(B) a general solicitation or general advertisement of the transaction is not made; and

(C) a commission or other remuneration is not paid or given, directly or indirectly, to a person not registered under this chapter as a broker-dealer or as an agent;

(12) a transaction by an executor, administrator of an estate, sheriff, marshal, receiver, trustee in bankruptcy, guardian, or conservator;

(13) a sale or offer to sell to:

(A) an institutional investor;

(B) an accredited investor as that term is defined in Regulation D, Rule 501(a);

(C) a federal covered investment adviser; or

(D) any other person exempted by rule adopted or order issued under this chapter;

(14) a sale or an offer to sell securities by an issuer, if the transaction is part of a single issue in which:

(A) not more than 35 purchasers are present in this state during any 12 consecutive months, other than those designated in paragraph (13);

(B) a general solicitation or general advertising is not made in connection with the offer to sell or sale of the securities;

(C) a commission or other remuneration is not paid or given, directly or indirectly, to a person other than a broker-dealer registered under this chapter or an agent registered under this chapter for soliciting a prospective purchaser in this state; and

(D) the issuer reasonably believes that all the purchasers in this state, other than those designated in paragraph (13), are purchasing for investment;

(15) a transaction under an offer to existing security holders of the issuer, including persons that at the date of the transaction are holders of convertible securities, options, or warrants, if a commission or other remuneration, other than a standby commission, is not paid or given, directly or indirectly, for soliciting a security holder in this state;

(16) an offer to sell, but not a sale, of a security not exempt from registration under the Securities Act of 1933 if:

(A) a registration or offering statement or similar record as required under the Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance with Rule 165 adopted under the Securities Act of 1933 (17 C.F.R. 230.165); and

(B) a stop order of which the offeror is aware has not been issued against the offeror by the administrator or the Securities and Exchange Commission, and an audit, inspection, or proceeding that is public and that may culminate in a stop order is not known by the offeror to be pending;

(17) an offer to sell, but not a sale, of a security exempt from registration under the Securities Act of 1933 if:

(A) a registration statement has been filed under this chapter, but is not effective;

(B) a solicitation of interest is provided in a record to offerees in compliance with a rule adopted by the administrator under this chapter; and

(C) a stop order of which the offeror is aware has not been issued by the administrator under this chapter and an audit, inspection, or proceeding that may culminate in a stop order is not known by the offeror to be pending;

(18) a transaction involving the distribution of the securities of an issuer to the security holders of another person in connection with a merger, consolidation, exchange of securities, sale of assets, or other reorganization to which the issuer, or its parent or subsidiary and the other person, or its parent or subsidiary, are parties;

(19) a rescission offer, sale, or purchase under section 80A.77;

(20) an offer or sale of a security to a person not a resident of this state and not present in this state if the offer or sale does not constitute a violation of the laws of the state or foreign jurisdiction in which the offeree or purchaser is present and is not part of an unlawful plan or scheme to evade this chapter;

(21) employees' stock purchase, savings, option, profit-sharing, pension, or similar employees' benefit plan, including any securities, plan interests, and guarantees issued under a compensatory benefit plan or compensation contract, contained in a record, established by the issuer, its parents, its majority-owned subsidiaries, or the majority-owned subsidiaries of the issuer's parent for the participation of their employees including offers or sales of such securities to:

(A) directors; general partners; trustees, if the issuer is a business trust; officers; consultants; and advisors;

(B) family members who acquire such securities from those persons through gifts or domestic relations orders;

(C) former employees, directors, general partners, trustees, officers, consultants, and advisors if those individuals were employed by or providing services to the issuer when the securities were offered; and

(D) insurance agents who are exclusive insurance agents of the issuer, or the issuer's subsidiaries or parents, or who derive more than 50 percent of their annual income from those organizations;

(22) a transaction involving:

(A) a stock dividend or equivalent equity distribution, whether the corporation or other business organization distributing the dividend or equivalent equity distribution is the issuer or not, if nothing of value is given by stockholders or other equity holders for the dividend or equivalent equity distribution other than the surrender of a right to a cash or property dividend if each stockholder or other equity holder may elect to take the dividend or equivalent equity distribution in cash, property, or stock;

(B) an act incident to a judicially approved reorganization in which a security is issued in exchange for one or more outstanding securities, claims, or property interests, or partly in such exchange and partly for cash; or

(C) the solicitation of tenders of securities by an offeror in a tender offer in compliance with Rule 162 adopted under the Securities Act of 1933 (17 C.F.R. 230.162);

(23) a nonissuer transaction in an outstanding security by or through a broker-dealer registered or exempt from registration under this chapter, if the issuer is a reporting issuer in a foreign jurisdiction designated by this paragraph or by rule adopted or order issued under this chapter; has been subject to continuous reporting requirements in the foreign jurisdiction for not less than 180 days before the transaction; and the security is listed on the foreign jurisdiction's securities exchange that has been designated by this paragraph or by rule adopted or order issued under this chapter, or is a security of the same issuer that is of senior or substantially equal rank to the listed security or is a warrant or right to purchase or subscribe to any of the foregoing. For purposes of this paragraph, Canada, together with its provinces and territories, is a designated foreign jurisdiction and The Toronto Stock Exchange, Inc. is a designated securities exchange. After an administrative hearing in compliance with chapter 14, the administrator, by rule adopted or order issued under this chapter, may revoke the designation of a securities exchange under this paragraph, if the administrator finds that revocation is necessary or appropriate in the public interest and for the protection of investors;

(24) any transaction effected by or through a Canadian broker-dealer exempted from broker-dealer registration pursuant to section 80A.56(b)(3); or

(25)(A) 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 the 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 administrator a consent to service of process under section 80A.88 and has, not less than ten days before the issuance or delivery, furnished the administrator with a written general description of the transaction and any other information that the administrator requires by rule or otherwise;

(B) the offer and sale by a cooperative organized under chapter 308B of its securities when the securities are offered and sold to its existing members or when the purchase of the securities is necessary or incidental to establishing patron membership in the cooperative, or when such securities are issued as patronage dividends. The administrator has the power to define "patron membership" for purposes of this paragraph. This paragraph applies to securities, other than securities issued as patronage dividends, only when:

(i) the issuer, before the completion of the sale of the securities, provides each offeree or purchaser disclosure materials that, to the extent material to an understanding of the issuer, its business, and the securities being offered, substantially meet the disclosure conditions and limitations found in rule 502(b) of Regulation D promulgated by the Securities and Exchange Commission, Code of Federal Regulations, title 17, section 230.502; and

(ii) within 15 days after the completion of the first sale in each offering completed in reliance upon this exemption, the cooperative has filed with the administrator a consent to service of process under section 80A.88 (or has previously filed such a consent), and has furnished the administrator with a written general description of the transaction and any other information that the administrator requires by rule or otherwise; and

(C) a cooperative may, at or about the same time as offers or sales are being completed in reliance upon the exemptions from registration found in this subpart and as part of a common plan of financing, offer or sell its securities in reliance upon any other exemption from registration available under this chapter. The offer or sale of securities in reliance upon the exemptions found in this subpart will not be considered or deemed a part of or be integrated with any offer or sale of securities conducted by the cooperative in reliance upon any other exemption from registration available under this chapter, nor will offers or sales of securities by the cooperative in reliance upon any other exemption from registration available under this chapter be considered or deemed a part of or be integrated with any offer or sale conducted by the cooperative in reliance upon this paragraph.

**History:** 2006 c 196 art 1 s 7

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 7, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

**80A.47 SECTION 203; ADDITIONAL EXEMPTIONS AND WAIVERS.**

A rule adopted or order issued under this chapter may exempt a security, transaction, or offer; a rule under this chapter may exempt a class of securities, transactions, or offers from any or all of the requirements of sections 80A.49 through 80A.54 and 80A.71; and an order under this chapter may waive, in whole or in part, any or all of the conditions for an exemption or offer under sections 80A.45 and 80A.46.

**History:** 2006 c 196 art 1 s 8

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 8, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

**80A.48 SECTION 204; DENIAL, SUSPENSION, REVOCATION, CONDITION, OR LIMITATION OF EXEMPTIONS.**

(a) **Enforcement related powers.** Except with respect to a federal covered security or a transaction involving a federal covered security, an order under this chapter may deny, suspend application of, condition, limit, or revoke an exemption created under section 80A.45(3)(C), (7) or (8) or 80A.46 or an exemption or waiver created under section 80A.47 with respect to a specific security, transaction, or offer. An order under this section may be issued only pursuant to the procedures in section 80A.54(d) or 80A.81 and only prospectively.

(b) **Knowledge of order required.** A person does not violate sections 80A.49, 80A.51 through 80A.54, 80A.71, or 80A.77 by an offer to sell, offer to purchase, sale, or purchase effected after the entry of an order issued under this section if the person did not know, and in the exercise of reasonable care could not have known, of the order.

**History:** 2006 c 196 art 1 s 9

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 9, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

**REGISTRATION OF SECURITIES AND NOTICE OF FILING OF FEDERAL COVERED SECURITIES****80A.49 SECTION 301; SECURITIES REGISTRATION REQUIREMENT.**

It is unlawful for a person to offer or sell a security in this state unless:

- (1) the security is a federal covered security;
- (2) the security, transaction, or offer is exempted from registration under sections 80A.45 through 80A.47; or
- (3) the security is registered under this chapter.

**History:** 2006 c 196 art 1 s 10

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 10, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

**TRANSITION****80A.50 SECTION 302; FEDERAL COVERED SECURITIES; SMALL CORPORATE OFFERING REGISTRATION.****(a) Federal covered securities.**

(1) **Required filing of records.** With respect to a federal covered security, as defined in Section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(2)), that is not other-



wise exempt under sections 80A.45 through 80A.47, a rule adopted or order issued under this chapter may require the filing of any or all of the following records:

(A) before the initial offer of a federal covered security in this state, all records that are part of a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933 and a consent to service of process complying with section 80A.88 signed by the issuer;

(B) after the initial offer of the federal covered security in this state, all records that are part of an amendment to a federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933; and

(C) to the extent necessary or appropriate to compute fees, a report of the value of the federal covered securities sold or offered to persons present in this state, if the sales data are not included in records filed with the Securities and Exchange Commission.

(2) **Notice filing effectiveness and renewal.** A notice filing under subsection (a) is effective for one year commencing on the later of the notice filing or the effectiveness of the offering filed with the Securities and Exchange Commission. On or before expiration, the issuer may renew a notice filing by filing a copy of those records filed by the issuer with the Securities and Exchange Commission that are required by rule or order under this chapter to be filed. A previously filed consent to service of process complying with section 80A.88 may be incorporated by reference in a renewal. A renewed notice filing becomes effective upon the expiration of the filing being renewed.

(3) **Notice filings for federal covered securities under section 18(b)(4)(D).** With respect to a security that is a federal covered security under Section 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(4)(D)), a rule under this chapter may require a notice filing by or on behalf of an issuer to include a copy of Form D, including the Appendix, as promulgated by the Securities and Exchange Commission, and a consent to service of process complying with section 80A.88 signed by the issuer not later than 15 days after the first sale of the federal covered security in this state.

(4) **Stop orders.** Except with respect to a federal security under Section 18(b)(1) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)), if the administrator finds that there is a failure to comply with a notice or fee requirement of this section, the administrator may issue a stop order suspending the offer and sale of a federal covered security in this state. If the deficiency is corrected, the stop order is void as of the time of its issuance and no penalty may be imposed by the administrator.

(b) **Small corporation offering registration.**

(1) **Registration required.** A security meeting the conditions set forth in this section may be registered as set forth in this section.

(2) **Availability.** Registration under this section is available only to the issuer of securities and not to an affiliate of the issuer or to any other person for resale of the issuer's securities. The issuer must be organized under the laws of one of the states or possessions of the United States. The securities offered must be exempt from registration under the Securities Act of 1933 pursuant to Rule 504 of Regulation D (15 U.S.C. Section 77c).

(3) **Disqualification.** Registration under this section is not available to any of the following issuers:

(A) an issuer subject to the reporting requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934;

(B) an investment company;

(C) 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;

(D) an issuer if the issuer or any of its predecessors, officers, directors, governors, partners, ten percent stock or equity holders, promoters, or any selling agents of the securities to be offered, or any officer, director, governor, or partner of the selling agent:

(i) 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;

(ii) 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;

(iii) 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;

(iv) 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

(v) 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 the offer, purchase, or sale of securities,

(I) except that clauses (i) to (iv) 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, and

(II) except that the 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.

(4) **Filing and effectiveness of registration statement.** A small corporate offering registration statement must be filed with the administrator. If no stop order is in effect and no proceeding is pending under section 80A.54, such registration statement shall become effective automatically at the close of business on the 20th day after filing of the registration statement or the last amendment of the registration statement or at such earlier time as the administrator may designate by rule or order.

(5) **Contents of registration statement.** A small corporate offering registration statement under this section shall be on Form U-7, including exhibits required by the instructions thereto, as adopted by the North American Securities Administrators Association, or such alternative form as may be designated by the administrator by rule or order and must include:

(A) a consent to service of process complying with section 80A.88;

(B) a statement of the type and amount of securities to be offered and the amount of securities to be offered in this state;

(C) a specimen or copy of the security being registered, unless the security is uncertificated, a copy of the issuer's articles of incorporation and bylaws or their substantial equivalents in effect, and a copy of any indenture or other instrument covering the security to be registered;

(D) a signed or conformed copy of an opinion of counsel concerning the legality of the securities being registered which states whether the securities, when sold, will be validly issued, fully paid, and nonassessable and, if debt securities, binding obligations of the issuer;

(E) the states (i) in which the securities are proposed to be offered; (ii) in which a registration statement or similar filing has been made in connection with the offering including information as to effectiveness of each such filing; and (iii) in which a stop order or similar proceeding has been entered or in which proceedings or actions seeking such an order are pending;

(F) a copy of the offering document proposed to be delivered to offerees; and

(G) a copy of any other pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering and any solicitation of interest used in compliance with section 80A.46(17)(B).

(6) **Copy to purchaser.** A copy of the offering document as filed with the administrator must be delivered to each person purchasing the securities prior to sale of the securities to such person.

**History:** 2006 c 196 art 1 s 11

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 11, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

### 80A.51 SECTION 303; SECURITIES REGISTRATION BY COORDINATION.

(a) **Registration permitted.** A 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 under this section.

(b) **Required records.** A registration statement and accompanying records under this section must contain or be accompanied by the following records in addition to the information specified in section 80A.53 and a consent to service of process complying with section 80A.88:

(1) a copy of the latest form of prospectus filed under the Securities Act of 1933;

(2) a copy of the articles of incorporation and bylaws or their substantial equivalents currently in effect; a copy of any agreement with or among underwriters; a copy of any indenture or other instrument governing the issuance of the security to be registered; and a specimen, copy, or description of the security that is required by rule adopted or order issued under this chapter;

(3) copies of any other information or any other records filed by the issuer under the Securities Act of 1933 requested by the administrator; and

(4) an undertaking to forward each amendment to the federal prospectus, other than an amendment that delays the effective date of the registration statement, promptly after it is filed with the Securities and Exchange Commission.

(c) **Conditions for effectiveness of registration statement.** A registration statement under this section becomes effective simultaneously with or subsequent to the federal registration statement when all of the following conditions are satisfied:

(1) a stop order under subsection (d) or section 80A.54 or issued by the Securities and Exchange Commission is not in effect and a proceeding is not pending against the issuer under section 80A.54; and

(2) the registration statement has been on file for at least 20 days or a shorter period provided by rule adopted or order issued under this chapter.

(d) **Notice of federal registration statement effectiveness.** The registrant shall promptly notify the administrator in a record of the date when the federal registration statement becomes effective and the content of any price amendment and shall promptly file a record containing the price amendment. If the notice is not timely received, the administrator may issue a stop order, without prior notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this section. The administrator shall promptly notify the registrant of an order by telegram, telephone, or electronic means and promptly confirm this notice by a record. If the registrant subsequently complies with the notice requirement of this section, the stop order is void as of the date of its issuance.

(e) **Effectiveness of registration statement.** If the federal registration statement becomes effective before each of the conditions in this section is satisfied or is waived by the administrator, the registration statement is automatically effective under this chapter when all the conditions are satisfied or waived. If the registrant notifies the administrator of the date when the federal registration statement is expected to become effective, the administrator shall promptly notify the registrant by telegram, telephone, or electronic means and promptly confirm this notice by a record, indicating whether all the conditions are satisfied or waived and whether the administrator intends the institution of a proceeding under section 80A.54. The notice by the administrator does not preclude the institution of such a proceeding.

**History:** 2006 c 196 art 1 s 12

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 12, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

### 80A.52 SECTION 304; SECURITIES REGISTRATION BY QUALIFICATION.

(a) **Registration permitted.** A security may be registered by qualification under this section.

(b) **Required records.** A registration statement under this section must contain the information or records specified in section 80A.53, a consent to service of process complying with section 80A.88, and, if required by rule adopted under this chapter, the following information or records:

(1) with respect to the issuer and any significant subsidiary, its name, address, and form of organization; the state or foreign jurisdiction and date of its organization; the general character and location of its business; a description of its physical properties and equipment; and a statement of the general competitive conditions in the industry or business in which it is or will be engaged;

(2) with respect to each director and officer of the issuer, and other person having a similar status or performing similar functions, the person's name, address, and principal occupation for the previous five years; the amount of securities of the issuer held by the person as of the 30th day before the filing of the registration statement; the amount of the securities covered by the registration statement to which the person has indicated an intention to subscribe; and a description of any material interest of the person in any material transaction with the issuer or a significant subsidiary effected within the previous three years or proposed to be effected;

(3) with respect to persons covered by paragraph (2), the aggregate sum of the remuneration paid to those persons during the previous 12 months and estimated to be paid during the next 12 months, directly or indirectly, by the issuer, and all predecessors, parents, subsidiaries, and affiliates of the issuer;

(4) with respect to a person owning of record or owning beneficially, if known, ten percent or more of the outstanding shares of any class of equity security of the issuer, the information specified in paragraph (2) other than the person's occupation;

(5) with respect to a promoter, if the issuer was organized within the previous three years, the information or records specified in paragraph (2), any amount paid to the promoter within that period or intended to be paid to the promoter, and the consideration for the payment;

(6) with respect to a person on whose behalf any part of the offering is to be made in a nonissuer distribution, the person's name and address; the amount of securities of the issuer held by the person as of the date of the filing of the registration statement; a description of any material interest of the person in any material transaction with the issuer or any significant subsidiary effected within the previous three years or proposed to be effected, and a statement of the reasons for making the offering;

(7) the capitalization and long-term debt, on both a current and pro forma basis, of the issuer and any significant subsidiary, including a description of each security outstanding or

being registered or otherwise offered, and a statement of the amount and kind of consideration, whether in the form of cash, physical assets, services, patents, goodwill, or anything else of value, for which the issuer or any subsidiary has issued its securities within the previous two years or is obligated to issue its securities;

(8) the kind and amount of securities to be offered; the proposed offering price or the method by which it is to be computed; any variation at which a proportion of the offering is to be made to a person or class of persons other than the underwriters, with a specification of the person or class; the basis on which the offering is to be made if otherwise than for cash; the estimated aggregate underwriting and selling discounts or commissions and finders' fees, including separately cash, securities, contracts, or anything else of value to accrue to the underwriters or finders in connection with the offering or, if the selling discounts or commissions are variable, the basis of determining them and their maximum and minimum amounts; the estimated amounts of other selling expenses, including legal, engineering, and accounting charges; the name and address of each underwriter and each recipient of a finder's fee; a copy of any underwriting or selling group agreement under which the distribution is to be made or the proposed form of any such agreement whose terms have not yet been determined; and a description of the plan of distribution of any securities that are to be offered otherwise than through an underwriter;

(9) the estimated monetary proceeds to be received by the issuer from the offering; the purposes for which the proceeds are to be used by the issuer; the estimated amount to be used for each purpose; the order or priority in which the proceeds will be used for the purposes stated; the amounts of any funds to be raised from other sources to achieve the purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to acquire property, including goodwill, otherwise than in the ordinary course of business, the names and addresses of the vendors, the purchase price, the names of any persons that have received commissions in connection with the acquisition, and the amounts of the commissions and other expenses in connection with the acquisition, including the cost of borrowing money to finance the acquisition;

(10) a description of any stock options or other security options outstanding, or to be created in connection with the offering, and the amount of those options held or to be held by each person required to be named in paragraph (2), (4), (5), (6), or (8) and by any person that holds or will hold ten percent or more in the aggregate of those options;

(11) the dates of, parties to, and general effect concisely stated of each managerial or other material contract made or to be made otherwise than in the ordinary course of business to be performed in whole or in part at or after the filing of the registration statement or that was made within the previous two years, and a copy of the contract;

(12) a description of any pending litigation, action, or proceeding to which the issuer is a party and that materially affects its business or assets, and any litigation, action, or proceeding known to be contemplated by governmental authorities;

(13) a copy of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature intended as of the effective date to be used in connection with the offering and any solicitation of interest used in compliance with section 80A.46(17)(B);

(14) a specimen or copy of the security being registered, unless the security is uncertificated; a copy of the issuer's articles of incorporation and bylaws or their substantial equivalents, in effect; and a copy of any indenture or other instrument covering the security to be registered;

(15) a signed or conformed copy of an opinion of counsel concerning the legality of the security being registered, with an English translation if it is in a language other than English, which states whether the security when sold will be validly issued, fully paid, and nonassessable and, if a debt security, a binding obligation of the issuer;

(16) a signed or conformed copy of a consent of any accountant, engineer, appraiser, or other person whose profession gives authority for a statement made by the person, if the person is named as having prepared or certified a report or valuation, other than an official record, that is public, which is used in connection with the registration statement;

(17) a balance sheet of the issuer as of a date within four months before the filing of the registration statement; a statement of income and a statement of cash flows for each of the three fiscal years preceding the date of the balance sheet and for any period between the close of the immediately previous fiscal year and the date of the balance sheet, or for the period of the issuer's and any predecessor's existence if less than three years; and, if any part of the proceeds of the offering is to be applied to the purchase of a business, the financial statements that would be required if that business were the registrant; and

(18) any additional information or records required by rule adopted or order issued under this chapter.

(c) **Conditions for effectiveness of registration statement.** A registration statement under this section becomes effective 30 days, or any shorter period provided by rule adopted or order issued under this chapter, after the date the registration statement or the last amendment other than a price amendment is filed, if:

(1) a stop order is not in effect and a proceeding is not pending under section 80A.54;

(2) the administrator has not issued an order under section 80A.54 delaying effectiveness; and

(3) the applicant or registrant has not requested that effectiveness be delayed.

(d) **Delay of effectiveness of registration statement.** The administrator may delay effectiveness once for not more than 90 days if the administrator determines the registration statement is not complete in all material respects and promptly notifies the applicant or registrant of that determination. The administrator may also delay effectiveness for a further period of not more than 30 days if the administrator determines that the delay is necessary or appropriate.

(e) **Prospectus distribution may be required.** A rule adopted or order issued under this chapter may require as a condition of registration under this section that a prospectus containing a specified part of the information or record specified in subsection (b) be sent or given to each person to which an offer is made, before or concurrently, with the earliest of:

(1) the first offer made in a record to the person otherwise than by means of a public advertisement, by or for the account of the issuer or another person on whose behalf the offering is being made or by an underwriter or broker-dealer that is offering part of an unsold allotment or subscription taken by the person as a participant in the distribution;

(2) the confirmation of a sale made by or for the account of the person;

(3) payment pursuant to such a sale; or

(4) delivery of the security pursuant to such a sale.

**History:** 2006 c 196 art 1 s 13

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 13, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

## 80A.53 SECTION 305; SECURITIES REGISTRATION FILINGS.

(a) **Who may file.** A registration statement may be filed by the issuer, a person on whose behalf the offering is to be made, or a broker-dealer registered under this chapter.

(b) **Status of offering.** A registration statement filed under section 80A.51 or 80A.52 must specify:

(1) the amount of securities to be offered in this state;

(2) the states in which a registration statement or similar record in connection with the offering has been or is to be filed; and

(3) any adverse order, judgment, or decree issued in connection with the offering by a state securities regulator, the Securities and Exchange Commission, or a court.

(c) **Incorporation by reference.** A record filed under this chapter or the predecessor act within five years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the record is currently accurate.

(d) **Nonissuer distribution.** In the case of a nonissuer distribution, information or a record may not be required under subsection (i) or section 80A.52, unless it is known to the person filing the registration statement or to the person on whose behalf the distribution is to be made or unless it can be furnished by those persons without unreasonable effort or expense.

(e) **Escrow and impoundment.** A rule adopted or order issued under this chapter may require as a condition of registration that a security issued within the previous five years or to be issued to a promoter for a consideration substantially less than the public offering price or to a person for a consideration other than cash be deposited in escrow; and 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 conditions of any escrow or impoundment required under this subsection may be established by rule adopted or order issued under this chapter, but the administrator may not reject a depository institution solely because of its location in another state.

(f) **Form of subscription.** A rule adopted or order issued under this chapter may require as a condition of registration that a security registered under this chapter be sold only on a specified form of subscription or sale contract and that a signed or conformed copy of each contract be filed under this chapter or preserved for a period specified by the rule or order, which may not be longer than five years.

(g) **Effective period.** Except while a stop order is in effect under section 80A.54, a registration statement is effective for one year after its effective date, or for any longer period designated in an order under this chapter during which the security is being offered or distributed in a nonexempted transaction by or for the account of the issuer or other person on whose behalf the offering is being made or by an underwriter or broker-dealer that is still offering part of an unsold allotment or subscription taken as a participant in the distribution. For the purposes of a nonissuer transaction, all outstanding securities of the same class identified in the registration statement as a security registered under this chapter are considered to be registered while the registration statement is effective. If any securities of the same class are outstanding, a registration statement may not be withdrawn until one year after its effective date. A registration statement may be withdrawn only with the approval of the administrator.

(h) **Periodic reports.** While a registration statement is effective, a rule adopted or order issued under this chapter may require the person that filed the registration statement to file reports, not more often than quarterly, to keep the information or other record in the registration statement reasonably current and to disclose the progress of the offering.

(i) **Posteffective amendments.** A registration statement may be amended after its effective date. The posteffective amendment becomes effective when the administrator so orders. If a posteffective amendment is made to increase the number of securities specified to be offered or sold, the person filing the amendment shall pay a registration fee. A posteffective amendment relates back to the date of the offering of the additional securities being registered if, within one year after the date of the sale, the amendment is filed and the additional registration fee is paid.

**History:** 2006 c 196 art 1 s 14

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 14, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

## **80A.54 SECTION 306; DENIAL, SUSPENSION, AND REVOCATION OF SECURITIES REGISTRATION.**

(a) **Stop orders.** The administrator may issue a stop order denying effectiveness to, or suspending or revoking the effectiveness of, a registration statement if the administrator finds that the order is in the public interest and that:

(1) the registration statement as of its effective date or before the effective date in the case of an order denying effectiveness, an amendment under section 80A.53(j) as of its effective date, or a report under section 80A.53(i), is incomplete in a material respect or contains a

statement that, in the light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) this chapter or a rule adopted or order issued under this chapter or a condition imposed under this chapter has been willfully violated, in connection with the offering, by:

(A) the person filing the registration statement, if the person is directly or indirectly controlled by or acting for the issuer;

(B) the issuer;

(C) a partner, officer, or director of the issuer or a person having a similar status or performing similar functions;

(D) a promoter of the issuer;

(E) a person directly or indirectly controlling or controlled by the issuer; or

(F) an underwriter;

(3) the security registered or sought to be registered is the subject of a permanent or temporary injunction of a court of competent jurisdiction or an administrative stop order or similar order issued under any federal, foreign, or state law other than this chapter applicable to the offering, but the administrator may not institute a proceeding against an effective registration statement under this paragraph more than one year after the date of the order or injunction on which it is based, and the administrator may not issue an order under this paragraph on the basis of an order or injunction issued under the securities act of another state unless the order or injunction was based on conduct that would constitute, as of the date of the order, a ground for a stop order under this section;

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

(5) with respect to a security sought to be registered under section 80A.51, there has been a failure to comply with the undertaking required by section 80A.51(b)(4); or

(6) the applicant or registrant has not paid the filing fee, but the administrator shall void the order if the deficiency is corrected.

(b) **Institution of stop order.** The administrator may not institute a stop order proceeding against an effective registration statement on the basis of conduct or a transaction known to the administrator when the registration statement became effective unless the proceeding is instituted within 30 days after the registration statement became effective.

(c) **Summary process.** The administrator may summarily revoke, deny, postpone, or suspend the effectiveness of a registration statement pending final determination of an administrative proceeding. Upon the issuance of the order, the administrator shall promptly notify each person specified in subsection (d) that the order has been issued; the reasons for the revocation, denial, postponement, or suspension; and that within 15 days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator, within 30 days after the date of service of the order, the order becomes final. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing for each person subject to the order, may modify or vacate the order or extend the order until final determination.

(d) **Procedural requirements for stop order.** A stop order may not be issued under this section without:

(1) appropriate notice to the applicant or registrant, the issuer, and the person on whose behalf the securities are to be or have been offered;

(2) an opportunity for hearing; and

(3) findings of fact and conclusions of law in a record in accordance with chapter 14.

(e) **Modification or vacation of stop order.** The administrator may modify or vacate a stop order issued under this section if the administrator finds that the conditions that caused



its issuance have changed or that it is necessary or appropriate in the public interest or for the protection of investors.

**History:** 2006 c 196 art 1 s 15

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 15, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

#### **80A.55 SECTION 307; WAIVER AND MODIFICATION.**

The administrator may waive or modify, in whole or in part, any or all of the requirements of sections 80A.50, 80A.51, and 80A.52(b) or the requirement of any information or record in a registration statement or in a periodic report filed pursuant to section 80A.53(i).

**History:** 2006 c 196 art 1 s 16

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 16, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

### **BROKER DEALERS, AGENTS, INVESTMENT ADVISERS, INVESTMENT ADVISER REPRESENTATIVES, AND FEDERAL COVERED INVESTMENT ADVISERS**

#### **80A.56 SECTION 401; BROKER-DEALER REGISTRATION REQUIREMENT AND EXEMPTIONS.**

(a) **Registration requirement.** It is unlawful for a person to transact business in this state as a broker-dealer unless the person is registered under this chapter as a broker-dealer or is exempt from registration as a broker-dealer under subsection (b) or (d).

(b) **Exemptions from registration.** The following persons are exempt from the registration requirement of subsection (a):

(1) a broker-dealer without a place of business in this state if its only transactions effected in the state are with:

(A) the issuer of the securities involved in the transactions;

(B) a broker-dealer registered under this chapter or not required to be registered as a broker-dealer under this chapter;

(C) an institutional investor;

(D) a nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000 acting for the account of others pursuant to discretionary authority in a signed record;

(E) a bona fide preexisting customer whose principal place of residence is not in this state and the person is registered as a broker-dealer under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the state in which the customer maintains a principal place of residence;

(F) a bona fide preexisting customer whose principal place of residence is in this state but was not present in this state when the customer relationship was established, if:

(i) the broker-dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities laws of the state in which the customer relationship was established and where the customer had maintained a principal place of residence; and

(ii) within 45 days after the customer's first transaction in this state, the person files an application for registration as a broker-dealer in this state and a further transaction is not effected more than 75 days after the date on which the application is filed, or, if earlier, the date on which the administrator notifies the person that the administrator has denied the application for registration or has stayed the pendency of the application for good cause;

(G) not more than three customers in this state during the previous 12 months, in addition to those customers specified in subparagraphs (A) through (F) and under subparagraph

(H), if the broker–dealer is registered under the Securities Exchange Act of 1934 or not required to be registered under the Securities Exchange Act of 1934 and is registered under the securities act of the state in which the broker–dealer has its principal place of business; and

(H) any other person exempted by rule adopted or order issued under this chapter; and

(2) a person that deals solely in United States government securities and is supervised as a dealer in government securities by the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation, or the Office of Thrift Supervision; and

(3) a broker–dealer that is registered in Canada and who has no office or other physical presence in this state if the broker–dealer complies with the following conditions:

(A) the broker–dealer is registered with or is a member of a self–regulatory organization in Canada, a stock exchange in Canada, or the Bureau des services financiers;

(B) the broker–dealer maintains in good standing its provincial or territorial registration and its registration with or membership in a self–regulatory organization in Canada, a stock exchange in Canada, or the Bureau des services financiers; and

(C) the broker–dealer effects or attempts to effect transactions in securities:

(i) with or for a person from Canada who is temporarily present in this state, with whom the broker–dealer had a bona fide broker–dealer–client relationship before the person entered the United States; or

(ii) with or for a person from Canada who is present in this state, whose transactions are in a Canadian self–directed tax advantaged retirement account of which the person is the holder or contributor.

(c) **Limits on employment or association.** It is unlawful for a broker–dealer, or for an issuer engaged in offering, offering to purchase, purchasing, or selling securities in this state, directly or indirectly, to employ or associate with an individual to engage in an activity related to securities transactions in this state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with a broker–dealer, an issuer, an investment adviser, or a federal covered investment adviser by an order of the administrator under this chapter, the Securities and Exchange Commission, or a self–regulatory organization. A broker–dealer or issuer does not violate this subsection if the broker–dealer or issuer did not know and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from a broker–dealer or issuer and for good cause, an order under this chapter may modify or waive, in whole or in part, the application of the prohibitions of this subsection to the broker–dealer.

(d) **Foreign transactions.** A rule adopted or order issued under this chapter may permit:

(1) a broker–dealer that is registered in Canada or other foreign jurisdiction and that does not have a place of business in this state to effect transactions in securities with or for, or attempt to effect the purchase or sale of any securities by:

(A) an individual from Canada or other foreign jurisdiction who is temporarily present in this state and with whom the broker–dealer had a bona fide customer relationship before the individual entered the United States;

(B) an individual from Canada or other foreign jurisdiction who is present in the state and whose transactions are in a self–directed tax advantaged retirement plan of which the individual is the holder or contributor in that foreign jurisdiction; or

(C) an individual who is present in this state, with whom the broker–dealer customer relationship arose while the individual was temporarily or permanently resident in Canada or the other foreign jurisdiction; and

(2) an agent who represents a broker–dealer that is exempt under this subsection to effect transactions in securities or attempt to effect the purchase or sale of securities in this state as permitted for a broker–dealer described in paragraph (1).

**History:** 2006 c 196 art 1 s 17

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 17, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

### 80A.57 SECTION 402; AGENT REGISTRATION REQUIREMENT AND EXEMPTIONS.

(a) **Registration requirement.** It is unlawful for an individual to transact business in the state as an agent unless the individual is registered under this chapter as an agent or is exempt from registration as an agent under subsection (b).

(b) **Exemptions from registration.** The following individuals are exempt from the registration requirement of subsection (a):

(1) an individual who represents a broker–dealer in effecting transactions in this state limited to those described in Section 15(h)(2) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78(o)(2));

(2) an individual who represents a broker–dealer that is exempt under section 80A.56(b) or (d);

(3) an individual who represents an issuer with respect to an offer or sale of the issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and who is not compensated in connection with the individual's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(4) an individual who represents an issuer and who effects transactions in the issuer's securities exempted by section 80A.46, other than section 80A.46(11) and (14);

(5) an individual who represents an issuer that effects transactions solely in federal covered securities of the issuer, but an individual who effects transactions in a federal covered security under Section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(3) or 77r(b)(4)(D)) is not exempt if the individual is compensated in connection with the agent's participation by the payment of commissions or other remuneration based, directly or indirectly, on transactions in those securities;

(6) an individual who represents a broker–dealer registered in this state under section 80A.56(a) or exempt from registration under section 80A.56(b) in the offer and sale of securities for an account of a nonaffiliated federal covered investment adviser with investments under management in excess of \$100,000,000 acting for the account of others pursuant to discretionary authority in a signed record;

(7) an individual who represents an issuer in connection with the purchase of the issuer's own securities;

(8) an individual who represents an issuer and who restricts participation to performing clerical or ministerial acts;

(9) an individual who represents an issuer in effecting transactions in a security exempted by section 80A.45;

(10) an individual who represents an issuer in 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;

(11) an individual who represents one or more issuers with respect to an offer or sale of the issuer's securities if the offer or sale of the securities is exempted by section 80A.46 and the individual complies with or satisfies each of the following conditions:

(A) the individual (i) would not be deemed disqualified pursuant to section 80A.50 (b)(3)(D)(ii) to (iv); (ii) is not employed by or associated with a broker–dealer; and (iii) has not been the subject of (a) an action, order, or decision by any self–regulatory organization, commodities exchange, or securities exchange resulting in a censure or other sanction within

12 months prior to the offer or sale or (b) a denial, revocation, or restriction of any license or membership by any self-regulatory organization, commodities exchange, or securities exchange that has been effective at any time within 12 months prior to the offer or sale;

(B) neither the individual nor any person associated with the individual handles or takes possession of funds or securities;

(C) the individual files with the administrator a consent to service of process complying with Section 611 before commencing any such representation; and

(D) the individual files with the administrator a notice that contains (i) the full legal name, address, and phone of the individual; (ii) any other names used by the individual in the prior five years; (iii) a statement whether the individual is, or within the last prior years has been, licensed by or registered with any state or federal government, government agency, or any self-regulatory organization, commodities exchange, or securities exchange as a broker-dealer, registered representative, investment advisor, or investment advisor representative, including, if applicable, the individual's IARD/CRD number; (iv) an undertaking to notify the administrator in writing of a change in any of the foregoing within five business days of such change; and (v) any additional information that may be required by rule adopted or order issued under this chapter. This notice must be filed before the individual commences any issuer representation. The notice is effective through December 31 of the year following the year in which it is filed and may be renewed annually in such manner as prescribed by the administrator; and

(12) any other individual exempted by rule adopted or order issued under this chapter.

(c) **Registration effective only while employed or associated.** The registration of an agent is effective only while the agent is employed by or associated with a broker-dealer registered under this chapter or an issuer that is offering, selling, or purchasing its securities in this state.

(d) **Limit on employment or association.** It is unlawful for a broker-dealer, or an issuer engaged in offering, selling, or purchasing securities in this state, to employ or associate with an agent who transacts business in the state on behalf of broker-dealers or issuers unless the agent is registered under subsection (a) or exempt from registration under subsection (b).

(e) **Limit on affiliations.** An individual may not act as an agent for more than one broker-dealer or one issuer at a time, unless the broker-dealer or the issuer for which the agent acts are affiliated by direct or indirect common control or are authorized by rule or order under this chapter.

**History:** 2006 c 196 art 1 s 18

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 18, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

## **80A.58 SECTION 403; INVESTMENT ADVISER REGISTRATION REQUIREMENT AND EXEMPTIONS.**

(a) **Registration requirement.** It is unlawful for a person to transact business in this state as an investment adviser unless the person is registered under this chapter as an investment adviser or is exempt from registration as an investment adviser under subsection (b).

(b) **Exemptions from registration.** The following persons are exempt from the registration requirement of subsection (a):

(1) any person whose only clients in this state are:

(A) federal covered investment advisers, investment advisers registered under this chapter, or broker-dealers registered under this chapter;

(B) institutional investors;

(C) bona fide preexisting clients whose principal places of residence are not in this state if the investment adviser is registered under the securities act of the state in which the clients maintain principal places of residence; or

(D) any other client exempted by rule adopted or order issued under this chapter;

(2) a person without a place of business in this state if the person has had, during the preceding 12 months, not more than five clients that are resident in this state in addition to those specified under paragraph (1); or

(3) any other person exempted by rule adopted or order issued under this chapter.

(c) **Limits on employment or association.** It is unlawful for an investment adviser, directly or indirectly, to employ or associate with an individual to engage in an activity related to investment advice in this state if the registration of the individual is suspended or revoked or the individual is barred from employment or association with an investment adviser, federal covered investment adviser, or broker-dealer by an order under this chapter, the Securities and Exchange Commission, or a self-regulatory organization, unless the investment adviser did not know, and in the exercise of reasonable care could not have known, of the suspension, revocation, or bar. Upon request from the investment adviser and for good cause, the administrator, by order, may waive, in whole or in part, the application of the prohibitions of this subsection to the investment adviser.

**History:** 2006 c 196 art 1 s 19

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 19, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

### 80A.60 SECTION 405; FEDERAL COVERED INVESTMENT ADVISER NOTICE FILING REQUIREMENT.

(a) **Notice filing requirement.** Except with respect to a federal covered investment adviser described in subsection (b), it is unlawful for a federal covered investment adviser to transact business in this state as a federal covered investment adviser unless the federal covered investment adviser complies with subsection (c).

(b) **Notice filing requirement not required.** The following federal covered investment advisers are not required to comply with subsection (c):

(1) a federal covered investment adviser without a place of business in this state if its only clients in this state are:

(A) federal covered investment advisers, investment advisers registered under this chapter, and broker-dealers registered under this chapter;

(B) institutional investors;

(C) bona fide preexisting clients whose principal places of residence are not in this state;

or

(D) other clients specified by rule adopted or order issued under this chapter;

(2) a federal covered investment adviser without a place of business in this state if the person has had, during the preceding 12 months, not more than five clients that are resident in this state in addition to those specified under paragraph (1); and

(3) any other person excluded by rule adopted or order issued under this chapter.

(c) **Notice filing procedure.** A person acting as a federal covered investment adviser, not excluded under subsection (b), shall file a notice, a consent to service of process complying with section 80A.88, and such records as have been filed with the Securities and Exchange Commission under the Investment Advisers Act of 1940 required by rule adopted or order issued under this chapter and pay the fees specified in section 80A.65(e).

(d) **Effectiveness of filing.** The notice under subsection (c) becomes effective upon its filing.

**History:** 2006 c 196 art 1 s 20

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 20, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

### 80A.61 SECTION 406; REGISTRATION BY BROKER-DEALER, AGENT, AND INVESTMENT ADVISER.

(a) **Application for initial registration.** A person shall register as a broker-dealer, agent, or investment adviser by filing an application and a consent to service of process com-

plying with section 80A.88, and paying the fee specified in section 80A.65 and any reasonable fees charged by the designee of the administrator for processing the filing. The application must contain:

(1) the information or record required for the filing of a uniform application; and  
(2) upon request by the administrator, any other financial or other information or record that the administrator determines is appropriate.

(b) **Amendment.** If the information or record contained in an application filed under subsection (a) is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) **Effectiveness of registration.** If an order is not in effect and a proceeding is not pending under section 80A.67, registration becomes effective at noon on the 45th day after a completed application is filed, unless the registration is denied. A rule adopted or order issued under this chapter may set an earlier effective date or may defer the effective date until noon on the 45th day after the filing of any amendment completing the application.

(d) **Registration renewal.** A registration is effective until midnight on December 31 of the year for which the application for registration is filed. Unless an order is in effect under section 80A.67, a registration may be automatically renewed each year by filing such records as are required by rule adopted or order issued under this chapter, by paying the fee specified in section 80A.65, and by paying costs charged by the designee of the administrator for processing the filings.

(e) **Additional conditions or waivers.** A rule adopted or order issued under this chapter may impose such other conditions, not inconsistent with the National Securities Markets Improvement Act of 1996. An order issued under this chapter may waive, in whole or in part, specific requirements in connection with registration as are in the public interest and for the protection of investors.

**History:** 2006 c 196 art 1 s 21

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 21, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

## **80A.62 SECTION 407; SUCCESSION AND CHANGE IN REGISTRATION OF BROKER-DEALER OR INVESTMENT ADVISER.**

(a) **Succession.** A broker-dealer or investment adviser may succeed to the current registration of another broker-dealer or investment adviser or a notice filing of a federal covered investment adviser, and a federal covered investment adviser may succeed to the current registration of an investment adviser or notice filing of another federal covered investment adviser, by filing as a successor an application for registration pursuant to section 80A.56 or 80A.58 or a notice pursuant to section 80A.60 for the unexpired portion of the current registration or notice filing.

(b) **Organizational change.** A broker-dealer or investment adviser that changes its form of organization or state of incorporation or organization may continue its registration by filing an amendment to its registration if the change does not involve a material change in its financial condition or management. The amendment becomes effective when filed or on a date designated by the registrant in its filing. The new organization is a successor to the original registrant for the purposes of this chapter. If there is a material change in financial condition or management, the broker-dealer or investment adviser shall file a new application for registration. A predecessor registered under this chapter shall stop conducting its securities business other than winding down transactions and shall file for withdrawal of broker-dealer or investment adviser registration within 45 days after filing its amendment to effect succession.

(c) **Name change.** A broker-dealer or investment adviser that changes its name may continue its registration by filing an amendment to its registration. The amendment becomes effective when filed or on a date designated by the registrant.

(d) **Change of control.** A change of control of a broker-dealer or investment adviser may be made in accordance with a rule adopted or order issued under this chapter.

**History:** 2006 c 196 art 1 s 22

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 22, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

### 80A.63 SECTION 408; TERMINATION OF EMPLOYMENT OR ASSOCIATION OF AGENT AND TRANSFER OF EMPLOYMENT OR ASSOCIATION.

(a) **Notice of termination.** If an agent registered under this chapter terminates employment by or association with a broker-dealer or issuer, or terminates activities that require registration as an agent, the broker-dealer, or issuer shall promptly file a notice of termination. If the registrant learns that the broker-dealer or issuer has not filed the notice, the registrant may do so.

(b) **Transfer of employment or association.** If an agent registered under this chapter terminates employment by or association with a broker-dealer registered under this chapter and begins employment by or association with another broker-dealer registered under this chapter, then upon the filing by or on behalf of the registrant, within 30 days after the termination, of an application for registration that complies with the requirement of section 80A.61(a) and payment of the filing fee required under section 80A.65, the registration of the agent is:

(1) immediately effective as of the date of the completed filing, if the agent's Central Registration Depository record or successor record does not contain a new or amended disciplinary disclosure within the previous 12 months; or

(2) temporarily effective as of the date of the completed filing, if the agent's Central Registration Depository record or successor record contains a new or amended disciplinary disclosure within the preceding 12 months.

(c) **Withdrawal of temporary registration.** The administrator may withdraw a temporary registration if there are or were grounds for discipline as specified in section 80A.67 and the administrator does so within 30 days after the filing of the application. If the administrator does not withdraw the temporary registration within the 30 day period, registration becomes automatically effective on the 31st day after filing.

(d) **Power to prevent registration.** The administrator may prevent the effectiveness of a transfer of an agent under subsection (b)(1) or (2) based on the public interest and the protection of investors.

(e) **Termination of registration or application for registration.** If the administrator determines that a registrant or applicant for registration is no longer in existence or has ceased to act as a broker-dealer, agent, or investment adviser, or is the subject of an adjudication of incapacity or is subject to the control of a committee, conservator, or guardian, or cannot reasonably be located, a rule adopted or order issued under this chapter may require the registration be canceled or terminated or the application denied. The administrator may reinstate a canceled or terminated registration, with or without hearing, and may make the registration retroactive.

**History:** 2006 c 196 art 1 s 23

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 23, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

### 80A.64 SECTION 409; WITHDRAWAL OF REGISTRATION OF BROKER-DEALER, AGENT, AND INVESTMENT ADVISER.

Withdrawal of registration by a broker-dealer, agent, or investment adviser becomes effective 60 days after the filing of the application to withdraw or within any shorter period as provided by rule adopted or order issued under this chapter unless a revocation or suspension proceeding is pending when the application is filed. If a proceeding is pending, withdrawal

becomes effective when and upon such conditions as required by rule adopted or order issued under this chapter. The administrator may institute a revocation or suspension proceeding under section 80A.67 within one year after the withdrawal became effective automatically and issue a revocation or suspension order as of the last date on which registration was effective if a proceeding is not pending.

**History:** 2006 c 196 art 1 s 24

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 24, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

### 80A.65 SECTION 410; FEES AND EXPENSES.

**Subdivision 1. Registration or notice filing fee.** (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.54, 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 annual fee of 1/20 of one percent of the maximum aggregate offering price at which the securities are to be offered in this state during the notice filing period. The fee must be paid at the time of the initial filing and thereafter in connection with each renewal no later than July 1 of each year and must be sufficient to cover the shares the issuer expects to sell in this state over the next 12 months. If during a current notice filing the issuer determines it is likely to sell shares in excess of the shares for which fees have been paid to the administrator, the issuer shall submit an amended notice filing to the administrator under section 80A.50, together with a fee of 1/20 of one percent of the maximum aggregate offering price of the additional shares. Shares for which a fee has been paid, but which have not been sold at the time of expiration of the notice filing, may not be sold unless an additional fee to cover the shares has been paid to the administrator as provided in this section and section 80A.50. 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. Beginning with fiscal year 2001 and continuing each fiscal year thereafter, as of the last day of each fiscal year, the administrator shall determine the total amount of all fees that were collected under this paragraph in connection with any filings made for that fiscal year for securities of an open-end investment company on behalf of a security that is a federal covered security pursuant to section 18(b)(2) of the Securities Act of 1933. To the extent the total fees collected by the administrator in connection with these filings exceed \$25,000,000 in a fiscal year, the administrator shall refund, on a pro rata basis, to all persons who paid any fees for that fiscal year, the amount of fees collected by the administrator in excess of \$25,000,000. No individual refund is required of amounts of \$100 or less for a fiscal year.

**Subd. 2. Registration application and renewal filing fee.** Every applicant for an initial or renewal registration 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 registered agent who has terminated employment with one broker-dealer shall, before beginning employment with another bro-



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ker-dealer, pay a transfer fee of \$25. The fee for a filing made according to section 80A.56 is \$100.

Subd. 3. **Amendment fee.** Any amendment to an existing registration requiring an order of the administrator 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 administrator shall by rule designate those amendments which require an order of the administrator.

Subd. 4. **Periodic report fee.** Every periodic report required by section 80A.53 shall be accompanied by a fee of \$100.

Subd. 5. **Exemption filing fee.** The filing of any exemption for which notice is required to be given the administrator under section 80A.45 shall be accompanied by a fee of \$50.

Subd. 6. **Rescission offer filing fee.** The filing of a rescission offer under section 80A.77 shall be accompanied by the fees as calculated in subdivision 1.

Subd. 7. **Written opinion request fee.** Every request for a written opinion from the administrator shall be accompanied by a fee of \$50.

Subd. 7a. **Excess securities registration filing fee.** 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. **Expense deposits.** When the administrator deems it necessary to incur any expense in connection with any application or registration, the administrator shall have the power to require the interested person to make an advance deposit with the administrator 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 administrator's investigation fund, from which fund the administrator 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 administrator or an employee away from the office of the administrator, 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. **Generally.** 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 administrator shall be covered into the state treasury. When any person is entitled to a refund under this section, the administrator 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:** 2006 c 196 art 1 s 25

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 25, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

## 80A.66 SECTION 411; POSTREGISTRATION REQUIREMENTS.

(a) **Financial requirements.** Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a rule adopted or order issued under this chapter may establish minimum financial requirements for broker-dealers registered or required to be registered under this chapter and investment advisers registered or required to be registered under this chapter.

(b) **Financial reports.** Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222(b) of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a broker-dealer registered or required to be registered under this chapter and an investment adviser registered or required to be registered under this chapter shall file such financial reports as are required by a rule adopted or order issued under this chapter. If the information contained in a record filed under this subsection is or becomes inaccurate or incomplete in a material respect, the registrant shall promptly file a correcting amendment.

(c) **Record keeping.** Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22):

(1) a broker-dealer registered or required to be registered under this chapter and an investment adviser registered or required to be registered under this chapter shall make and maintain the accounts, correspondence, memoranda, papers, books, and other records required by rule adopted or order issued under this chapter;

(2) broker-dealer records required to be maintained under paragraph (1) may be maintained in any form of data storage acceptable under Section 17(a) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78q(a)) if they are readily accessible to the administrator; and

(3) investment adviser records required to be maintained under paragraph (1) may be maintained in any form of data storage required by rule adopted or order issued under this chapter.

(d) **Audits or inspections.** The records of a broker-dealer registered or required to be registered under this chapter and of an investment adviser registered or required to be registered under this chapter are subject to such reasonable periodic, special, or other audits or inspections by a representative of the administrator, within or without this state, as the administrator considers necessary or appropriate in the public interest and for the protection of investors. An audit or inspection may be made at any time and without prior notice. The administrator may copy, and remove for audit or inspection copies of, all records the administrator reasonably considers necessary or appropriate to conduct the audit or inspection. The administrator may assess a reasonable charge for conducting an audit or inspection under this subsection.

(e) **Custody and discretionary authority bond or insurance.** Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a rule adopted or order issued under this chapter may require a broker-dealer or investment adviser that has custody of or discretionary authority over funds or securities of a customer or client to obtain insurance or post a bond or other satisfactory form of security in an amount not to exceed \$25,000. The administrator may determine the requirements of the insurance, bond, or other satisfactory form of security. Insurance or a bond or other satisfactory form of security may not be required of a broker-dealer registered under this chapter whose net capital exceeds, or of an investment adviser registered under this chapter whose minimum financial requirements exceed, the amounts required by rule or order under this chapter. The insurance, bond, or other satisfactory form of security must permit an action by a person to enforce any liability on the insurance, bond, or other satisfactory form of security if instituted within the time limitations in section 80A.76(j)(2).

(f) **Requirements for custody.** Subject to Section 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), an agent may not have custody of funds or securities of a customer except under the supervision of a broker-dealer and an investment adviser representative may not have custody of funds or securities of a client except under the supervision of an investment adviser or a federal covered investment adviser. A rule adopted or order issued under this chapter may prohibit, limit, or impose conditions on a broker-dealer regarding custody of funds or securities of a customer and on an investment adviser regarding custody of securities or funds of a client.

(g) **Investment adviser brochure rule.** With respect to an investment adviser registered or required to be registered under this chapter, a rule adopted or order issued under this chapter may require that information or other record be furnished or disseminated to clients or prospective clients in this state as necessary or appropriate in the public interest and for the protection of investors and advisory clients.

(h) **Continuing education.** A rule adopted or order issued under this chapter may require an individual registered under section 80A.57 or 80A.59 to participate in a continuing education program approved by the Securities and Exchange Commission and administered by a self-regulatory organization or, in the absence of such a program, a rule adopted or order issued under this chapter may require continuing education for an individual registered under section 80A.59.

**History:** 2006 c 196 art 1 s 26

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 26, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

### 80A.67 SECTION 412; DENIAL, REVOCATION, SUSPENSION, WITHDRAWAL, RESTRICTION, CONDITION, OR LIMITATION OF REGISTRATION.

(a) **Disciplinary conditions—applicants.** If the administrator finds that the order is in the public interest and subsection (d) authorizes the action, an order issued under this chapter may deny an application, or may condition or limit registration of an applicant to be a broker-dealer, agent, or investment adviser, and, if the applicant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser.

(b) **Disciplinary conditions—registrants.** If the administrator finds that the order is in the public interest and subsection (d) authorizes the action an order issued under this chapter may revoke, suspend, condition, or limit the registration of a registrant and, if the registrant is a broker-dealer or investment adviser, of a partner, officer, director, or person having a similar status or performing similar functions, or a person directly or indirectly in control of the broker-dealer or investment adviser. However, the administrator may not:

(1) institute a revocation or suspension proceeding under this subsection based on an order issued under a law of another state that is reported to the administrator or a designee of the administrator more than one year after the date of the order on which it is based; or

(2) under subsection (d)(5)(A) or (B), issue an order on the basis of an order issued under the securities act of another state unless the other order was based on conduct for which subsection (d) would authorize the action had the conduct occurred in this state.

(c) **Disciplinary penalties—registrants.** If the administrator finds that the order is in the public interest and subsection (d)(1) through (6), (8), (9), (10), or (12) and (13) authorizes the action, an order under this chapter may censure, impose a bar, or impose a civil penalty in an amount up to \$10,000 for each violation, on a registrant, and, if the registrant is a broker-dealer or investment adviser, a partner, officer, director, person having a similar status or performing similar functions, or a person directly or indirectly in control, of the broker-dealer or investment adviser.

(d) **Grounds for discipline.** A person may be disciplined under subsections (a) through (c) if the person:

(1) has filed an application for registration in this state under this chapter or the predecessor act within the previous ten years, which, as of the effective date of registration or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained a statement that, in light of the circumstances under which it was made, was false or misleading with respect to a material fact;

(2) willfully violated or willfully failed to comply with this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act within the previous ten years;

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(3) has been convicted of a felony or within the previous ten years has been convicted of a misdemeanor involving a security, a commodity future or option contract, or an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance;

(4) is enjoined or restrained by a court of competent jurisdiction in an action instituted by the administrator under this chapter or the predecessor act, a state, the Securities and Exchange Commission, or the United States from engaging in or continuing an act, practice, or course of business involving an aspect of a business involving securities, commodities, investments, franchises, insurance, banking, or finance.

(5) is the subject of an order, issued after notice and opportunity for hearing by:

(A) the securities, depository institution, insurance, or other financial services regulator of a state or by the Securities and Exchange Commission or other federal agency denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative;

(B) the securities regulator of a state or the Securities and Exchange Commission against a broker-dealer, agent, investment adviser, investment adviser representative, or federal covered investment adviser;

(C) the Securities and Exchange Commission or a self-regulatory organization suspending or expelling the registrant from membership in the self-regulatory organization;

(D) a court adjudicating a United States Postal Service fraud order;

(E) the insurance regulator of a state denying, suspending, or revoking registration as an insurance agent; or

(F) a depository institution regulator suspending or barring the person from the depository institution business;

(6) is the subject of an adjudication or determination, after notice and opportunity for hearing, by the Securities and Exchange Commission, the Commodity Futures Trading Commission; the Federal Trade Commission; a federal depository institution regulator, or a depository institution, insurance, or other financial services regulator of a state that the person willfully violated the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or the Commodity Exchange Act, the securities or commodities law of a state, or a federal or state law under which a business involving investments, franchises, insurance, banking, or finance is regulated;

(7) is insolvent, either because the person's liabilities exceed the person's assets or because the person cannot meet the person's obligations as they mature, but the administrator may not enter an order against an applicant or registrant under this paragraph without a finding of insolvency as to the applicant or registrant;

(8) refuses to allow or otherwise impedes the administrator from conducting an audit or inspection under section 80A.66(d) or refuses access to a registrant's office to conduct an audit or inspection under section 80A.66(d);

(9) has failed to reasonably supervise an agent, investment adviser representative, or other individual, if the agent, investment adviser representative, or other individual was subject to the person's supervision and committed a violation of this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act within the previous ten years;

(10) has not paid the proper filing fee within 30 days after having been notified by the administrator of a deficiency, but the administrator shall vacate an order under this paragraph when the deficiency is corrected;

(11) after notice and opportunity for a hearing, has been found within the previous ten years:

(A) by a court of competent jurisdiction to have willfully violated the laws of a foreign jurisdiction under which the business of securities, commodities, investment, franchises, insurance, banking, or finance is regulated;

(B) to have been the subject of an order of a securities regulator of a foreign jurisdiction denying, revoking, or suspending the right to engage in the business of securities as a broker-dealer, agent, investment adviser, investment adviser representative, or similar person; or

(C) to have been suspended or expelled from membership by or participation in a securities exchange or securities association operating under the securities laws of a foreign jurisdiction;

(12) is the subject of a cease and desist order issued by the Securities and Exchange Commission or issued under the securities, commodities, investment, franchise, banking, finance, or insurance laws of a state;

(13) has engaged in dishonest or unethical practices in the securities, commodities, investment, franchise, banking, finance, or insurance business within the previous ten years; or

(14) is not qualified on the basis of factors such as training, experience, and knowledge of the securities business. However, in the case of an application by an agent for a broker-dealer that is a member of a self-regulatory organization or by an individual for registration as an investment adviser representative, a denial order may not be based on this paragraph if the individual has successfully completed all examinations required by subsection (e). The administrator may require an applicant for registration under section 80A.57 or 80A.59 who has not been registered in a state within the two years preceding the filing of an application in this state to successfully complete an examination.

(e) **Examinations.** A rule adopted or order issued under this chapter may require that an examination, including an examination developed or approved by an organization of securities regulators, be successfully completed by a class of individuals or all individuals. An order issued under this chapter may waive, in whole or in part, an examination as to an individual and a rule adopted under this chapter may waive, in whole or in part, an examination as to a class of individuals if the administrator determines that the examination is not necessary or appropriate in the public interest and for the protection of investors.

(f) **Summary process.** The administrator may suspend or deny an application summarily; restrict, condition, limit, or suspend a registration; or censure, bar, or impose a civil penalty on a registrant before final determination of an administrative proceeding. Upon the issuance of an order, the administrator shall promptly notify each person subject to the order that the order has been issued, the reasons for the action, and that within 15 days after the receipt of a request in a record from the person the matter will be scheduled for a hearing. If a hearing is not requested and none is ordered by the administrator within 30 days after the date of service of the order, the order becomes final by operation of law. If a hearing is requested or ordered, the administrator, after notice of and opportunity for hearing to each person subject to the order, may modify or vacate the order or extend the order until final determination.

(g) **Procedural requirements.** An order issued may not be issued under this section, except under subsection (f), without:

- (1) appropriate notice to the applicant or registrant;
- (2) opportunity for hearing; and
- (3) findings of fact and conclusions of law in a record in accordance with chapter 14.

(h) **Control person liability.** A person that controls, directly or indirectly, a person not in compliance with this section may be disciplined by order of the administrator under subsections (a) through (c) to the same extent as the noncomplying person, unless the controlling person did not know, or knowingly or recklessly disregarded evidence, of the existence of conduct that is a ground for discipline under this section.

(i) **Limit on investigation or proceeding.** The administrator may not institute a proceeding under subsection (a), (b), or (c) based solely on material facts actually known by the administrator unless an investigation or the proceeding is instituted within one year after the administrator actually acquires knowledge of the material facts.

**History:** 2006 c 196 art 1 s 27

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 27, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

## FRAUD AND LIABILITIES

**80A.68 SECTION 501; GENERAL FRAUD.**

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

- (1) to employ a device, scheme, or artifice to defraud;
- (2) to make an untrue statement of a material fact or to omit to state a material fact necessary in order to make a statement made, in the light of the circumstances under which it is made, not misleading; or
- (3) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

**History:** 2006 c 196 art 1 s 28

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 28, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

**80A.69 SECTION 502; PROHIBITED CONDUCT IN PROVIDING INVESTMENT ADVICE.**

(a) **Fraud in providing investment advice.** It is unlawful for a person that advises others for compensation, either directly or indirectly or through publications or writings, as to the value of securities or the advisability of investing in, purchasing, or selling securities or that, for compensation and as part of a regular business, issues or promulgates analyses or reports relating to securities:

- (1) to employ a device, scheme, or artifice to defraud another person; or
- (2) to engage in an act, practice, or course of business that operates or would operate as a fraud or deceit upon another person.

(b) **Rules defining fraud.** A rule adopted under this chapter may define an act, practice, or course of business of an investment adviser or an investment adviser representative, other than a supervised person of a federal covered investment adviser, as fraudulent, deceptive, or manipulative, and prescribe means reasonably designed to prevent investment advisers and investment adviser representatives, other than supervised persons of a federal covered investment adviser, from engaging in acts, practices, and courses of business defined as fraudulent, deceptive, or manipulative.

(c) **Rules specifying contents of advisory contract.** A rule adopted under this chapter may specify the contents of an investment advisory contract entered into, extended, or renewed by an investment adviser.

**History:** 2006 c 196 art 1 s 29

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 29, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

**80A.70 SECTION 503; EVIDENTIARY BURDEN.**

(a) **Civil.** In a civil action or administrative proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion has the burden to prove the applicability of the claim.

(b) **Criminal.** In a criminal proceeding under this chapter, a person claiming an exemption, exception, preemption, or exclusion has the burden of going forward with evidence of the claim.

**History:** 2006 c 196 art 1 s 30

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 30, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

**80A.71 SECTION 504; FILING OF SALES AND ADVERTISING LITERATURE.**

(a) **Filing requirement.** Except as otherwise provided in subsection (b), a rule adopted or order issued under this chapter may require the filing of a prospectus, pamphlet, circular,

form letter, advertisement, sales literature, or other advertising record relating to a security or investment advice, addressed or intended for distribution to prospective investors, including clients or prospective clients of a person registered or required to be registered as an investment adviser under this chapter.

(b) **Excluded communications.** This section does not apply to sales and advertising literature specified in subsection (a) which relates to a federal covered security, a federal covered investment adviser, or a security or transaction exempted by section 80A.45, 80A.46, or 80A.47 except as required pursuant to section 80A.45(7).

**History:** 2006 c 196 art 1 s 31

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 31, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

### 80A.72 SECTION 505; MISLEADING FILINGS.

It is unlawful for a person to make or cause to be made, in a record that is used in an action or proceeding or filed under this chapter other than a contested case hearing, a statement that, at the time and in the light of the circumstances under which it is made, is false or misleading in a material respect, or, in connection with the statement, to omit to state a material fact necessary to make the statement made, in the light of the circumstances under which it was made, not false or misleading.

**History:** 2006 c 196 art 1 s 32

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 32, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

### 80A.73 SECTION 506; MISREPRESENTATIONS CONCERNING REGISTRATION OR EXEMPTION.

The filing of an application for registration, a registration statement, a notice filing under this chapter, the registration of a person, the notice filing by a person, or the registration of a security under this chapter does not constitute a finding by the administrator that a record filed under this chapter is true, complete, and not misleading. The filing or registration or the availability of an exemption, exception, preemption, or exclusion for a security or a transaction does not mean that the administrator has passed upon the merits or qualifications of, or recommended or given approval to, a person, security, or transaction. It is unlawful to make, or cause to be made, to a purchaser, customer, client, or prospective customer or client a representation inconsistent with this section.

**History:** 2006 c 196 art 1 s 33

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 33, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

### 80A.74 SECTION 507; QUALIFIED IMMUNITY.

A broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative is not liable to another broker-dealer, agent, investment adviser, federal covered investment adviser, or investment adviser representative for defamation relating to a statement that is contained in a record required by the administrator, or designee of the administrator, the Securities and Exchange Commission, or a self-regulatory organization, unless the person knew, or should have known at the time that the statement was made, that it was false in a material respect or the person acted in reckless disregard of the statement's truth or falsity.

**History:** 2006 c 196 art 1 s 34

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 34, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

### 80A.75 SECTION 508; CRIMINAL PENALTIES.

(a) **Criminal penalties.** A person that willfully violates this chapter, or a rule adopted or order issued under this chapter, except section 80A.71 or the notice filing requirements of

section 80A.50 or 80A.60, or that willfully violates section 80A.72 knowing the statement made to be false or misleading in a material respect, upon conviction, shall be fined not more than \$10,000 or imprisoned not more than five years or both. Each of the acts specified constitutes a separate offense and a prosecution or conviction for any such offense does not bar prosecution or conviction for any other offense.

(b) **Criminal reference not required.** The attorney general with or without a reference from the administrator, may institute criminal proceedings under this chapter.

(c) **No limitation on other criminal enforcement.** This chapter does not limit the power of this state to punish a person for conduct that constitutes a crime under other laws of this state.

**History:** 2006 c 196 art 1 s 35

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 35, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

### 80A.76 SECTION 509; CIVIL LIABILITY.

(a) **Securities Litigation Uniform Standards Act.** Enforcement of civil liability under this section is subject to the Securities Litigation Uniform Standards Act of 1998.

(b) **Liability of seller to purchaser.** A person is liable to the purchaser if the person sells a security in violation of section 80A.49 or, by means of an untrue statement of a material fact or an omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the purchaser not knowing the untruth or omission and the seller not sustaining the burden of proof that the seller did not know and, in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following:

(1) The purchaser may maintain an action to recover the consideration paid for the security, less the amount of any income received on the security, and interest from the date of the purchase, costs, and reasonable attorneys' fees determined by the court, upon the tender of the security, or for actual damages as provided in paragraph (3).

(2) The tender referred to in paragraph (1) may be made any time before entry of judgment. Tender requires only notice in a record of ownership of the security and willingness to exchange the security for the amount specified. A purchaser that no longer owns the security may recover actual damages as provided in paragraph (3).

(3) Actual damages in an action arising under this subsection are the amount that would be recoverable upon a tender less the value of the security when the purchaser disposed of it, and interest from the date of the purchase, costs, and reasonable attorneys' fees determined by the court.

(c) **Liability of purchaser to seller.** A person is liable to the seller if the person buys a security by means of an untrue statement of a material fact or omission to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading, the seller not knowing of the untruth or omission, and the purchaser not sustaining the burden of proof that the purchaser did not know, and in the exercise of reasonable care, could not have known of the untruth or omission. An action under this subsection is governed by the following:

(1) The seller may maintain an action to recover the security, and any income received on the security, costs, and reasonable attorneys' fees determined by the court, upon the tender of the purchase price, or for actual damages as provided in paragraph (3).

(2) The tender referred to in paragraph (1) may be made any time before entry of judgment. Tender requires only notice in a record of the present ability to pay the amount tendered and willingness to take delivery of the security for the amount specified. If the purchaser no longer owns the security, the seller may recover actual damages as provided in paragraph (3).

(3) Actual damages in an action arising under this subsection are the difference between the price at which the security was sold and the value the security would have had at the time



of the sale in the absence of the purchaser's conduct causing liability, and interest from the date of the sale of the security, costs, and reasonable attorneys' fees determined by the court.

(d) **Liability of unregistered broker-dealer and agent.** A person acting as a broker-dealer or agent that sells or buys a security in violation of section 80A.56(a), 80A.57(a), or 80A.73 is liable to the customer. The customer, if a purchaser, may maintain an action for recovery of actual damages as specified in subsections (b)(1) through (3), or, if a seller, for a remedy as specified in subsections (c)(1) through (3).

(e) **Liability of unregistered investment adviser and investment adviser representative.** A person acting as an investment adviser or investment adviser representative that provides investment advice for compensation in violation of section 80A.58(a), 80A.59(a), or 80A.73 is liable to the client. The client may maintain an action to recover the consideration paid for the advice, interest from the date of payment, costs, and reasonable attorneys' fees determined by the court.

(f) **Liability for investment advice.** A person that receives directly or indirectly any consideration for providing investment advice to another person and that employs a device, scheme, or artifice to defraud the other person or engages in an act, practice, or course of business that operates or would operate as a fraud or deceit on the other person, is liable to the other person. An action under this subsection is governed by the following:

(1) The person defrauded may maintain an action to recover the consideration paid for the advice and the amount of any actual damages caused by the fraudulent conduct, interest from the date of the fraudulent conduct, costs, and reasonable attorneys' fees determined by the court, less the amount of any income received as a result of the fraudulent conduct.

(2) This subsection does not apply to a broker-dealer or its agents if the investment advice provided is solely incidental to transacting business as a broker-dealer and no special compensation is received for the investment advice.

(g) **Joint and several liability.** The following persons are liable jointly and severally with and to the same extent as persons liable under subsections (b) through (f):

(1) a person that directly or indirectly controls a person liable under subsections (b) through (f), unless the controlling person sustains 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 conduct by reason of which the liability is alleged to exist;

(2) an individual who is a managing partner, executive officer, or director of a person liable under subsections (b) through (f), including an individual having a similar status or performing similar functions, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could have known, of the existence of conduct by reason of which the liability is alleged to exist;

(3) an individual who is an employee of or associated with a person liable under subsections (b) through (f) and who materially aids the conduct giving rise to the liability, unless the individual sustains the burden of proof that the individual did not know and, in the exercise of reasonable care could not have known, of the existence of conduct by reason of which the liability is alleged to exist; and

(4) a person that is a broker-dealer, agent, investment adviser, or investment adviser representative that materially aids the conduct giving rise to the liability under subsections (b) through (f), unless the person sustains 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 conduct by reason of which liability is alleged to exist.

(h) **Right of contribution.** A person liable under this section has a right of contribution as in cases of tort against any other person liable under this section for the same conduct.

(i) **Survival of cause of action.** A cause of action under this section survives the death of an individual who might have been a plaintiff or defendant.

(j) **Statute of limitations.** A person may not obtain relief:

(1) under subsection (b) for violation of section 80A.49, or under subsection (d) or (e), unless the action is instituted within one year after the violation occurred; or

(2) under subsection (b), other than for violation of section 80A.49, or under subsection (c) or (f), unless the action is instituted within the earlier of two years after discovery of the facts constituting the violation or five years after the violation.

(k) **No enforcement of violative contract.** A person that has made, or has engaged in the performance of, a contract in violation of this chapter or a rule adopted or order issued under this chapter, or that has acquired a purported right under the contract with knowledge of conduct by reason of which its making or performance was in violation of this chapter, may not base an action on the contract.

(l) **No contractual waiver.** A condition, stipulation, or provision binding a person purchasing or selling a security or receiving investment advice to waive compliance with this chapter or a rule adopted or order issued under this chapter is void.

(m) **Survival of other right or remedies.** The rights and remedies provided by this chapter are in addition to any other rights or remedies that may exist, but this chapter does not create a cause of action not specified in this section or section 80A.66(e).

**History:** 2006 c 196 art 1 s 36

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 36, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

### 80A.77 SECTION 510; RESCISSION OFFERS.

A purchaser, seller, or recipient of investment advice may not maintain an action under section 80A.76 if:

(1) the purchaser, seller, or recipient of investment advice receives in a record, before the action is instituted:

(A) an offer stating the respect in which liability under section 80A.76 may have arisen and fairly advising the purchaser, seller, or recipient of investment advice of that person's rights in connection with the offer, and any financial or other information necessary to correct all material misrepresentations or omissions in the information that was required by this chapter to be furnished to that person at the time of this purchase, sale, or investment advice;

(B) if the basis for relief under this section may have been a violation of section 80A.76(b), an offer to repurchase the security for cash, payable on delivery of the security, equal to the consideration paid, and interest from the date of the purchase, less the amount of any income received on the security, or, if the purchaser no longer owns the security, an offer to pay the purchaser upon acceptance of the offer damages in an amount that would be recoverable upon a tender, less the value of the security when the purchaser disposed of it, and interest from the date of the purchase in cash equal to the damages computed in the manner provided in this subsection.

(C) if the basis for relief under this section may have been a violation of section 80A.76(c), an offer to tender the security, on payment by the seller of an amount equal to the purchase price paid, less income received on the security by the purchaser and interest from the date of the sale; or if the purchaser no longer owns the security, an offer to pay the seller upon acceptance of the offer, in cash, damages in the amount of the difference between the price at which the security was purchased and the value the security would have had at the time of the purchase in the absence of the purchaser's conduct that may have caused liability and interest from the date of the sale.

(D) if the basis for relief under this section may have been a violation of section 80A.76(d); and if the customer is a purchaser, an offer to pay as specified in subparagraph (B); or, if the customer is a seller, an offer to tender or to pay as specified in subparagraph (C);

(E) if the basis for relief under this section may have been a violation of section 80A.76(e), an offer to reimburse in cash the consideration paid for the advice and interest from the date of payment; or

(F) if the basis for relief under this section may have been a violation of section 80A.76(f), an offer to reimburse in cash the consideration paid for the advice, the amount of

any actual damages that may have been caused by the conduct, and interest from the date of the violation causing the loss;

(2) the offer under paragraph (1) states that it must be accepted by the purchaser, seller, or recipient of investment advice within 30 days after the date of its receipt by the purchaser, seller, or recipient of investment advice or any shorter period, of not less than three days, that the administrator, by order, specifies;

(3) the offeror has the present ability to pay the amount offered or to tender the security under paragraph (1);

(4) the offer under paragraph (1) is delivered to the purchaser, seller, or recipient of investment advice, or sent in a manner that ensures receipt by the purchaser, seller, or recipient of investment advice; and

(5) the purchaser, seller, or recipient of investment advice that accepts the offer under paragraph (1) in a record within the period specified under paragraph (2) is paid in accordance with the terms of the offer.

**History:** 2006 c 196 art 1 s 37

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 37, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

## ADMINISTRATION AND JUDICIAL REVIEW

### 80A.78 SECTION 601; ADMINISTRATION.

(a) **Administration.** The administrator shall administer this chapter.

(b) **Unlawful use of records or information.** It is unlawful for the administrator or an officer, employee, or designee of the administrator to use for personal benefit or the benefit of others records or other information obtained by or filed with the administrator that are not public under section 80A.84(b). This chapter does not authorize the administrator or an officer, employee, or designee of the administrator to disclose the record or information, except in accordance with section 80A.79, 80A.84(c), or 80A.85.

(c) **No privilege or exemption created or diminished.** This chapter does not create or diminish a privilege or exemption that exists at common law, by statute or rule, or otherwise.

(d) **Investor education.** The administrator may develop and implement investor education initiatives to inform the public about investing in securities, with particular emphasis on the prevention and detection of securities fraud. In developing and implementing these initiatives, the administrator may collaborate with public and nonprofit organizations with an interest in investor education. The administrator may accept a grant or donation from a person that is not affiliated with the securities industry or from a nonprofit organization, regardless of whether the organization is affiliated with the securities industry, to develop and implement investor education initiatives. This subsection does not authorize the administrator to require participation or monetary contributions of a registrant in an investor education program.

**History:** 2006 c 196 art 1 s 38

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 38, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

### 80A.79 SECTION 602; INVESTIGATIONS AND SUBPOENAS.

(a) **Authority to investigate.** The administrator may:

(1) conduct public or private investigations within or outside of this state which the administrator considers necessary or appropriate to determine whether a person has violated, is violating, or is about to violate this chapter or a rule adopted or order issued under this chapter, or to aid in the enforcement of this chapter or in the adoption of rules and forms under this chapter;

(2) require or permit a person to testify, file a statement, or produce a record, under oath or otherwise as the administrator determines, as to all the facts and circumstances concerning a matter to be investigated or about which an action or proceeding is to be instituted; and

(3) publish a record concerning an action, proceeding, or an investigation under, or a violation of, this chapter or a rule adopted or order issued under this chapter if the administrator determines it is necessary or appropriate in the public interest and for the protection of investors.

(b) **Administrator powers to investigate.** For the purpose of an investigation under this chapter, the administrator or its designated officer may administer oaths and affirmations, subpoena witnesses, seek compulsion of attendance, take evidence, require the filing of statements, and require the production of any records that the administrator considers relevant or material to the investigation.

(c) **Procedure and remedies for noncompliance.** If a person does not appear or refuses to testify, file a statement, produce records, or otherwise does not obey a subpoena as required by the administrator under this chapter, the administrator may refer the matter to the attorney general, who may apply to the district court or a court of another state to enforce compliance. The court may:

- (1) hold the person in contempt;
- (2) order the person to appear before the administrator;
- (3) order the person to testify about the matter under investigation or in question;
- (4) order the production of records;
- (5) grant injunctive relief, including restricting or prohibiting the offer or sale of securities or the providing of investment advice;
- (6) impose a civil penalty up to \$10,000 for each violation; and
- (7) grant any other necessary or appropriate relief.

(d) **Application for relief.** This section does not preclude a person from applying to the district court or a court of another state for relief from a request to appear, testify, file a statement, produce records, or obey a subpoena.

(e) **Use immunity procedure.** An individual is not excused from attending, testifying, filing a statement, producing a record or other evidence, or obeying a subpoena of the administrator under this chapter or in an action or proceeding instituted by the administrator under this chapter on the ground that the required testimony, statement, record, or other evidence, directly or indirectly, may tend to incriminate the individual or subject the individual to a criminal fine, penalty, or forfeiture. If the individual refuses to testify, file a statement or produce a record or other evidence on the basis of the individual's privilege against self-incrimination, the administrator may apply to the district court to compel the testimony, the filing of the statement, the production of the record, or the giving of other evidence. The testimony, record, or other evidence compelled under such an order may not be used, directly or indirectly, against the individual in a criminal case, except in a prosecution for perjury or contempt or otherwise failing to comply with the order.

(f) **Assistance to securities regulator of another jurisdiction.** At the request of the securities regulator of another state or a foreign jurisdiction, the administrator may provide assistance if the requesting regulator states that it is conducting an investigation to determine whether a person has violated, is violating, or is about to violate a law or rule of the other state or foreign jurisdiction relating to securities matters that the requesting regulator administers or enforces. The administrator may provide the assistance by using the authority to investigate and the powers conferred by this section as the administrator determines is necessary or appropriate. The assistance may be provided without regard to whether the conduct described in the request would also constitute a violation of this chapter or other law of this state if occurring in this state. In deciding whether to provide the assistance, the administrator may consider whether the requesting regulator is permitted and has agreed to provide assistance reciprocally within its state or foreign jurisdiction to the administrator on securities matters when requested; whether compliance with the request would violate or prejudice the public

policy of this state; and the availability of resources and employees of the administrator to carry out the request for assistance.

**History:** 2006 c 196 art 1 s 39

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 39, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

### 80A.80 SECTION 603; CIVIL ENFORCEMENT.

(a) **Civil action instituted by administrator.** If the administrator believes that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has, is, or is about to engage in an act, practice, or course of business that materially aids a violation of this chapter or a rule adopted or order issued under this chapter, the administrator may maintain an action in the district court to enjoin the act, practice, or course of business and to enforce compliance with this chapter or a rule adopted or order issued under this chapter.

(b) **Relief available.** In an action under this section and on a proper showing, the court may:

(1) issue a permanent or temporary injunction, restraining order, or declaratory judgment;

(2) order other appropriate or ancillary relief, which may include:

(A) an asset freeze, accounting, writ of attachment, writ of general or specific execution, and appointment of a receiver or conservator, that may be the administrator, for the defendant or the defendant's assets;

(B) ordering the administrator to take charge and control of a defendant's property, including investment accounts and accounts in a depository institution, rents, and profits; to collect debts; and to acquire and dispose of property;

(C) imposing a civil penalty up to \$10,000 for each violation; an order of rescission, restitution, or disgorgement directed to a person that has engaged in an act, practice, or course of business constituting a violation of this chapter or the predecessor act or a rule adopted or order issued under this chapter or the predecessor act; and

(D) ordering the payment of prejudgment and postjudgment interest; or

(3) order such other relief as the court considers appropriate.

(c) **No bond required.** The administrator may not be required to post a bond in an action or proceeding under this chapter.

**History:** 2006 c 196 art 1 s 40

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 40, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

### 80A.81 SECTION 604; ADMINISTRATIVE ENFORCEMENT.

(a) **Issuance of an order or notice.** If the administrator determines that a person has engaged, is engaging, or is about to engage in an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter or that a person has materially aided, is materially aiding, or is about to materially aid an act, practice, or course of business constituting a violation of this chapter or a rule adopted or order issued under this chapter, the administrator may:

(1) issue an order directing the person to cease and desist from engaging in the act, practice, or course of business or to take other action necessary or appropriate to comply with this chapter;

(2) issue an order denying, suspending, revoking, or conditioning the exemptions for a broker-dealer under section 80A.56(b)(1)(D) or (F) or an investment adviser under section 80A.58(b)(1)(C); or

(3) issue an order under section 80A.48.

(b) **Summary process.** An order under subsection (a) is effective on the date of issuance. Upon issuance of the order, the administrator shall promptly serve each person subject to the order with a copy of the order and a notice that the order has been entered. The order must include a statement whether the administrator will seek a civil penalty or costs of the investigation, a statement of the reasons for the order, and notice that, within 15 days after receipt of a request in a record from the person, the matter will be scheduled for a hearing. If a person subject to the order does not request a hearing and none is ordered by the administrator within 30 days after the date of service of the order, the order, which may include a civil penalty or costs of the investigation if a civil penalty or costs were sought in the statement accompanying the order, becomes final as to that person by operation of law. If a hearing is requested or ordered, the administrator, after notice of an opportunity for hearing to each person subject to the order, may modify or vacate the order or extend it until final determination.

(c) **Procedure for final order.** If a hearing is requested or ordered pursuant to subsection (b), a hearing must be held under chapter 14. A final order may not be issued unless the administrator makes findings of fact and conclusions of law in a record according to chapter 14. The final order may make final, vacate, or modify the order issued under subsection (a).

(d) **Civil penalty.** In a final order under subsection (c), the administrator may impose a civil penalty up to \$10,000 for each violation.

(e) **Costs.** In a final order, the administrator may charge the actual cost of an investigation or proceeding for a violation of this chapter or a rule adopted or order issued under this chapter.

(f) **Filing of certified final order with court; effect of filing.** If a petition for judicial review of a final order is not filed in accordance with section 80A.86, the administrator may file a certified copy of the final order with the clerk of a court of competent jurisdiction. The order so filed has the same effect as a judgment of the court and may be recorded, enforced, or satisfied in the same manner as a judgment of the court.

(g) **Enforcement by court; further civil penalty.** If a person does not comply with an order under this section, the administrator may petition a court of competent jurisdiction to enforce the order. The court may not require the administrator to post a bond in an action or proceeding under this section. If the court finds, after service and opportunity for hearing, that the person was not in compliance with the order, the court may adjudge the person in civil contempt of the order. The court may impose a further civil penalty against the person for contempt in an amount up to \$10,000 for each violation and may grant any other relief the court determines is just and proper in the circumstances.

**History:** 2006 c 196 art 1 s 41

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 41, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

## **80A.82 SECTION 605; RULES, FORMS, ORDERS, INTERPRETATIVE OPINIONS, AND HEARINGS.**

(a) **Issuance and adoption of forms, orders, and rules.** The administrator may:

(1) issue forms and orders and, after notice and comment, may adopt and amend rules necessary or appropriate to carry out this chapter and may repeal rules, including rules and forms governing registration statements, applications, notice filings, reports, and other records;

(2) by rule, define terms, whether or not used in this chapter, but those definitions may not be inconsistent with this chapter; and

(3) by rule, classify securities, persons, and transactions and adopt different requirements for different classes.

(b) **Findings and cooperation.** Under this chapter, a rule or form may not be adopted or amended, or an order issued or amended, unless the administrator finds that the rule, form, order, or amendment is necessary or appropriate in the public interest or for the protection of investors and is consistent with the purposes intended by this chapter. In adopting, amending,

and repealing rules and forms, section 80A.85 applies in order to achieve uniformity among the states and coordination with federal laws in the form and content of registration statements, applications, reports, and other records, including the adoption of uniform rules, forms, and procedures.

(c) **Financial statements.** Subject to Section 15(h) of the Securities Exchange Act and Section 222 of the Investment Advisers Act of 1940, the administrator may require that a financial statement filed under this chapter be prepared in accordance with generally accepted accounting principles in the United States and comply with other requirements specified by rule adopted or order issued under this chapter. A rule adopted or order issued under this chapter may establish:

(1) subject to Section 15(h) of the Securities Exchange Act and Section 222 of the Investment Advisers Act of 1940, the form and content of financial statements required under this chapter;

(2) whether unconsolidated financial statements must be filed; and

(3) whether required financial statements must be audited by an independent certified public accountant.

(d) **Interpretative opinions.** The administrator may provide interpretative opinions or issue determinations that the administrator will not institute a proceeding or an action under this chapter against a specified person for engaging in a specified act, practice, or course of business if the determination is consistent with this chapter. A rule adopted or order issued under this chapter may establish a reasonable charge for interpretative opinions or determinations that the administrator will not institute an action or a proceeding under this chapter.

(e) **Effect of compliance.** A penalty under this chapter may not be imposed for, and liability does not arise from conduct that is engaged in or omitted in good faith believing it conforms to a rule, form, or order of the administrator under this chapter.

(f) **Presumption for public hearings.** A hearing in an administrative proceeding under this chapter must be conducted in public unless the administrator for good cause consistent with this chapter determines that the hearing will not be so conducted.

**History:** 2006 c 196 art 1 s 42

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 42, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

### 80A.83 SECTION 606; ADMINISTRATIVE FILES AND OPINIONS.

(a) **Public register of filings.** The administrator shall maintain, or designate a person to maintain, a register of applications for registration of securities; registration statements; notice filings; applications for registration of broker-dealers, agents, investment advisers, and investment adviser representatives; notice filings by federal covered investment advisers that are or have been effective under this chapter or the predecessor act; notices of claims of exemption from registration or notice filing requirements contained in a record; orders issued under this chapter or the predecessor act; and interpretative opinions or no action determinations issued under this chapter.

(b) **Public availability.** The administrator shall make all rules, forms, interpretative opinions, and orders available to the public.

(c) **Copies of public records.** The administrator shall furnish a copy of a record that is a public record or a certification that the public record does not exist to a person that so requests. A rule adopted under this chapter may establish a reasonable charge for furnishing the record or certification. A copy of the record certified or a certificate by the administrator of a record's nonexistence is prima facie evidence of a record or its nonexistence.

**History:** 2006 c 196 art 1 s 43

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 43, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

**80A.84 SECTION 607; PUBLIC RECORDS; CONFIDENTIALITY.**

(a) **Presumption of public records.** Except as otherwise provided in subsection (b), records obtained by the administrator or filed under this chapter, including a record contained in or filed with a registration statement, application, notice filing, or report, are public records and are available for public examination.

(b) **Nonpublic records.** The following records are not public records and are not available for public examination under subsection (a):

(1) a record obtained by the administrator in connection with an audit or inspection under section 80A.66(d) or an investigation under section 80A.79;

(2) a part of a record filed in connection with a registration statement under sections 80A.49 and 80A.51 through 80A.53 or a record under section 80A.66(d) that contains trade secrets or confidential information if the person filing the registration statement or report has asserted a claim of confidentiality or privilege that is authorized by law;

(3) a record that is not required to be provided to the administrator or filed under this chapter and is provided to the administrator only on the condition that the record will not be subject to public examination or disclosure;

(4) a nonpublic record received from a person specified in section 80A.85(a);

(5) any social security number, residential address unless used as a business address, and residential telephone number contained in a record that is filed; and

(6) a record obtained by the administrator through a designee of the administrator that a rule or order under this chapter determines has been:

(A) expunged from the administrator's records by the designee; or

(B) determined to be nonpublic or nondisclosable by that designee if the administrator finds the determination to be in the public interest and for the protection of investors.

(c) **Administrator discretion to disclose.** If disclosure is for the purpose of a civil, administrative, or criminal investigation, action, or proceeding or to a person specified in section 80A.85(a), the administrator may disclose a record obtained in connection with an audit or inspection under section 80A.66(d) or a record obtained in connection with an investigation under section 80A.79.

**History:** 2006 c 196 art 1 s 44

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 44, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

**80A.85 SECTION 608; UNIFORMITY AND COOPERATION WITH OTHER AGENCIES.**

(a) **Objective of uniformity.** The administrator shall, in its discretion, cooperate, coordinate, consult, and, subject to section 80A.84, share records and information with the securities regulator of another state, Canada, a Canadian province or territory, a foreign jurisdiction, the Securities and Exchange Commission, the United States Department of Justice, the Commodity Futures Trading Commission, the Federal Trade Commission, the Securities Investor Protection Corporation, a self-regulatory organization, a national or international organization of securities regulators, a federal or state banking and insurance regulator, and a governmental law enforcement agency to effectuate greater uniformity in securities matters among the federal government, self-regulatory organizations, states, and foreign governments.

(b) **Policies to consider.** In cooperating, coordinating, consulting, and sharing records and information under this section and in acting by rule, order, or waiver under this chapter, the administrator shall, in its discretion, take into consideration in carrying out the public interest the following general policies:

(1) maximizing effectiveness of regulation for the protection of investors;

(2) maximizing uniformity in federal and state regulatory standards; and

(3) minimizing burdens on the business of capital formation, without adversely affecting essentials of investor protection.



(c) **Subjects for cooperation.** The cooperation, coordination, consultation, and sharing of records and information authorized by this section includes:

(1) establishing or employing one or more designees as a central depository for registration and notice filings under this chapter and for records required or allowed to be maintained under this chapter;

(2) developing and maintaining uniform forms;

(3) conducting a joint examination or investigation;

(4) holding a joint administrative hearing;

(5) instituting and prosecuting a joint civil or administrative proceeding;

(6) sharing and exchanging personnel;

(7) coordinating registrations under sections 80A.49 and 80A.56 through 80A.59 and exemptions under section 80A.47;

(8) sharing and exchanging records, subject to section 80A.84;

(9) formulating rules, statements of policy, guidelines, forms, and interpretative opinions and releases;

(10) formulating common systems and procedures;

(11) notifying the public of proposed rules, forms, statements of policy, and guidelines;

(12) attending conferences and other meetings among securities regulators, which may include representatives of governmental and private sector organizations involved in capital formation, deemed necessary or appropriate to promote or achieve uniformity; and

(13) developing and maintaining a uniform exemption from registration for small issuers, and taking other steps to reduce the burden of raising investment capital by small businesses.

**History:** 2006 c 196 art 1 s 45

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 45, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

### 80A.86 SECTION 609; JUDICIAL REVIEW.

(a) **Judicial review of orders.** A final order issued by the administrator under this chapter is subject to judicial review in accordance with chapter 14.

(b) **Judicial review of rules.** A rule adopted under this chapter is subject to judicial review in accordance with chapter 14.

**History:** 2006 c 196 art 1 s 46

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 46, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

### 80A.87 SECTION 610; JURISDICTION.

(a) **Sales and offers to sell.** Sections 80A.49, 80A.50, 80A.56(a), 80A.57(a), 80A.58(a), 80A.59(a), 80A.68, 80A.73, 80A.76, and 80A.77 do not apply to a person that sells or offers to sell a security unless the offer to sell or the sale is made in this state or the offer to purchase or the purchase is made and accepted in this state.

(b) **Purchases and offers to purchase.** Sections 80A.56(a), 80A.57(a), 80A.58(a), 80A.59(a), 80A.68, 80A.73, 80A.76, and 80A.77 do not apply to a person that purchases or offers to purchase a security unless the offer to purchase or the purchase is made in this state or the offer to sell or the sale is made and accepted in this state.

(c) **Offers in this state.** For the purpose of this section, an offer to sell or to purchase a security is made in this state, whether or not either party is then present in this state, if the offer:

(1) originates from within this state; or

(2) is directed by the offeror to a place in this state and received at the place to which it is directed.

(d) **Acceptances in this state.** For the purpose of this section, an offer to purchase or to sell is accepted in this state, whether or not either party is then present in this state, if the acceptance:

(1) is communicated to the offeror in this state and the offeree reasonably believes the offeror to be present in this state and the acceptance is received at the place in this state to which it is directed; and

(2) has not previously been communicated to the offeror, orally or in a record, outside this state.

(e) **Publications, radio, television, or electronic communications.** An offer to sell or to purchase is not made in this state when a publisher circulates or there is circulated on the publisher's behalf in this state a bona fide newspaper or other publication of general, regular, and paid circulation that is not published in this state, or that is published in this state but has had more than two-thirds of its circulation outside this state during the previous 12 months or when a radio or television program or other electronic communication originating outside this state is received in this state. A radio or television program, or other electronic communication is considered as having originated in this state if either the broadcast studio or the originating source of transmission is located in this state, unless:

(1) the program or communication is syndicated and distributed from outside this state for redistribution to the general public in this state;

(2) the program or communication is supplied by a radio, television, or other electronic network with the electronic signal originating from outside this state for redistribution to the general public in this state;

(3) the program or communication is an electronic communication that originates outside this state and is captured for redistribution to the general public in this state by a community antenna or cable, radio, cable television, or other electronic system; or

(4) the program or communication consists of an electronic communication that originates in this state, but which is not intended for distribution to the general public in this state.

(f) **Investment advice and misrepresentations.** Sections 80A.58(a), 80A.59(a), 80A.60(a), 80A.69, 80A.72, and 80A.73 apply to a person if the person engages in an act, practice, or course of business instrumental in effecting prohibited or actionable conduct in this state, whether or not either party is then present in this state.

**History:** 2006 c 196 art 1 s 47

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 47, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

## **80A.88 SECTION 611; SERVICE OF PROCESS.**

(a) **Signed consent to service of process.** A consent to service of process complying with this section required by this chapter must be signed and filed in the form required by a rule or order under this chapter. A consent appointing the administrator the person's agent for service of process in a noncriminal action or proceeding against the person, or the person's successor or personal representative under this chapter or a rule adopted or order issued under this chapter after the consent is filed, has the same force and validity as if the service were made personally on the person filing the consent. A person that has filed a consent complying with this subsection in connection with a previous application for registration or notice filing need not file an additional consent.

(b) **Conduct constituting appointment of agent for service.** If a person, including a nonresident of this state, engages in an act, practice, or course of business prohibited or made actionable by this chapter or a rule adopted or order issued under this chapter and the person has not filed a consent to service of process under subsection (a), the act, practice, or course of business constitutes the appointment of the administrator as the person's agent for service of process in a noncriminal action or proceeding against the person or the person's successor or personal representative.

(c) **Procedure for service of process.** Service under subsection (a) or (b) may be made by providing a copy of the process to the office of the administrator, but it is not effective unless:

(1) the plaintiff, which may be the administrator, promptly sends notice of the service and a copy of the process, return receipt requested, to the defendant or respondent at the address set forth in the consent to service of process or, if a consent to service of process has not been filed, at the last known address, or takes other reasonable steps to give notice; and

(2) the plaintiff files an affidavit of compliance with this subsection in the action or proceeding on or before the return day of the process, if any, or within the time that the court, or the administrator in a proceeding before the administrator, allows.

(d) **Service in administrative proceedings or civil actions by administrator.** Service pursuant to subsection (c) may be used in a proceeding before the administrator or by the administrator in a civil action in which the administrator is the moving party.

(e) **Opportunity to defend.** If process is served under subsection (c), the court, or the administrator in a proceeding before the administrator, shall order continuances as are necessary or appropriate to afford the defendant or respondent reasonable opportunity to defend.

**History:** 2006 c 196 art 1 s 48

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 48, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

#### 80A.89 SECTION 612; SEVERABILITY CLAUSE.

If any provision of this chapter or its application to any person or circumstances is held invalid, the invalidity does not affect other provisions or applications of this chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

**History:** 2006 c 196 art 1 s 49

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 49, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.

### TRANSITION

#### 80A.90 SECTION 703; APPLICATION OF ACT TO EXISTING PROCEEDING AND EXISTING RIGHTS AND DUTIES.

(a) **Applicability of predecessor act to pending proceedings and existing rights.** The predecessor act exclusively governs all actions or proceedings that are pending on the effective date of this chapter or may be instituted on the basis of conduct occurring before August 1, 2007, but a civil action may not be maintained to enforce any liability under the predecessor act unless instituted within any period of limitation that applied when the cause of action accrued or within five years after August 1, 2007, whichever is earlier.

(b) **Continued effectiveness under predecessor act.** All effective registrations under the predecessor act, all administrative orders relating to the registrations, rules, statements of policy, interpretative opinions, declaratory rulings, no action determinations, and conditions imposed on the registrations under the predecessor act remain in effect while they would have remained in effect if this chapter had not been enacted. They are considered to have been filed, issued, or composed under this chapter, but are exclusively governed by the predecessor act.

(c) **Applicability of predecessor act to offers or sales.** The predecessor act exclusively applies to an offer or sale made within one year after August 1, 2007, pursuant to an offering made in good faith before August 1, 2007, on the basis of an exemption available under the predecessor act.

**History:** 2006 c 196 art 1 s 50

**NOTE:** This section, as added by Laws 2006, chapter 196, article 1, section 50, is effective August 1, 2007. Laws 2006, chapter 196, article 1, section 52.