CHAPTER 80A

REGULATION OF SECURITIES

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80A.05 [Repealed, 2006 c 196 art 1 s 51,52]

80A.06 [Repealed, 2006 c 196 art 1 s 51,52]

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80A.24 Subdivision 1. [Repealed, 2006 c 196 art 1 s 51,52]

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Subd. 3. [Repealed, 1982 c 501 s 26; 1983 c 247 s 219; 2006 c 196 art 1 s 51,52]

80A.25 [Repealed, 2006 c 196 art 1 s 51,52]

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80A.29 [Repealed, 2006 c 196 art 1 s 51,52]

80A.30 [Repealed, 2006 c 196 art 1 s 51,52]

80A.31 [Repealed, 2006 c 196 art 1 s 51,52]

GENERAL PROVISION

80A.40 SECTION 101; SHORT TITLE.

This chapter may be cited as the "Minnesota Securities Act."

History: *2006 c 196 art 1 s 1,52; 2008 c 256 s 1*

80A.41 SECTION 102; DEFINITIONS.

In this chapter, unless the context otherwise requires:

(1) "Accredited investor" means an accredited investor as the term is defined in Rule 501(a) of Regulation D adopted pursuant to the Securities Act of 1933.

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

(3) "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.

(4) "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

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

(5) "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.

(6) "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, an approved credit union share guaranty corporation, 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.

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

(8) "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.

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

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

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

(12) "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 or a private fund, 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.

(13) "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.

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

(15) "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.

(16) "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;

(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.

(17) "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.

(18) "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.

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

(20) "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)).

(21) "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.

(22) "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.

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

(24) "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.

(25) "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.

(26) Only for purposes of calculating the number of purchasers under section 80A.46, clauses (1) and (14), "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.

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.

(27) "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.

(28) "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.

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

(30) "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 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," 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

(E) 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.

(31) "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.

(32) "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.

(33) "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.

(34) "Associated with" with respect to a person means any partner, officer, director, manager, or employee 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. "Employee" includes an independent contractor who performs advisory functions on behalf of an investment adviser.

(35) "Private fund" means an issuer that would be an investment company as defined in Section 3 of the Investment Company Act of 1940 but for section 3(c)(1) or 3(c)(7) of that act.

(36) "Private fund adviser" means an investment adviser whose only advisory clients are one or more qualifying private funds.

(37) "Qualifying private fund" means a private fund that meets the definition of a qualifying private fund in SEC Rule 203(m)-1, Code of Federal Regulations, title 17, section 275.203(m)-1.

(38) "3(c)(1) fund" means a qualifying private fund that is eligible for the exclusion from the definition of an investment company under section 3(c)(1) of the Investment Company Act of 1940, United States Code, title 15, section 80a-3(c)(1).

(39) "Venture capital fund" means a private fund that meets the definition of a venture capital fund in SEC Rule 203(1)-1, Code of Federal Regulations, title 17, section 275.203(1)-1.

(40) "Funding portal" means any person acting as a funding portal as defined in section 3(a)(80) of the Securities Exchange Act of 1934, United States Code, title 15, section 78c(a)(80), and any rule adopted or order issued thereunder.

History: *2006 c 196 art 1 s 2,52; 2008 c 256 s 2; 2010 c 384 s 44; 2013 c 106 s 1; 2026 c 56 s 19*

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 3,52*

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 4,52*

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 5,52*

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 business 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, an approved credit union share guaranty corporation, 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 6,52; 2026 c 56 s 20*

80A.46 SECTION 202; EXEMPT TRANSACTIONS.

The following transactions are exempt from the requirements of sections 80A.49 through 80A.54, except 80A.50, paragraph (a), clause (3), 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;

(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:

(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;

(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.

Any issuer selling to purchasers in this state in reliance on this clause (14) exemption must provide to the administrator notice of the transaction by filing a statement of issuer form as adopted by rule. Notice must be filed at least ten days in advance of any sale or such shorter period as permitted by the administrator. However, an issuer who makes sales to ten or fewer purchasers in Minnesota during any period of 12 consecutive months is not required to provide this notice;

(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. The person making the offer and effecting the transaction must provide to the administrator notice of the transaction by filing a written description of the transaction. Notice must be filed at least ten days in advance of any transaction or such shorter period as permitted by the administrator;

(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. The person distributing the issuer's securities must provide to the administrator notice of the transaction by filing a written description of the transaction along with a consent to service of process complying with section 80A.88. Notice must be filed at least ten days in advance of any transaction or such shorter period as permitted by the administrator;

(19) a rescission offer, sale, or purchase under section 80A.77. The person making the rescission offer must provide to the administrator notice of the transaction by filing a written description of the transaction and a copy of the record that must be delivered to the offeree under section 80A.77. Notice must be filed at least ten days in advance of any rescission offer under section 80A.77 or a shorter period as permitted by the administrator;

(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.

A person establishing an employee benefit plan under the exemption in this clause (21) must provide to the administrator notice of the transaction by filing a written description of the transaction along with a consent to service of process complying with section 80A.88. Notice must be filed at least ten days in advance of any transaction or such shorter period as permitted by the administrator;

(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 chapter 308A, or 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 7,52; 2008 c 256 s 3; 2010 c 215 art 4 s 9; 2010 c 384 s 45*

80A.461 MNVEST REGISTRATION EXEMPTION.

Subdivision 1. **Definitions.** (a) For purposes of this section, the terms defined in paragraphs (b) through (f) have the meanings given them.

(b) "MNvest issuer" means an entity, other than a general partnership, that satisfies the requirements of Code of Federal Regulations, title 17, part 230.147A, and the following requirements:

(1) for purposes of this section only, the MNvest issuer shall at the time of any offers and sales have its principal place of business in Minnesota and be doing business within Minnesota;

(i) the MNvest issuer shall be deemed to have its principal place of business in Minnesota if the officers, partners, or managers of the issuer primarily direct, control, and coordinate the activities of the issuer from within Minnesota; and

(ii) the MNvest issuer shall be deemed to be doing business within Minnesota if the issuer satisfies at least one of the following requirements:

(A) the issuer derived at least 80 percent of its consolidated gross revenues from the operation of a business or of real property located in or from the rendering of services within Minnesota. Revenues must be calculated based on the issuer's most recent fiscal year, if the first offer of securities pursuant to this section is made during the first six months of the issuer's current fiscal year, and based on the first six months of the issuer's current fiscal year or during the 12-month fiscal period ending with such six-month period, if the first offer of securities pursuant to this section is made during the last six months of the issuer's current fiscal year;

(B) the issuer had, at the end of its most recent semiannual fiscal period prior to an initial offer of securities in any offering or subsequent offering pursuant to this section, at least 80 percent of its assets and those of its subsidiaries on a consolidated basis located within Minnesota;

(C) the issuer intends to use and uses at least 80 percent of the net proceeds to the issuer from sales made pursuant to Code of Federal Regulations, title 17, part 230.147A, in connection with the operation of a business or of real property, the purchase of real property located in, or the rendering of services within Minnesota; or

(D) a majority of the issuer's employees are based in Minnesota;

(2) an issuer that has previously conducted an intrastate offering pursuant to Code of Federal Regulations, title 17, part 230.147A, or Rule 147, part 230.147, may not conduct another intrastate offering pursuant to Code of Federal Regulations, title 17, part 230.147A, in a different state or territory, until the expiration of the time period specified in Code of Federal Regulations, title 17, part 230.147A (e), or Rule 147, section 230.147 (e), calculated on the basis of the date of the last sale in such offering;

(3) the entity does not attempt to limit its liability, or the liability of any other person, for fraud or intentional misrepresentation in connection with the offering of its securities in a MNvest offering; and

(4) the entity is not:

(i) engaged in the business of investing, reinvesting, owning, holding, or trading in securities, except that the entity may hold securities of one class in an entity that is not itself engaged in the business of investing, reinvesting, owning, holding, or trading in securities; or

(ii) subject to the reporting requirements of the Securities and Exchange Act of 1934, section 13 or 15(d), United States Code, title 15, sections 78m and 78o(d).

(c) "MNvest offering" means an offer, or an offer and sale, of securities by a MNvest issuer that: (1) is conducted exclusively through a MNvest portal, and (2) satisfies the requirements of this section and other requirements the administrator imposes by rule.

(d) "MNvest portal" means an Internet website that is operated by a portal operator for the offer or sale of MNvest offerings under this section or registered securities under section 80A.50, paragraph (b), or 80A.52, and satisfies the requirements of subdivision 6.

(e) "Portal operator" means an entity, including an issuer, that:

(1) is authorized to do business in Minnesota;

(2) is a broker-dealer registered under this chapter or otherwise registers with the administrator as a portal operator in accordance with subdivision 7, paragraph (a), and is therefore excluded from broker-dealer registration; and

(3) satisfies such other conditions as the administrator may determine.

(f) "Purchaser" means a person or entity that complies with this section and satisfies other requirements the administrator imposes by rule.

Subd. 2. **Generally.** The offer, sale, and issuance of securities in a MNvest offering is exempt from the requirements of sections 80A.49 to 80A.54, except 80A.50, paragraph (a), clause (3), and 80A.71, if the issuer meets the qualifications under this section.

Subd. 3. **MNvest offering.** A MNvest offering must satisfy the following requirements:

(1) the issuer must be a MNvest issuer on the date that its securities are first offered for sale in the offering and continuously through the closing of the offering;

(2) the offering must meet the requirements of the federal exemption for intrastate offerings in Rule 147A, adopted under the Securities Act of 1933, Code of Federal Regulations, title 17, part 230.147A;

(3) the sale of securities must be conducted exclusively through a MNvest portal;

(4) the MNvest issuer shall require the portal operator to provide or make available to prospective purchasers through the MNvest portal a copy of the MNvest issuer's balance sheet and income statement for the MNvest issuer's most recent fiscal year, if the issuer was in existence. For offerings beginning more than 90 days after the issuer's most recent fiscal year end, or if the MNvest issuer was not in existence the previous calendar year, the MNvest issuer must provide or make available a balance sheet as of a date not more than 90 days before the commencement of the MNvest offering for the MNvest issuer's most recently completed fiscal year, or such shorter portion the MNvest issuer was in existence during that period, and the year-to-date period, or inception-to-date period, if shorter, corresponding with the more recent balance sheet required by this clause;

(5) in any 12-month period, the MNvest issuer shall not raise more than the aggregate amounts set forth in item (i) or (ii), either in cash or other consideration, in connection with one or more MNvest offerings:

(i) $2,000,000 if the financial statements described in clause (4) have been (A) audited by a certified public accountant firm licensed under chapter 326A using auditing standards issued by either the American Institute of Certified Public Accountants or the Public Company Accounting Oversight Board, or (B) reviewed by a certified public accountant firm licensed under chapter 326A using the Statements on Standards for Accounting and Review Services issued by the Accounting and Review Services Committee of the American Institute of Certified Public Accountants; or

(ii) $1,000,000 if the financial statements described in clause (4) have not been audited or reviewed as described in item (i);

(6) offers or sales made in reliance on this section will not be integrated with:

(i) offers or sales of securities made prior to the commencement of offers and sales of securities pursuant to this section; or

(ii) offers or sales made after completion of offers and sales of securities pursuant to this section that are:

(A) registered under the Securities Act of 1933, except as provided in Code of Federal Regulations, part 230.147A, paragraph (h);

(B) exempt from registration under Regulation A, title 17, parts 230.251 to 230.263;

(C) exempt from registration under Rule 701, title 17, part 230.701;

(D) made pursuant to an employee benefit plan;

(E) exempt from registration under Regulation S, title 17, parts 230.901 to 230.905;

(F) exempt from registration under section 4(a)(6) of the Securities Act of 1933, United States Code, title 15, section 77d(a)(6); or

(G) made more than six months after the completion of an offering conducted pursuant to this section.

For purposes of clarity, this section does not permit a MNvest issuer to conduct simultaneous securities offerings;

(7) no single purchaser may purchase more than $10,000 in securities of the MNvest issuer under this exemption in connection with a single MNvest offering unless the purchaser is an accredited investor under Rule 501, adopted under the Securities Act of 1933, Code of Federal Regulations, title 17, part 230.501;

(8) all payments for the purchase of securities must be held in escrow until the aggregate capital deposited into escrow from all purchasers is equal to or greater than the stated minimum offering amount. Purchasers will receive a return of all their subscription funds if the minimum offering amount is not raised by the stipulated expiration date required in subdivision 4, clause (2). The escrow agent must be a bank, regulated trust company, savings bank, savings association, or credit union authorized to do business in Minnesota. Prior to the execution of the escrow agreement between the issuer and the escrow agent, the escrow agent must conduct searches of the issuer, its executive officers, directors, governors, and managers, as provided to the escrow agent by the portal operator, against the Specially Designated Nationals list maintained by the Office of Foreign Assets Control. The escrow agent is only responsible to act at the direction of the party establishing the escrow account and does not have a duty or liability, contractual or otherwise, to an investor or other person except as set forth in the applicable escrow agreement or other contract;

(9) the MNvest issuer shall require the portal operator to make available to the prospective purchaser through the MNvest portal a disclosure document that meets the requirements set forth in subdivision 4;

(10) before selling securities to a prospective purchaser on a MNvest portal, the MNvest issuer shall require the portal operator to obtain from the prospective purchaser the certification required under subdivision 5;

(11) not less than ten days before the beginning of an offering of securities in reliance on the exemption under this section, the MNvest issuer shall provide the following to the administrator:

(i) a notice of claim of exemption from registration, specifying that the MNvest issuer will be conducting an offering in reliance on the exemption under this section;

(ii) a copy of the disclosure document to be provided to prospective purchasers in connection with the offering, as described in subdivision 4;

(iii) a filing fee of $300; and

(iv) MNvest offerings otherwise registered pursuant to sections 80A.50 and 80A.52 are excluded from such ten-day wait period; and

(12) the MNvest issuer and the portal operator may engage in solicitation and advertising of the MNvest offering provided that:

(i) the advertisement contains disclaiming language which clearly states:

(A) the advertisement is not the offer and is for informational purposes only;

(B) the offering is being made in reliance on the exemption under this section;

(C) the offering indicates that purchasers may only be residents of the state;

(D) all offers and sales are made through a MNvest portal; and

(E) the Department of Commerce is the securities regulator in Minnesota;

(ii) along with the disclosures required under item (i), the advertisement may contain no more than the following information:

(A) the name and contact information of the MNvest issuer;

(B) a brief description of the general type of business of the MNvest issuer;

(C) the minimum offering amount the MNvest issuer is attempting to raise through its offering;

(D) a description of how the issuer will use the funds raised through the MNvest offering;

(E) the duration that the MNvest offering will remain open;

(F) the MNvest issuer's logo; and

(G) a link to the MNvest issuer's website and the MNvest portal in which the MNvest offering is being made; and

(iii) the advertisement complies with all applicable state and federal laws.

Subd. 4. **Required disclosures to prospective MNvest offering purchasers.** The MNvest issuer shall require the portal operator to make available to the prospective purchaser through the MNvest portal a printable or downloadable disclosure document containing the following:

(1) the MNvest issuer's type of entity, the address and telephone number of its principal office, its formation history for the previous five years, a summary of the material facts of its business plan and its capital structure, and its intended use of the offering proceeds, including any amounts to be paid from the proceeds of the MNvest offering, as compensation or otherwise, to an owner, executive officer, director, governor, manager, member, or other person occupying a similar status or performing similar functions on behalf of the MNvest issuer;

(2) the MNvest offering must stipulate the date on which the offering will expire, which must not be longer than 12 months from the date the MNvest offering commenced;

(3) a copy of the escrow agreement between the escrow agent, the MNvest issuer, and, if applicable, the portal operator, as described in subdivision 3, clause (8);

(4) the financial statements required under subdivision 3, clause (4);

(5) the identity of all persons owning more than ten percent of any class of equity interests in the company;

(6) the identity of the executive officers, directors, governors, managers, members, and other persons occupying a similar status or performing similar functions in the name of and on the behalf of the MNvest issuer, including their titles and their relevant experience;

(7) the terms and conditions of the securities being offered, a description of investor exit strategies, and of any outstanding securities of the MNvest issuer; the minimum and maximum amount of securities being offered; either the percentage economic ownership of the MNvest issuer represented by the offered securities, assuming the minimum and, if applicable, maximum number of securities being offered is sold, or the valuation of the MNvest issuer implied by the price of the offered securities; the price per share, unit, or interest of the securities being offered; any restrictions on transfer of the securities being offered; and a disclosure that any future issuance of securities might dilute the value of securities being offered;

(8) the identity of and consideration payable to a person who has been or will be retained by the MNvest issuer to assist the MNvest issuer in conducting the offering and sale of the securities, including a portal operator, but excluding (i) persons acting primarily as accountants or attorneys, and (ii) employees whose primary job responsibilities involve operating the business of the MNvest issuer rather than assisting the MNvest issuer in raising capital;

(9) a description of any pending material litigation, legal proceedings, or regulatory action involving the MNvest issuer or any executive officers, directors, governors, managers, members, and other persons occupying a similar status or performing similar functions in the name of and on behalf of the MNvest issuer;

(10) a statement of the material risks unique to the MNvest issuer and its business plans;

(11) a statement that the securities have not been registered under federal or state securities law and that the securities are subject to limitations on resale;

(12) the following legend must be displayed conspicuously in the disclosure document:

"IN MAKING AN INVESTMENT DECISION, PURCHASERS MUST RELY ON THEIR OWN EXAMINATION OF THE ISSUER AND THE TERMS OF THE OFFERING, INCLUDING THE MERITS AND RISKS INVOLVED. THESE SECURITIES HAVE NOT BEEN RECOMMENDED BY ANY FEDERAL OR STATE SECURITIES COMMISSION OR DIVISION OR OTHER REGULATORY AUTHORITY. FURTHERMORE, THE FOREGOING AUTHORITIES HAVE NOT CONFIRMED THE ACCURACY OR DETERMINED THE ADEQUACY OF THIS DOCUMENT. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE. THESE SECURITIES ARE SUBJECT TO RESTRICTIONS ON TRANSFERABILITY AND RESALE AND MAY NOT BE TRANSFERRED OR RESOLD EXCEPT AS PERMITTED BY SUBSECTION (e) OF SEC RULE 147A (CODE OF FEDERAL REGULATIONS, TITLE 17, PART 230.147A (e)) AS PROMULGATED UNDER THE SECURITIES ACT OF 1933, AS AMENDED, AND THE APPLICABLE STATE SECURITIES LAWS, PURSUANT TO REGISTRATION OR EXEMPTION THEREFROM. PURCHASERS SHOULD BE AWARE THAT THEY WILL BE REQUIRED TO BEAR THE FINANCIAL RISKS OF THIS INVESTMENT FOR AN INDEFINITE PERIOD OF TIME.

SALES WILL BE MADE ONLY TO RESIDENTS OF MINNESOTA. OFFERS AND SALES OF THESE SECURITIES ARE MADE UNDER AN EXEMPTION FROM FEDERAL REGISTRATION AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. FOR A PERIOD OF SIX MONTHS FROM THE DATE OF THE SALE BY THE ISSUER OF THE SECURITIES, ANY RESALE OF THE SECURITIES (OR THE UNDERLYING SECURITIES IN THE CASE OF CONVERTIBLE SECURITIES) SHALL BE MADE ONLY TO PERSONS RESIDENT WITHIN

MINNESOTA. ANY RESALE OF THESE SECURITIES MUST BE REGISTERED OR EXEMPT PURSUANT TO THIS CHAPTER."; and

(13) the following legend must be displayed conspicuously on the certificate or other document, if applicable, evidencing the security stating that:

"OFFERS AND SALES OF THESE SECURITIES WERE MADE UNDER AN EXEMPTION FROM FEDERAL REGISTRATION AND HAVE NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933. FOR A PERIOD OF SIX MONTHS FROM THE DATE OF THE SALE BY THE ISSUER OF THESE SECURITIES, ANY RESALE OF THESE SECURITIES (OR THE UNDERLYING SECURITIES IN THE CASE OF CONVERTIBLE SECURITIES) SHALL BE MADE ONLY TO PERSONS RESIDENT WITHIN MINNESOTA. ANY RESALE OF THESE SECURITIES MUST BE REGISTERED OR EXEMPT PURSUANT TO THIS CHAPTER."

Subd. 5. **Required certification from MNvest offering purchasers.** Before selling securities to a prospective purchaser through a MNvest portal, the MNvest issuer shall require the portal operator to obtain from the prospective purchaser through the applicable MNvest portal a written or electronic certification that includes, at a minimum, the following statements:

"I UNDERSTAND AND ACKNOWLEDGE THAT:

If I make an investment in an offering through this MNvest portal, it is very likely that I am investing in a high-risk, speculative business venture that could result in the complete loss of my investment, and I need to be able to afford such a loss.

This offering has not been reviewed or approved by any state or federal securities commission or division or other regulatory authority and that no such person or authority has confirmed the accuracy or determined the adequacy of any disclosure made to me relating to this offering.

If I make an investment in an offering through this MNvest portal, it is very likely that the investment will be difficult to transfer or sell and, accordingly, I may be required to hold the investment indefinitely.

By entering into this transaction with the company, I am affirmatively representing myself as being a Minnesota resident at the time that this contract is formed, and if this representation is subsequently shown to be false, the contract is void."

Subd. 6. **MNvest portal.** A MNvest portal must satisfy the requirements of clauses (1) through (4):

(1) the website does not contain the word "MNvest" in its URL address;

(2) the website implements steps to limit website access to sale of securities to only Minnesota residents when conducting MNvest offerings; and

(3) MNvest offerings may not be viewed on the MNvest portal by a prospective purchaser until:

(i) the portal operator verifies, through its exercise of reasonable steps, such as using a third-party verification service or as otherwise approved by the administrator, that the prospective purchaser is a Minnesota resident; and

(ii) the prospective purchaser makes an affirmative acknowledgment, electronically through the MNvest portal, that:

(A) I am a Minnesota resident;

(B) the securities and investment opportunities listed on this website involve high-risk, speculative business ventures. If I choose to invest in any securities or investment opportunity listed on this website, I may lose all of my investment, and I can afford such a loss;

(C) the securities and investment opportunities listed on this website have not been reviewed or approved by any state or federal securities commission or division or other regulatory authority, and no such person or authority, including this website, has confirmed the accuracy or determined the adequacy of any disclosure made to prospective investors relating to any offering; and

(D) if I choose to invest in any securities or investment opportunity listed on this website, I understand that the securities I will acquire may be difficult to transfer or sell, that there is no ready market for the sale of such securities, that it may be difficult or impossible for me to sell or otherwise dispose of this investment at any price, and that, accordingly, I may be required to hold this investment indefinitely; and

(4) the website complies with all other rules adopted by the administrator.

Subd. 7. **Portal operator.** (a) An entity, other than a registered broker-dealer, wishing to become a portal operator shall file with the administrator:

(1) the Portal Operator Registration Form, including all applicable schedules and supplemental information;

(2) a copy of the articles of incorporation or other documents that indicate the entity's form of organization; and

(3) a filing fee of $200.

(b) A portal operator's registration expires 12 months from the date the administrator has approved the entity as a portal operator, and subsequent registration for the succeeding 12-month period shall be issued upon written application and upon payment of a renewal fee of $200, without filing of further statements or furnishing any further information, unless specifically requested by the administrator. This section is not applicable to a registered broker-dealer functioning as a portal operator.

(c) A portal operator that is not a broker-dealer registered under this chapter shall not:

(1) offer investment advice or recommendations, provided that a portal operator shall not be deemed to be offering investment advice or recommendations merely because it (i) selects, or may perform due diligence with respect to, issuers or offerings to be listed, or (ii) provides general investor educational materials;

(2) provide transaction-based compensation for securities sold under this chapter to employees, agents, or other persons unless the employees, agents, or other persons are registered with the administrator and permitted to receive such compensation;

(3) charge a fee to the issuer for an offering of securities on a MNvest portal unless the fee is (i) a fixed amount for each offering, (ii) a variable amount based on the length of time that the securities are offered on the MNvest portal, or (iii) a combination of such fixed and variable amounts; or

(4) hold, manage, possess, or otherwise handle purchaser funds or securities. This restriction does not apply if the issuer is the portal operator.

(d) A portal operator shall provide the administrator with read-only access to administrative sections of the MNvest portal.

(e) A portal operator shall comply with the record-keeping requirements of this paragraph, provided that the failure of a portal operator that is not an issuer to maintain records in compliance with this paragraph shall not affect the MNvest issuer's exemption from registration afforded by this section:

(1) a portal operator shall maintain and preserve, for a period of five years from either the date of the closing or termination of the securities offering, the following records:

(i) the name of each issuer whose securities have been listed on its MNvest portal;

(ii) the full name, residential address, Social Security number, date of birth, and copy of a state-issued identification for all owners with greater than ten percent voting equity in an issuer;

(iii) copies of all offering materials that have been displayed on its MNvest portal;

(iv) the names and other personal information of each purchaser who has registered at its MNvest portal;

(v) any agreements and contracts between the portal operator and the issuer; and

(vi) any information used to establish that a MNvest issuer, prospective MNvest purchaser, or MNvest purchaser is a Minnesota resident;

(2) a portal operator shall, upon written request of the administrator, furnish to the administrator any records required to be maintained and preserved under this subdivision;

(3) the records required to be kept and preserved under this subdivision must be maintained in a manner, including by any electronic storage media, that will permit the immediate location of any particular document so long as such records are available for immediate and complete access by representatives of the administrator. Any electronic storage system must preserve the records exclusively in a nonrewriteable, nonerasable format; verify automatically the quality and accuracy of the storage media recording process; serialize the original and, if applicable, duplicate units storage media, and time-date for the required period of retention the information placed on such electronic storage media; and be able to download indexes and records preserved on electronic storage media to an acceptable medium. In the event that a records retention system commingles records required to be kept under this subdivision with records not required to be kept, representatives of the administrator may review all commingled records; and

(4) a portal operator shall maintain such other records as the administrator shall determine by rule.

Subd. 8. **Portal operator; privacy of purchaser information.** (a) For purposes of this subdivision, "personal information" means information provided to a portal operator by a prospective purchaser or purchaser that identifies, or can be used to identify, the prospective purchaser or purchaser.

(b) Except as provided in paragraph (c), a portal operator must not disclose personal information without written or electronic consent from the prospective purchaser or purchaser that authorizes the disclosure.

(c) Paragraph (b) does not apply to:

(1) records required to be provided to the administrator under subdivision 7, paragraph (e);

(2) the disclosure of personal information to a MNvest issuer relating to its MNvest offering; or

(3) the disclosure of personal information to the extent required or authorized under other law.

Subd. 9. **Bad actor disqualification.** (a) An exemption under this section is not available for a sale if securities in the MNvest issuer; any predecessor of the MNvest issuer; any affiliated issuer; any director,

governor, executive officer, other officer participating in the MNvest offering, general partner, or managing member of the MNvest issuer; any beneficial owner of 20 percent or more of the MNvest issuer's outstanding voting equity securities, calculated on the basis of voting power; any promoter connected with the MNvest issuer in any capacity at the time of the sale; any investment manager of an issuer that is a pooled investment fund; any general partner or managing member of any investment manager; or any director, governor, executive officer, or other officer participating in the offering of any investment manager or general partner or managing member of the investment manager:

(1) has been convicted, within ten years before the offering, or five years, in the case of MNvest issuers, their predecessors, and affiliated issuers, of any felony or misdemeanor:

(i) in connection with the purchase or sale of any security;

(ii) involving the making of any false filing with the Securities and Exchange Commission or a state administrator; or

(iii) arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser, or paid solicitor of purchasers of securities;

(2) is subject to any order, judgment, or decree of any court of competent jurisdiction, entered within five years before the sale, that, at the time of the sale, restrains or enjoins the person from engaging or continuing to engage in any conduct or practice:

(i) in connection with the purchase or sale of any security;

(ii) involving the making of any false filing with the Securities and Exchange Commission or a state administrator; or

(iii) arising out of the conduct of the business of an underwriter, broker, dealer, municipal securities dealer, investment adviser, or paid solicitor of purchasers of securities;

(3) is subject to a final order of a state securities commission or an agency or officer of a state performing like functions; a state authority that supervises or examines banks, savings associations, or credit unions; a state insurance commission or an agency or officer of a state performing like functions; an appropriate federal banking agency; the United States Commodity Futures Trading Commission; or the National Credit Union Administration that:

(i) at the time of the offering, bars the person from:

(A) association with an entity regulated by the commission, authority, agency, or officer;

(B) engaging in the business of securities, insurance, or banking; or

(C) engaging in savings association or credit union activities; or

(ii) constitutes a final order based on a violation of any law or regulation that prohibits fraudulent, manipulative, or deceptive conduct entered within ten years before the offering;

(4) is subject to an order of the Securities and Exchange Commission entered pursuant to section 15(b) or 15B(c) of the Securities Exchange Act of 1934, United States Code, title 15, section 78o(b) or 78o-4(c) or section 203(e) or (f) of the Investment Advisers Act of 1940, United States Code, title 15, section 80b-3(e) or (f) that, at the time of the offering:

(i) suspends or revokes the person's registration as a broker, dealer, municipal securities dealer, or investment adviser;

(ii) places limitations on the activities, functions, or operations of the person; or

(iii) bars the person from being associated with any entity or from participating in the offering of any penny stock;

(5) is subject to any order of the Securities and Exchange Commission or a state administrator entered within five years before the sale that, at the time of the sale, orders the person to cease and desist from committing or causing a violation or future violation of:

(i) any scienter-based antifraud provision of the federal securities laws, including without limitation section 17(a)(1) of the Securities Act of 1933, United States Code, title 15, section 77q(a)(1), section 10(b) of the Securities Exchange Act of 1934, United States Code, title 15, section 78j(b) and Code of Federal Regulations, title 17, section 240.10b-5, section 15(c)(1) of the Securities Exchange Act of 1934, United States Code, title 15, section 78o(c)(1) and section 206(1) of the Investment Advisers Act of 1940, United States Code, title 15, section 80b-6(1), or any other rule or regulation thereunder; or

(ii) section 5 of the Securities Act of 1933, United States Code, title 15, section 77e;

(6) is suspended or expelled from membership in, or suspended or barred from association with a member of, a registered national securities exchange or a registered national or affiliated securities association for any act or omission to act constituting conduct inconsistent with just and equitable principles of trade;

(7) has filed as a registrant or issuer, or was or was named as an underwriter in, any registrations statement or Regulation A offering statement filed with the Securities and Exchange Commission or a state administrator that, within five years before the sale, was the subject of a refusal order, stop order, or order suspending the Regulation A exemption, or is, at the time of the sale, the subject of an investigation or proceeding to determine whether a stop order or suspension order should be issued; or

(8) is subject to a United States Postal Service false representation order entered within five years before the offering, or is, at the time of the offering, subject to a temporary restraining order or preliminary injunction with respect to conduct alleged by the United States Postal Service to constitute a scheme or device for obtaining money or property through the mail by means of false representations.

(b) Paragraph (a) does not apply:

(1) with respect to any conviction, order, judgment, decree, suspension, expulsion, or bar that occurred or was issued before September 23, 2013;

(2) upon a showing of good cause and without prejudice to any other action by the Securities and Exchange Commission or a state administrator, if the Securities and Exchange Commission or a state administrator determines that it is not necessary under the circumstances that an exemption be denied;

(3) if, before the relevant offering, the court of regulatory authority that entered the relevant order, judgment, or decree advises in writing, whether contained in the relevant judgment, order, or decree or separately to the Securities and Exchange Commission or a state administrator or their staff, that disqualification under paragraph (a) should not arise as a consequence of the order, judgment, or decree; or

(4) if the MNvest issuer establishes that it did not know and, in the exercise of reasonable care, could not have known that a disqualification existed under paragraph (a).

(c) For purposes of paragraph (a), events relating to any affiliated issuer that occurred before the affiliation arose will not be considered disqualifying if the affiliated entity is not:

(1) in control of the issuer; or

(2) under common control with the issuer by a third party that was in control of the affiliated entity at the time of the events.

Subd. 10. **Residence of purchasers.** Sales of securities pursuant to this section must be made only to residents of Minnesota, or who the issuer reasonably believes, at the time of sale, are residents of Minnesota. For purposes of determining the residence of purchasers:

(1) a corporation, partnership, limited liability company, trust, or other form of business organization shall be deemed to be a resident of Minnesota if, at the time of sale to it, it has its principal place of business determined in the same manner as the principal place of business for a MNvest issuer within Minnesota;

(2) individuals shall be deemed to be residents of Minnesota if the individuals have, at the time of sale to them, their principal residence in Minnesota;

(3) a corporation, partnership, trust, or other form of business organization, which is organized for the specific purpose of acquiring securities offered pursuant to this section, shall not be a resident of Minnesota unless all of the beneficial owners of the organization are residents of Minnesota;

(4) obtaining a written representation from purchasers of in-state residency status will not, without more, be sufficient to establish a reasonable belief that the purchasers are in-state residents; and

(5) a trust that is not deemed by the law of the state or territory of its creation to be a separate legal entity is deemed to be a resident of each state or territory in which its trustee is, or trustees are, residents.

History: *1Sp2015 c 1 art 3 s 12; 2017 c 10 s 1*

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 8,52*

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 9,52*

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 10,52*

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 otherwise 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. For the purposes of a nonissuer transaction, other than by an affiliate of the issuer, all outstanding securities of the same class identified in the small corporate offering registration statement as a security registered under this chapter are considered to be registered while the small corporate offering registration statement is effective. A small corporate offering registration statement is effective for one year after its effective date or for any longer period designated in an order under this chapter. A small corporate offering registration statement may be withdrawn only with the approval of the administrator.

(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.

(c) **Offering limit.** Offers and sales of securities under a small corporate offering registration as set forth in this section are allowed up to the limit prescribed by Code of Federal Regulations, title 17, part 230.504(b)(2), as amended.

(d) **Regulation A - Tier 2 filing requirements.**

(1) **Initial filing.** An issuer planning to offer and sell securities in Minnesota in an offering exempt under Tier 2 of federal Regulation A must, at least 21 calendar days before the date of the initial sale of securities in Minnesota, submit to the administrator:

(A) a completed Regulation A - Tier 2 offering notice filing form or copies of all the documents filed with the Securities Exchange Commission; and

(B) a consent to service of process on Form U-2, if consent to service of process is not provided in the Regulation A - Tier 2 offering notice filing form.

The initial notice filing made in Minnesota is effective for 12 months after the date the filing is made.

(2) **Renewal.** For each additional 12-month period in which the same offering is continued, an issuer conducting a Tier 2 offering under federal Regulation A may renew the notice filing by filing (i) the Regulation A - Tier 2 offering notice filing form marked "renewal," or (ii) a cover letter or other document requesting renewal. The renewal filing must be made on or before the date notice filing expires.

(3) **Amendment.** An issuer may increase the amount of securities offered in Minnesota by submitting a Regulation A - Tier 2 offering notice filing form or other document describing the transaction.

(e) **Notice filing requirement for federal crowdfunding offerings.** This paragraph applies to offerings made under Regulation Crowdfunding, Code of Federal Regulations, title 17, part 227, and sections 4(a)(6) and 18(b)(4)(C) of the Securities Act of 1933, United States Code, title 15, sections 77d(A)(6) and 77r(b)(4)(C).

(1) **Initial filing.** An issuer that (i) offers and sells securities in Minnesota in an offering exempt under federal Regulation Crowdfunding, and (ii) has a principal place of business in Minnesota or sells at least 50 percent of the offering's aggregate amount to Minnesota residents, must file with the administrator:

(A) a completed Uniform Notice of Federal Crowdfunding Offering form or copies of all documents filed with the Securities and Exchange Commission; and

(B) if the issuer is not filing on the Uniform Notice of Federal Crowdfunding Offering form, consent to service of process on Form U-2.

If the issuer's principal place of business is in Minnesota, the initial filing must be submitted with the administrator when the issuer makes the issuer's initial Form C filing concerning the offering with the Securities and Exchange Commission. If the issuer's principal place of business is not in Minnesota but Minnesota residents have purchased at least 50 percent of the aggregate amount of the offering, the filing must be submitted when the issuer becomes aware that the aggregate purchases made by Minnesota residents meets the threshold, but no later than 30 days after the date the offering is complete. The initial notice filing is effective for a 12-month period beginning on the date the initial filing is submitted to the administrator.

(2) **Renewal.** For each additional 12-month period in which a single offering is continued, an issuer conducting an offering under federal Regulation Crowdfunding may renew the issuer's notice filing by filing with the administrator on or before the date the current notice filing expires:

(A) a completed Uniform Notice of Federal Crowdfunding Offering form that is marked "renewal"; or

(B) a cover letter or other document requesting renewal.

(3) **Amendment.** An issuer may increase the amount of securities offered in Minnesota by submitting (i) a completed Uniform Notice of Federal Crowdfunding Offering form that is marked "amendment," or (ii) another document that describes the modified transaction.

History: *2006 c 196 art 1 s 11,52; 2008 c 256 s 4; 2023 c 57 art 3 s 68; 2024 c 114 art 2 s 39; 2026 c 124 art 2 s 1*

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 12,52*

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 13,52; 2008 c 256 s 5*

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 14,52*

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(i) as of its effective date, or a report under section 80A.53(h), 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) the terms of the securities offering 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 who is unaffiliated with the issuer shall be presumed to have been determined by arm's-length negotiation;

(6) 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

(7) 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 15,52; 2008 c 256 s 6; 2013 c 106 s 2*

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(h).

History: *2006 c 196 art 1 s 16,52; 2008 c 256 s 7*

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) an accredited investor;

(E) 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;

(F) 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;

(G) 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;

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

(I) 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 17,52; 2008 c 256 s 8*

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(11) or 80A.46(14) 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 80A.88 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 prior five 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 18,52; 2008 c 256 s 9*

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 or investment adviser representative unless the person is registered under this chapter or is exempt from registration 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) 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

(C) 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);

(3) A private fund adviser, subject to the additional requirements of subsection (c), if the private fund adviser satisfies each of the following conditions:

(i) neither the private fund adviser nor any of its advisory affiliates are subject to a disqualification as described in Rule 262 of SEC Regulation A, Code of Federal Regulations, title 17, section 230.262;

(ii) the private fund adviser files with the state each report and amendment thereto that an exempt reporting adviser is required to file with the Securities and Exchange Commission pursuant to SEC Rule 204-4, Code of Federal Regulations, title 17, section 275.204-4; and

(iii) the private fund adviser pays the fees under section 80A.65, subdivision 2b; or

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

(c) **Additional requirements for private fund advisers to certain 3(c)(1) funds.** In order to qualify for the exemption described in subsection (b)(3), a private fund adviser who advises at least one 3(c)(1) fund that is not a venture capital fund shall, in addition to satisfying each of the conditions specified in subsection (b)(3), comply with the following requirements:

(1) The private fund adviser shall advise only those 3(c)(1) funds, other than venture capital funds, whose outstanding securities, other than short-term paper, are beneficially owned entirely by persons who, after deducting the value of the primary residence from the person's net worth, would each meet the definition of a qualified client in SEC Rule 205-3, Code of Federal Regulations, title 17, section 275.205-3, at the time the securities are purchased from the issuer;

(2) At the time of purchase, the private fund adviser shall disclose the following in writing to each beneficial owner of a 3(c)(1) fund that is not a venture capital fund:

(i) all services, if any, to be provided to individual beneficial owners;

(ii) all duties, if any, the investment adviser owes to the beneficial owners; and

(iii) any other material information affecting the rights or responsibilities of the beneficial owners; and

(3) The private fund adviser shall obtain on an annual basis audited financial statements of each 3(c)(1) fund that is not a venture capital fund and shall deliver a copy of such audited financial statements to each beneficial owner of the fund.

(d) **Federal covered investment advisers.** If a private fund adviser is registered with the Securities and Exchange Commission, the adviser shall not be eligible for the private fund adviser exemption under paragraph (b), clause (3), and shall comply with the state notice filing requirements applicable to federal covered investment advisers in section 80A.58.

(e) **Investment adviser representatives.** A person is exempt from the registration requirements of section 80A.58, paragraph (a), if he or she is employed by or associated with an investment adviser that is exempt from registration in this state pursuant to the private fund adviser exemption under paragraph (b), clause (3), and does not otherwise engage in activities that would require registration as an investment adviser representative.

(f) **Electronic filings.** The report filings described in subsection (b)(3)(ii) shall be made electronically through the IARD. A report shall be deemed filed when the report and the fee required by sections 80A.60 and 80A.65 are filed and accepted by the IARD on the state's behalf.

(g) **Transition.** An investment adviser who becomes ineligible for the exemption provided by this section must comply with all applicable laws and rules requiring registration or notice filing within 90 days from the date of the investment adviser's eligibility for this exemption ceases.

(h) **Grandfathering for investment advisers to 3(c)(1) funds with nonqualified clients.** An investment adviser to a 3(c)(1) fund (other than a venture capital fund) that has one or more beneficial owners who are not qualified clients as described in paragraph (c), clause (1), is eligible for the exemption contained in paragraph (b), clause (3), if the following conditions are satisfied:

(1) the subject fund existed prior to August 1, 2013;

(2) as of August 1, 2013, the subject fund ceases to accept beneficial owners who are not qualified clients, as described in paragraph (c), clause (1);

(3) the investment adviser discloses in writing the information described in paragraph (c), clause (2), to all beneficial owners of the fund; and

(4) as of August 1, 2013, the investment adviser delivers audited financial statements as required by paragraph (c), clause (3).

(i) **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 19,52; 2008 c 256 s 10; 2013 c 106 s 3; 1Sp2025 c 4 art 7 s 7*

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) accredited investors;

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

(E) 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.

(d) **Effectiveness of filing.** The notice under subsection (c) becomes effective upon its filing and remains effective through December 31 of the year following the year in which it is filed. The notice may be renewed annually in such manner as prescribed by the administrator.

History: *2006 c 196 art 1 s 20,52; 2008 c 256 s 11*

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

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

(f) **Funding portal registration.** A funding portal that has its principal place of business in the state of Minnesota shall register with the state of Minnesota by filing with the administrator a copy of the information or record required for the filing of an application for registration as a funding portal in the manner established by the Securities and Exchange Commission and/or the Financial Institutions Regulatory Authority (FINRA), along with any rule adopted or order issued, and any amendments thereto.

(g) **Application for investment adviser representative registration.**

(1) The application for initial registration as an investment adviser representative pursuant to section 80A.58 is made by completing Form U-4 (Uniform Application for Securities Industry Registration or

Transfer) in accordance with the form instructions and by filing the form U-4 with the IARD. The application for initial registration must also include the following:

(i) proof of compliance by the investment adviser representative with the examination requirements of:

(A) the Uniform Investment Adviser Law Examination (Series 65); or

(B) the General Securities Representative Examination (Series 7) and the Uniform Combined State Law Examination (Series 66);

(ii) any other information the administrator may reasonably require.

(2) The application for the annual renewal registration as an investment adviser representative shall be filed with the IARD.

(3)(i) The investment adviser representative is under a continuing obligation to update information required by Form U-4 as changes occur;

(ii) An investment adviser representative and the investment adviser must file promptly with the IARD any amendments to the representative's Form U-4; and

(iii) An amendment will be considered to be filed promptly if the amendment is filed within 30 days of the event that requires the filing of the amendment.

(4) An application for initial or renewal of registration is not considered filed for purposes of section 80A.58 until the required fee and all required submissions have been received by the administrator.

(5) The application for withdrawal of registration as an investment adviser representative pursuant to section 80A.58 shall be completed by following the instructions on Form U-5 (Uniform Termination Notice for Securities Industry Registration) and filed upon Form U-5 with the IARD.

History: *2006 c 196 art 1 s 21,52; 2013 c 106 s 4; 2017 c 94 art 8 s 6; 2022 c 93 art 2 s 34; 2024 c 114 art 2 s 40*

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 22,52*

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 23,52*

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 24,52*

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 preeffective 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.

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, $65 in the case of an agent, $100 in the case of an investment adviser, and $50 in the case of an investment adviser representative. 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 broker-dealer, pay a transfer fee of $65. A registered investment adviser representative who has terminated employment with

one investment adviser must, before beginning employment with another investment adviser, pay a $50 transfer fee.

Subd. 2a. **Federal covered investment adviser filings.** Every federal covered investment adviser filing the initial or renewal notice required under section 80A.60 must pay a filing fee of $100.

Subd. 2b. **Private fund adviser filings.** A private fund adviser must pay a $100 filing fee when filing an initial or renewal notice required under section 80A.58.

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.46(19), 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 management and budget the amount of the fee to be refunded to the applicant, and the commissioner of management and budget shall issue a 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 25,52; 2007 c 57 art 3 s 35; 2008 c 256 s 12,13; 2008 c 363 art 6 s 5; 2009 c 101 art 2 s 109; 2010 c 384 s 46; 2017 c 94 art 8 s 7; 1Sp2019 c 10 art 3 s 14; 1Sp2025 c 4 art 7 s 8,9*

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;

(3) a broker-dealer must establish and maintain: (i) a set of written supervisory procedures that reasonably prevent and detect violations of chapter 80A; Minnesota Rules, chapter 2876; or related orders issued by the commissioner; and (ii) a system to apply the procedures established under this clause. The procedures must designate by name or title a number of supervisory employees that is reasonable relative to the number of the broker-dealer's registered agents, offices, and transactions in Minnesota. A copy of the written procedures and the system to apply the procedures must be kept and maintained at each branch office affiliated with the broker-dealer. A broker-dealer may use electronic media in accordance with FINRA Rule 3110.11, or any successor federal law, to satisfy its obligation under this paragraph; and

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

(d) **Records and reports of private funds.**

(1) **In general.** An investment adviser to a private fund shall maintain such records of, and file with the administrator such reports and amendments thereto, that an exempt reporting adviser is required to file with the Securities and Exchange Commission pursuant to SEC Rule 204-4, Code of Federal Regulations, title 17, section 275.204-4.

(2) **Treatment of records.** The records and reports of any private fund to which an investment adviser provides investment advice shall be deemed to be the records and reports of the investment adviser.

(3) **Required information.** The records and reports required to be maintained by an investment adviser, which are subject to inspection by a representative of the administrator at any time, shall include for each private fund advised by the investment adviser, a description of:

(A) the amount of assets under management;

(B) the use of leverage, including off-balance-sheet leverage, as to the assets under management;

(C) counterparty credit risk exposure;

(D) trading and investment positions;

(E) valuation policies and practices of the fund;

(F) types of assets held;

(G) side arrangements or side letters, whereby certain investors in a fund obtain more favorable rights or entitlements than other investors;

(H) trading practices; and

(I) such other information as the administrator determines is necessary and appropriate in the public interest and for the protection of investors, which may include the establishment of different reporting requirements for different classes of fund advisers, based on the type or size of the private fund being advised.

(4) **Filing of records.** A rule or order under this chapter may require each investment adviser to a private fund to file reports containing such information as the administrator deems necessary and appropriate in the public interest and for the protection of investors.

(e) **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, including the records of a private fund described in paragraph (d) and the records of investment advisers to private funds, 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.

(f) **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 of at least $25,000, but not to exceed $100,000. 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).

(g) **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.

(h) **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.

(i) **Continuing education.** A rule adopted or order issued under this chapter may require an individual registered under section 80A.57 or 80A.58 to participate in a continuing education program approved by the Securities and Exchange Commission and administered by a self-regulatory organization, the North American Securities Administrators Association, or the commissioner.

(j) **Business continuity and succession plan.** An investment adviser registered or required to be registered under this chapter must establish, maintain, and enforce written policies and procedures relating to business continuity and succession planning. At a minimum, the policies and procedures under this paragraph must provide:

(1) a means to protect, back up, and recover books and records;

(2) an alternate method to provide notice to customers; key personnel; employees; vendors; service providers, including third-party custodians; and regulators, regarding issues pertaining to the investment adviser's business operations, including but not limited to significant business interruption, the death or unavailability of key personnel, other disruption to business activities, or ceasing business operations;

(3) a plan to relocate the office space for a principal place of business that is subject to a temporary or permanent loss;

(4) a plan to assign duties to qualified responsible persons if key personnel die or are otherwise unavailable; and

(5) a plan to otherwise minimize service disruption and client harm that might result from sudden and significant business interruption.

(k) **Physical security and cybersecurity policies and procedures.** An investment adviser registered or required to be registered under this chapter must establish, implement, update, and enforce written physical security and cybersecurity policies and procedures that are designed to ensure the confidentiality, integrity, and availability of physical and electronic records and information. The policies and procedures must be tailored to the investment adviser's business model and must take into account the investment adviser's business size, type of service provided, and number of locations.

(1) The physical security and cybersecurity policies and procedures must:

(A) protect against reasonably anticipated threats or hazards to the security or integrity of client records and information;

(B) ensure that the investment adviser protects confidential client records and information; and

(C) protect client records and information that, if released, might result in harm or inconvenience to the client.

(2) At a minimum, the physical security and cybersecurity policies and procedures must develop and implement:

(A) an organizational understanding to manage information security risk with respect to systems, assets, data, and capabilities;

(B) safeguards to ensure delivery of critical infrastructure services;

(C) actions and tools to identify when an information security event occurs;

(D) actions to take when an information security event is detected; and

(E) plans for security and system resilience, and to restore capabilities or services that are impaired due to an information security event.

(3) At the time a client engages an investment adviser and on an annual basis thereafter, an investment adviser must deliver to the client a privacy policy that is reasonably designed to assist the client understand how the investment adviser collects and shares, to the extent permitted by state and federal law, nonpublic personal information. If information in the policy becomes materially inaccurate, the investment adviser must promptly update and deliver an amended privacy policy to the client.

(l) **Written confirmation.** A broker-dealer must promptly provide to the customer a written confirmation at or before completing a transaction in accordance with FINRA Rule 2232 or any successor federal law. The confirmation must:

(1) describe the security purchased or sold, the date of the transaction, the price of the security purchased or sold, and any commission charged;

(2) indicate whether the broker-dealer acted for the broker-dealer's account, as an agent for a customer, as an agent for another person, or as an agent for both a customer and another person;

(3) if the broker-dealer is acting as an agent for a customer, include (i) the name of the person who purchased the security, (ii) the name of the person who sold the security, or (iii) a statement that the information in item (i) or (ii) is available to a customer on request if the broker-dealer knows the information or is able to ascertain the information with reasonable diligence;

(4) indicate whether the transaction was unsolicited; and

(5) indicate the name of the agent that executed the transaction.

A broker-dealer that complies with Securities and Exchange Commission Rule 10b-10; Code of Federal Regulations, title 17, part 240.10b-10; or article III, section 12 of the Financial Industry Regulatory Authority Rules of Fair Practice complies with this paragraph.

(m) **Conditions; stipulations; provisions.** A broker-dealer is prohibited from entering into a contract with a customer if the contract contains a condition, stipulation, or provision that binds the customer to

waive rights under chapter 80A; Minnesota Rules, chapter 2876; or an order issued by the commissioner. A condition, stipulation, or provision included in a contract subject to this paragraph is void.

(n) **Principal office; employment.** A broker-dealer whose principal office is located in Minnesota must have at least one registered person employed on a full-time basis at the principal office located in Minnesota. This paragraph does not apply to a broker-dealer engaged solely in offering and selling:

(1) interests in a direct participation program; or

(2) securities issued by open-end investment companies, face amount certificate companies, or unit investment trusts registered under the Investment Company Act of 1940, United States Code, title 15, sections 80a-1 to 80a-64.

History: *2006 c 196 art 1 s 26,52; 2008 c 256 s 14; 2013 c 106 s 5; 2024 c 114 art 2 s 41; 1Sp2025 c 4 art 7 s 10; 2026 c 124 art 2 s 2*

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;

(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, 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 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 27,52; 2008 c 256 s 15*

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 28,52*

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 29,52*

80A.691 BROKER-DEALERS; AGENTS; DISHONEST OR UNETHICAL BUSINESS PRACTICES.

Subdivision 1. **Broker-dealers; standards and principles.** A broker-dealer must observe high standards of commercial honor and just and equitable principles of trade when conducting the broker-dealer's business. An act or practice that is contrary to the standards constitutes grounds for the administrator to deny, suspend, or revoke the broker-dealer's registration or to take other action authorized by statute. For purposes of this subdivision, an act or practice that is contrary to the standards includes:

(1) engaging in a pattern of unreasonable and unjustifiable delays with respect to: (i) delivering securities purchased by a customer; or (ii) upon request, paying free credit balances reflecting a customer's completed transactions;

(2) inducing trading in a customer's account that is excessive in size or frequency considering the account's financial resources and character;

(3) recommending that a customer purchase, sell, or exchange a security without reasonable grounds to believe the transaction or recommendation is suitable for the customer, based on: (i) a reasonable inquiry regarding the customer's investment objectives, financial situation, and needs; and (ii) other relevant information known by the broker-dealer;

(4) recommending a security transaction or investment strategy involving securities, including account recommendations, to a retail customer if the recommendation does not comply with the obligations set forth in Code of Federal Regulations, title 17, section 240.15l-1;

(5) executing a transaction on behalf of a customer without the customer's authorization;

(6) exercising discretionary power to effect a transaction for a customer's account without first obtaining written discretionary authority from the customer, unless the discretionary power relates solely to the time the order is executed or the order's price;

(7) executing a transaction in a margin account without securing from the customer a properly executed written margin agreement promptly after the account's initial transaction;

(8) failing to segregate customers' free securities or securities held in safekeeping;

(9) hypothecating a customer's securities without having a lien on the customer's securities, unless the broker-dealer secures the customer's properly executed written consent promptly after the initial transaction, except as permitted by Securities and Exchange Commission regulations;

(10) entering into a transaction with or for a customer at a price that is not reasonably related to the security's current market price, or receiving an unreasonable commission or profit;

(11) failing to furnish to a customer purchasing securities in an offering, no later than the due date for the transaction's confirmation: (i) a final prospectus; or (ii) a preliminary prospectus and an additional

document that, when combined with the preliminary prospectus, includes all of the information included in the final prospectus;

(12) charging an unreasonable or inequitable fee for services performed, including: (i) miscellaneous services that include but are not limited to collecting money due for principal, dividends or interest, exchanging or transferring securities, appraisals, safekeeping, or maintaining custody of securities; and (ii) other services related to the broker-dealer's securities business;

(13) offering to buy or sell a security at a stated price if the broker-dealer is not prepared to purchase or sell at the stated price and under the stated conditions at the time the offer to buy or sell is made;

(14) representing that a security is being offered to a customer "at the market" or at a price relevant to the market price, unless the broker-dealer knows or has reasonable grounds to believe a market for the security exists other than the market made, created, or controlled by: (i) the broker-dealer; (ii) a person for whom the broker-dealer is acting or with whom the broker-dealer is associated with respect to the security's distribution; or (iii) a person controlled by, controlling, or under common control with the broker-dealer;

(15) effecting a transaction in, or inducing the purchase or sale of, a security using a manipulative, deceptive, or fraudulent device, practice, plan, program, design, or contrivance, which includes but is not limited to:

(i) effecting a transaction in a security that involves no change in the security's beneficial ownership;

(ii) entering an order to purchase or sell a security with the knowledge that at least one other order for the same security that is substantially the same size, entered at substantially the same time, and for substantially the same price as the order has been or will be entered by or for the same or a different party to create (A) a false or misleading appearance of active trading in the security, or (B) a false or misleading appearance with respect to the market for the security. This item does not prohibit a broker-dealer from entering bona fide agency cross transactions for the broker-dealer's customers; or

(iii) effecting, alone or with another person, a series of transactions in a security that creates actual or apparent active trading in the security, or raises or reduces the price of the security, to induce others to purchase or sell the security;

(16) guaranteeing a customer against loss in: (i) a securities account the broker-dealer carries for the customer; (ii) a securities transaction effected by the broker-dealer; or (iii) a securities transaction effected by the broker-dealer with or for the customer;

(17) publishing or circulating, or causing to be published or circulated, a notice, circular, advertisement, newspaper article, investment service, or communication of any kind that purports to: (i) report a transaction as a purchase or sale of a security, unless the broker-dealer believes that the transaction was a bona fide purchase or sale of the security; or (ii) quote the bid price or asked price for a security, unless the broker-dealer believes the quote represents a bona fide bid for or offer of the security;

(18) using an advertising or sales presentation in a manner that is deceptive or misleading, including but not limited to distributing: (i) nonfactual data, material, or a presentation based on conjecture, unfounded claims, or unrealistic claims; or (ii) assertions in a brochure, flyer, or display using words, pictures, graphs, or other representations that are designed to supplement, detract from, supersede, or defeat a prospectus' or disclosure's purpose or effect;

(19) failing to disclose to a customer, before entering into a contract with or for a customer to purchase or sell a security, that the broker-dealer is controlled by, controlling, affiliated with, or under common control

with the security's issuer. If a disclosure under this clause is not made in writing, the disclosure must be supplemented by giving or sending written disclosure before or at the time the transaction is completed;

(20) failing to make a bona fide public offering of all of the securities allotted to a broker-dealer for distribution, whether the securities are acquired as an underwriter, as a selling group member, or from a member participating in the distribution as an underwriter or selling group member;

(21) failing or refusing to: (i) furnish a customer, upon reasonable request, information the customer is entitled to; or (ii) respond to a formal written request or complaint;

(22) failing to pay and fully satisfy a final judgment or arbitration award resulting from an arbitration or court proceeding relating to an investment and initiated by the customer, unless: (i) the customer and broker-dealer, or broker-dealer's agent, agree in writing to an alternative payment arrangement; and (ii) the broker-dealer or broker-dealer's agent complies with the terms of the alternative payment arrangement;

(23) attempting to avoid paying a final judgment or arbitration award resulting from an arbitration or court proceeding relating to an investment and initiated by the customer, unless: (i) the customer and broker-dealer, or broker-dealer's agent, agree in writing to an alternative payment arrangement; and (ii) the broker-dealer or broker-dealer's agent complies with the terms of the alternative payment arrangement;

(24) failing to pay and fully satisfy a fine, civil penalty, order of restitution, order of disgorgement, or similar monetary payment obligation imposed upon the broker-dealer or broker-dealer's agent by the Securities and Exchange Commission, a state or provincial securities or other financial services regulator, or a self-regulatory organization;

(25) accessing a client's account by using the client's unique identifying information, including but not limited to the client's username and password;

(26) in connection with soliciting a sale or purchase of an over-the-counter non-NASDAQ security, failing to promptly provide the most current prospectus or the most recently filed periodic report filed under Section 13 of the Securities Exchange Act of 1934, United States Code, title 15, section 78m, as amended, if the broker-dealer receives a request from a customer;

(27) marking an order ticket or confirmation as unsolicited if the transaction is solicited;

(28) for each month in which activity has occurred in a customer's account and no less frequently than once every three months regardless of whether customer account activity has occurred, failing to provide the customer with an account statement that, with respect to all over-the-counter non-NASDAQ equity securities in the account, contains a value for each security based on the closing market bid on a date certain. This clause applies only if the broker-dealer has been a market maker in the security at any time during the month in which the monthly or quarterly statement is issued; or

(29) failing to comply with an applicable provision of the Financial Industry Regulatory Authority conduct rules or an applicable fair practice or ethical standard promulgated by the Securities and Exchange Commission or a self-regulatory organization approved by the Securities and Exchange Commission.

Subd. 2. **Broker-dealer's agents; standards and principles.** A broker-dealer's agent must observe high standards of commercial honor and just and equitable principles of trade when conducting the broker-dealer's agent's business. An act or practice that is contrary to the standards constitutes grounds for the administrator to deny, suspend, or revoke the broker-dealer's agent's registration or to take other action authorized by statute. For purposes of this subdivision, an act or practice that is contrary to the standards includes:

(1) lending to or borrowing from a customer money or securities, or acting as a custodian for a customer's money, securities, or executed stock power, unless otherwise permissible under FINRA Rule 3240 or any successor federal law;

(2) effecting securities transactions that are not recorded on the regular books or records maintained by the broker-dealer the broker-dealer's agent represents, unless the transactions are authorized in writing by the broker-dealer before executing the transaction or exempt as subscription-way transactions under Rule 17a-3 of the Securities Exchange Act of 1934 or any successor federal law;

(3) establishing or maintaining an account that contains fictitious information in order to execute transactions that are otherwise prohibited;

(4) sharing directly or indirectly in profits or losses in a customer account without the written authorization from the customer and the broker-dealer the broker-dealer's agent represents;

(5) dividing or otherwise splitting the broker-dealer's agent's commissions, profits, or other compensation from purchasing or selling securities with a person who is not also registered as a broker-dealer's agent for the same broker-dealer or for a broker-dealer under direct or indirect common control or unless otherwise allowed under Securities and Exchange Commission rules, guidance, or authorization; or

(6) engaging in the conduct specified under subdivision 1, clause (2), (3), (4), (5), (6), (7), (10), (11), (15), (16), (17), (18), (22), (23), (24), (25), (26), (27), (28), or (29).

Subd. 3. **Conduct specified not exclusive.** The conduct identified as a violation under subdivisions 1 and 2 is not exclusive. A broker-dealer or broker-dealer's agent that engages in other conduct, including but not limited to forgery, embezzlement, nondisclosure, incomplete disclosure, misstatement of material facts, or manipulative or deceptive practices, is also subject to denial, suspension, or revocation of registration.

History: *2026 c 124 art 2 s 3*

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 30,52*

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 31,52*

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 32,52*

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 33,52*

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 is 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 34,52*

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 35,52*

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.** A person acting as an investment adviser that provides investment advice for compensation in violation of section 80A.58(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 36,52; 2008 c 256 s 16*

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 37,52*

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 38,52*

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 39,52*

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 40,52*

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 41,52*

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, in accordance with chapter 14, 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 Advisors 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 42,52; 2008 c 256 s 17*

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, and investment advisers; 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 43,52; 2008 c 256 s 18*

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(e) 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;

(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; and

(7) a record furnished to the administrator by a portal operator under section 80A.461, subdivision 7, paragraph (e).

(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(e) or a record obtained in connection with an investigation under section 80A.79.

History: *2006 c 196 art 1 s 44,52; 1Sp2015 c 1 art 3 s 13; 2019 c 59 s 4*

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 effecting 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.58 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 45,52; 2008 c 256 s 19*

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 46,52*

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.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.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.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 47,52; 2008 c 256 s 20*

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 48,52*

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 49,52*

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 August 1, 2007, 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 50,52*

80A.91 AGENT ERRORS AND OMISSIONS INSURANCE; CHOICE OF SOURCE.

A broker-dealer shall not require an agent to maintain insurance coverage for the agent's errors and omissions from a specific insurance company. This section does not apply if the agent is an employee of that broker-dealer, or if the broker-dealer or affiliated insurance company contributes to the premiums for the errors and omissions coverage. Nothing in this section shall prohibit a broker-dealer from requiring an agent to maintain errors and omissions coverage or requiring that the errors and omissions coverage meet certain criteria.

History: *2009 c 178 art 1 s 49*