

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
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MINNESOTA STATE REGULATIONS

Notice of filing by the Commissioner of Administration

We have received on this date, stamped and filed 2 copies of Rules and Regulations pertaining to the Department of Commerce
(Agency or Board)

Regulation No. S Div 2000 thru 2136 (new)

Subject: Securities

Department of Administration
Publication, Central Services Division
Documents Section
140 Centennial Office Building
St. Paul, Minnesota 55155
Telephone: (612) 296-2874

FILED
RICHARD L. BRUBACHER
Commissioner of Administration

MAY 22 1975 1:55 PM

BY Eda Staudenmaier
AUTH. SIGNATURE EJ

Stamped and filed with the Secretary of State 5-22-75

Rev. 9-72

Robert W. Herr
Assistant Attorney General
Securities Division

May 21, 1975

- SDiv. 2000-2136

ADMIN. 1000

STATE OF MINNESOTA

DEPARTMENT Attorney General

Office Memorandum

TO : Robert W. Herr
Assistant Attorney General
Securities Division

DATE: May 15, 1975

FROM : Michael B. Miller
Special Assistant
Attorney General

SUBJECT: Securities Rules S. Div. 2000-2136

Returned herewith pursuant to Attorney General's Rules on Rulemaking 305(a)(2) are the above-captioned rules. After having reviewed these rules, I find the following problems with them:

1. The following rules were promulgated after the public hearing, and therefore must be the subject of a public hearing:

   - SDiv. 2110(a) and (b)
   - SDiv. 2113(b)
   - SDiv. 2114
   - SDiv. 2115(a) (as amended), (b) and (c)
   - SDiv. 2116
   - SDiv. 2117
   - SDiv. 2118(i)
   - SDiv. 2119
   - SDiv. 2121
   - SDiv. 2122
   - SDiv. 2089

2. SDiv. 2014(c) exceeds the statutory limit of $25,000.00 set forth in Minn. Stat. § 80A.05, Subd. 5 as to investment advisors.

3. SDiv. 2055(f) is vague, in that the word "reasonable" is not sufficiently defined to specify the conduct being regulated.

4. SDiv. 2063(d) is not worded with sufficient specificity; the terms "discouraged" and "not looked upon with favor" should be changed either to allow or prohibit the activity referred to.

5. SDiv. 2102 uses the term "majority of securities"; this term should be clarified to indicate either volume or dollar amount.

In addition, I suggest the following changes:

1. The word "not" should evidently be added to the phrase "less than ninety days" to effectuate the intent of SDiv. 2006(b).

2. SDiv. 2085(c), referring to exoneration, should have language added to indicate that exoneration cannot be effected in the agreement referred to in this section.

3. SDiv. 2086 appears to have an extra word ("and") at the end instead of a period.

4. The title of SDiv 2100 appears unrelated to the content of the rule.

5. S Div 2125 appears to be an unenforceable generality and should be deleted.

6. The date "April 15, 1974" in SDiv 2135 apparently should be "April 15, 1975".

7. The words "Commissioner of Administration" in SDiv. 2136 should be changed to "Secretary of State".

As you know, the rules should be resubmitted to this office pursuant to Attorney General Rule 305 (a) (4) after the above-noted problems have been corrected. Upon resubmission and examination, I will promptly file the same.

MBM/sr

Enclosures

Adopted

SDiv. 2000 (a) It shall constitute a "device, scheme, or artifice to defraud" for an investment adviser, directly or indirectly, to publish, circulate or distribute any advertisement:

(1) Which refers, directly or indirectly, to any testimonial of any kind concerning the investment adviser or concerning any advise, analysis, report or other service rendered by such investment adviser; or

(2) Which refers, directly or indirectly, to past specific recommendations of such investment adviser which were or would have been profitable to any person; provided, however, that this shall not prohibit an advertisement which sets out or offers to furnish a list of all recommendations made by such investment adviser within the immediately preceding period of not less than one year if such advertisement and such list, if it is furnished separately: (aa) states the name of each such security recommended, the date and nature of each such recommendation (for example, whether to buy, sell or hold), the market value at that time, the price at which the recommendation was to be acted upon, and the market price of each such security as of the most recent practicable date, and (bb) contains the following cautionary legend on the first page thereof in print or type as large as the largest print or type used in the body or text thereof: "It shall not be assumed that recommendations made in the future will be profitable or will equal the performance of the securities in this list.";

(3) Which represents, directly or indirectly, that any graph, chart, formula or other device being offered can in and of itself be used to determine which securities to buy or sell, or when to buy or sell them; or which represents directly or indirectly, that any graph, chart, formula or other device being offered will assist any person in making his own decisions as to which securities to buy or sell, or when to buy or sell them,

without prominently disclosing in such advertisement the limitations thereof and the difficulties with respect to its use;

(4) Which contains any statement to the effect that any report, analysis or other service will be furnished free or without charge, unless such report, analysis or other service actually is or will be furnished entirely free and without any condition or obligation, directly or indirectly; or

(5) Which contains any untrue statement of a material fact or which is otherwise false or misleading.

(b) For the purposes of this regulation the term "advertisement" shall include any notice, circular, letter or other written communication given to more than one person, or any notice or other announcement, any publication or by radio or television, which offers (1) any analysis, report or publication concerning securities, or which is to be used in making any determination as to when to buy or sell securities, or (2) any graph, chart, formula or other device to be used in making any determination concerning when to buy or sell any security, or which security to buy or sell, or (3) any other investment advisory service with regard to securities.

SDiv. 2001 It is unlawful for any investment adviser to enter into, extend or renew any investment advisory contract which:

(a) provides for compensation to the investment adviser which is based upon or measured by profits accrued or to accrue from transactions recommended or carried out by the investment adviser, or which is based upon a share of capital gains or upon capital appreciation of the funds or any portion of the funds of the client. This shall not be construed to prohibit charges based upon the total value of the assets under management averaged over a definite period, or as of definite dates, or taken as of a definite date, nor charges based upon the performance of the managed assets as compared to an established index;

(b) fails to provide, in writing, that no assignment of such contract shall be made by the investment adviser without the consent of the other party to the contract. "Assignment," as used herein, includes any direct or indirect transfer or hypothecation of an investment advisory contract by the assignor or of a controlling block of the assignor's outstanding voting securities by a security holder of the assignor; but, if the investment adviser is a partnership, no assignment of an investment advisory contract is considered to result from the death or withdrawal of a minority of the members of the investment adviser having only a minority interest in the business of the investment adviser, or from the admission to the investment adviser of one or more members who, after admission, will be only a minority of the members and will have only a minority interest in the business; or

(c) fails to provide in writing that the investment adviser, if a partnership, shall notify the other party to the contract of any change in the membership of the partnership within 30 business days after such change.

As used in this section, "investment advisory contract" means any contract or agreement whereby a person agrees to act as an investment adviser or to manage any investment or trading account for a person other than an investment company as defined in the Investment Company Act of 1940.

SDiv. 2002 It is unlawful for any investment adviser to take or have custody of any funds or securities in which any client has a beneficial interest unless:

(a) All such securities of each such client are segregated, marked to identify the particular client who has the beneficial interest therein, and held in safekeeping in some place reasonably free from risk of destruction or other loss; and

(b) (1) All such funds of such clients are deposited in one or more bank accounts which contain only clients' funds;

(2) Such account or accounts are maintained in the name of the investment adviser as agent or trustee for such clients; and

(3) The investment adviser maintains a separate record for each such account which shows the name and address of the bank where such account is maintained, the dates and amounts of deposits in and withdrawals from such account, and the exact amount of each client's beneficial interest in such account; and

(c) Such investment adviser, immediately after accepting custody or possession of such funds or securities from any client, notifies such client in writing of the place and manner in which such funds or securities will be maintained, and thereafter, if and when there is any change in the place or manner in which such funds or securities are being maintained, gives each such client written notice thereof; and

(d) Such investment adviser sends to each client, not less frequently than once every three months, an itemized statement showing the funds and securities in the custody or possession of the investment adviser at the end of such period, and all debits, credits and transactions in such client's account during such period; and

(e) All such funds and securities of clients are verified by actual examination at least once during each calendar year by an independent certified public accountant. A certificate of such accountant stating that he has made an examination of such funds and securities, and describing the nature and extent of such examination, shall be filed with the Commissioner promptly after such examination.

(f) This regulation (SDiv. 2002) shall not apply to an investment adviser also registered as a broker-dealer under Section 15 of the Securities Exchange act of 1934 if (1) such broker-dealer is subject to and in compliance with Rule 15c3-1 (Reg. 240.15c3-1) under the Securities Exchange Act of 1934, or (2) such broker-dealer

is a member of an exchange whose members are exempt from Rule 15c3-1 under the provisions of paragraph (b)(2) thereof, and such broker-dealer is in compliance with all rules and settled practices of such exchange imposing requirements with respect to financial responsibility and the segregation of funds or securities carried for the account of customers.

SDiv. 2003 It shall constitute a "manipulative or deceptive device or contrivance" within the meaning of Minnesota Statutes, Section 80A.03 for any broker-dealer or agent who is an underwriter in connection with a distribution of securities to fail to make a bona fide distribution of the securities at the public offering price of securities of a public offering which immediately trades at a premium in the secondary market. An underwriter does not make a "bona fide distribution to the public" within the meaning of this section when he, or any person associated with him:

(a) Continues to hold any of the securities in his own account or in the account of any person associated with him;

(b) Sells any of the securities to any officer, director, general partner, employee or agent of the underwriter or of any other broker-dealer, or to a person associated with the underwriter or with any other broker-dealer, or to a member of the immediate family of any such person;

(c) Sells any of the securities to a person who is a finder in respect to the public offering or to any person acting in a fiduciary capacity to the managing underwriter, including, among others, attorneys, accountants and financial consultants, or to a member of the immediate family of any such person;

(d) Sells any securities to any senior officer of a bank, savings and loan association, insurance company, registered investment company, registered investment advisory firm or any other institutional type account, domestic or foreign, or to any person in the securities department of, or to any employee or any other person

who may influence or whose activities directly or indirectly involve or are related to the function of buying or selling securities for any bank, savings and loan association, insurance company, registered investment company, registered investment advisory firm, or other institutional type account, domestic or foreign, or to a member of the immediate family of any such person;

(e) Sells any securities to any account in which any person specified in paragraphs (a), (b), (c) or (d) hereof has a beneficial interest. Provided, however, an underwriter may sell part of his securities acquired as described above to:

(1) persons enumerated in paragraphs (c) or (d) hereof; and

(2) members of the immediate family or persons enumerated in paragraph (b) hereof provided that such person enumerated in paragraph (b) does not contribute directly or indirectly to the support of such member of the immediate family; and

(3) any account in which any person specified under paragraph (c), (d) or (e) above has a beneficial interest;

if the broker-dealer or agent is prepared to demonstrate that the securities were sold to such persons in accordance with their normal investment practice with the broker-dealer or agent, that the aggregate of the securities so sold is insubstantial and not disproportionate in amount as compared to sales to members of the public and that the amount sold to any one of such persons is insubstantial in amount;

(f) Sells any of the securities, at or above the public offering price, to any other broker-dealer; provided, however, an underwriter may sell all or part of the securities acquired as described above to another broker-dealer upon receipt from the latter assurance in writing that such purchase would be made to fill orders for bona fide public customers, other than those enumerated

in paragraphs (a), (b), (c), (d) or (e) above, at the public offering price as an accommodation to them and without compensation for such;

(g) Sells any of the securities to any domestic bank, domestic branch of a foreign bank, trust company or other conduit for an undisclosed principal unless written assurance is received from such bank, trust company or conduit certifying that the purchase in each case is not made for the benefit of any person enumerated in paragraphs (a) through (f) hereof;

(h) For purposes of this rule, the term "any person associated with him (an underwriter)" shall mean any officer, director, partner or branch manager of an underwriter, or any person occupying a similar status or performing similar functions, or any natural person directly or indirectly controlling or controlled by such underwriter (other than employees whose functions are clerical or ministerial).

SDiv. 2004 (a) It shall constitute a "manipulative or deceptive device or contrivance" within the meaning of Minnesota Statutes, Section 80A.03, for any person, directly or indirectly, in connection with the offer or sale of any security, to make any representation:

(1) To the effect that the security is being offered or sold on an "all or none" basis, unless the security is part of an offering or distribution being made on the condition that all or a specified amount of the consideration paid for such security will be promptly refunded to the purchaser unless (aa) all of the securities being offered are sold at a specified price within a specified time, and (bb) the total amount due to the seller is received by him by a specified date; or

(2) To the effect that the security is being offered or sold on any other basis whereby all or part of the consideration paid for such security will be refunded to the purchaser if all or some of the securities are not sold, unless the security

is part of an offering or distribution being made on the condition that all or a specified part of the consideration paid for such security will be promptly refunded to the purchaser unless (aa) a specified number of units of the security are sold at a specified price within a specified time, and (bb) the total amount due to the seller is received by him by a specified date.

(b) This rule shall not apply to any offer or sale of securities as to which the seller has a firm commitment from an underwriter (subject only to customary conditions precedent, including "market outs") for the purchase of all the securities being offered.

SDiv. 2005 It shall constitute a "fraudulent or deceptive device or contrivance" within the meaning of Minnesota Statutes, Section 80A.03, for any person to:

(a) represent in the offer or sale of securities, either directly or by implication, in writing or orally, that there is a guarantee against risk or loss;

(b) induce excessive trading in a customer's account, or induce trading beyond the customer's known financial resources;

(c) effect transactions in the account of a customer without his knowledge or maintain discretionary accounts without written authorization;

(d) engage or aid in "boiler room" operations or high pressure tactics in connection with the promotion of speculative offerings or "hot issues" by means of an intensive telephone campaign or unsolicited calls to persons not known by or having an account with the salesmen or broker-dealer represented by him, whereby the prospective purchaser is encouraged to make a hasty decision to invest, irrespective of his investment needs and objectives;

(e) charge, pay or receive commissions, selling charges, expenses or any other kind of remuneration greater than those

authorized for the particular types of securities involved in connection with registered offerings under SDiv. 2034 of these rules; provided, however, that this paragraph (e) shall not apply to the sale, by an issuer, of a security exempted by Section 80A.15, Subdivision 2(a);

(f) use information about an issuer, learned from the issuer's officers, directors or key employees, which is not generally available to the public and which would significantly affect the market price of the issuer's securities for personal benefit, directly or indirectly, in the offer, sale or purchase of the issuer's securities;

(g) create an atmosphere of false supply or demand or engage in market manipulations;

(h) create unreasonable delays in delivering securities;

(i) representing that securities will be listed on a national exchange or that application for listing will be made, without any basis in fact for such representation;

(j) selling or soliciting the purchase of one security conditioned upon the customer's agreement to purchase another security.

SDiv. 2006 (a) It shall constitute a "manipulative, deceptive, or other fraudulent device or contrivance," within the meaning of Minnesota Statutes, Section 80A.03, for any broker-dealer to furnish or submit, directly or indirectly, any quotation for a security to an inter-dealer-quotation-system unless:

(1) the inter-dealer-quotation-system is informed, if such is the case, that the quotation is furnished or submitted;

(aa) by a broker-dealer acting for the account of or on behalf of another broker-dealer, and if so, the identity of such other broker-dealer; and/or

(bb) in furtherance of one or more other arrangements (including a joint account, guarantee of profit, guarantee against loss, commission, markup, markdown,

indication of interest and accommodation arrangement) between or among broker-dealers, and if so, the identity of each broker-dealer participating in any such arrangement or arrangements; provided, however, that the provisions of this subparagraph shall not apply if only one of the broker-dealers participating in any such arrangement or arrangements furnishes or submits a quotation with respect to the security to an inter-dealer-quotation- system.

(2) The inter-dealer-quotation-system to which the quotation is furnished or submitted makes it a general practice to disclose with each published quotation, by appropriate symbol or otherwise, the category or categories (subparagraphs (1)(aa) and/or (1)(bb) in furtherance of which the quotation is submitted, and the identities of all other broker-dealers referred to in subparagraphs (1)(aa) and (1)(bb) where such information is supplied to the inter-dealer-quotation-system under the provisions of paragraph (1) of this rule.

(b) It shall constitute a "manipulative, deceptive or other fraudulent device or contrivance" within the meaning of Section 80A.03, for a broker-dealer or agent to recommend the purchase or sale of any security or to furnish any quotation for a security or, directly or indirectly, to submit any such quotation for publication, in any quotation medium (as defined in this Rule) unless:

(1) the issuer has filed a registration statement under Sections 80A.09, 80A.10 or 80A.11 which became effective not less than 90 calendar days prior to the day on which such broker-dealer or agent publishes or submits the quotation to the quotation medium, provided that such registration statement has not thereafter been the subject of a stop order which is still in effect when the quotation is published or submitted, and such broker-dealer has in his records a copy of the prospectus or offering circular used in connection with the registration, or

(2) (aa) the issuer is required to file reports pursuant to Section 80A.12, Subd. 8 and the Rules thereunder; and

(bb) the broker-dealer has a reasonable basis for believing that the issuer is current in filing the reports required to be filed by Section 80A.12, Subd. 8 and the Rules thereunder; and

(cc) the broker-dealer has in his records the issuer's reports filed pursuant to Section 80A.12, Subd. 8 and the Rules thereunder covering the most recent eighteen (18) months or such shorter period as the issuer has filed such reports; or

(3) such broker-dealer has in his records, and shall make reasonably available upon request to any person expressing an interest in a proposed transaction in the security with such broker-dealer, the following information (which shall be reasonably current in relation to the day the quotation is submitted), which he has no reasonable basis for believing is not true and correct or reasonably current, and which was obtained by him from sources which he has a reasonable basis for believing are reliable: (aa) the exact name of the issuer and its predecessor (if any); (bb) the address of its principal executive offices; (cc) the state of incorporation, if it is a corporation; (dd) the exact title and class of the security; (ee) the par or stated value of the security; (ff) the number of shares or total amount of the securities outstanding as of the end of the issuer's most recent fiscal year; (gg) the name and address of the transfer agent; (hh) the nature of the issuer's business; (ii) the nature of products or services offered; (jj) the nature and extent of the issuer's facilities; (kk) the name of the chief executive officer and members of the board of directors; (ll) the issuer's most recent balance sheet and profit and loss and retained

earnings statements; (mm) similar financial information for such part of the two preceding fiscal years as the issuer or its predecessor has been in existence; (nn) whether the broker-dealer or any associated person is affiliated, directly or indirectly with the issuer; (oo) whether the quotation is being published or submitted on behalf of any other broker-dealer, and, if so, the name of such broker-dealer; and (pp) whether the quotation is being submitted or published directly or indirectly on behalf of the issuer, or any director, officer or any person, directly or indirectly the beneficial owner of more than 10 per cent of the outstanding units or shares of any equity security of the issuer, and, if so, the name of such person, and the basis for any exemption under Sections 80A.01 to 80A.31 for any sales of such securities on behalf of such person. If such information is made available to others upon request pursuant to this sub-paragraph, such delivery, unless otherwise represented, shall not constitute a representation by such broker-dealer that such information is true and correct, but shall constitute a representation by such broker-dealer that the information is reasonably current in relation to the day the quotation is submitted, that he has no reasonable basis for believing the information is not true and correct, and that the information was obtained from sources which he has a reasonable basis for believing are reliable.

(c) With respect to any security the quotation of which is within the provisions of this rule, the broker-dealer submitting or publishing such quotation shall maintain in his records information regarding all circumstances involved in the submission of publication of such quotation, including the identity of the person or persons for whom the quotation is being submitted or published and any information regarding the transaction provided to the broker-dealer by such person or persons.

(d) The broker-dealer shall maintain in writing as part of his records the information described in paragraphs (b) and (c), and any other information (including adverse information) regarding the issuer which comes to his knowledge or possession before the publication or submission of the quotation, and preserve such records for the periods specified in Section 80A.06, Subd. 1, or any Rule thereunder.

(e) For any security of an issuer included in paragraph (b)(3), the broker-dealer submitting the quotation shall furnish to the inter-dealer-quotation-system (as defined below), in such form as such system shall prescribe, at least 2 days before the quotation is published or submitted, the information regarding the security and the issuer which such broker-dealer is required to maintain pursuant to said paragraph (b)(3).

(f) For purposes of this rule:

(1) "Quotation medium" shall mean any "inter-dealer-quotation-system" or any publication or electronic communications network or other device which is used by broker-dealers to make known to others their interest in transactions in any security, including offers to buy or sell at a stated price or otherwise, or invitations of offers to buy or sell.

(2) "inter-dealer-quotation-system" shall mean any system of general circulation to broker-dealers which regularly disseminates quotations of identified broker-dealers.

(3) except as otherwise specified in this rule, "quotation" shall mean any bid or offer at a specified price with respect to a security.

(g) The provisions of this rule shall not apply to:

(1) the publication or submission of a quotation respecting a security which has been the subject of both bid and ask quotations in an inter-dealer-quotation-system at specified prices on each of at least twelve days within the previous

thirty calendar days, with no more than four business days in succession without such a two-way quotation.

(h) The requirement in subparagraph (b)(3) that the information with respect to the issuer be "reasonably current" will be presumed to be satisfied, unless the broker-dealer has information to the contrary, if:

(1) the balance sheet is as of a date less than 16 months before the publication or submission of the quotation, the statements of profit and loss and retained earnings are for the 12 months preceding the date of such balance sheet, and if such balance sheet is not as of a date less than 6 months before the publication or submission of the quotation, it shall be accompanied by additional statements of profit and loss and retained earnings for the period from the date of such balance sheet to a date less than 6 months before the publication or submission of the quotation.

(2) other information regarding the issuer specified in subparagraph (b)(3) is as of a date within 12 months prior to the publication or submission of the quotation.

(i) This rule shall not prohibit any publication or submission of any quotation if the Commissioner, upon written request or upon his own motion, exempts by order such quotation either unconditionally or on specified terms and conditions, as not constituting a fraudulent, manipulative or deceptive practice comprehended within the purpose of this rule.

(j) (1) It shall constitute a fraudulent and dishonest practice for a broker-dealer to enter into any correspondent or other arrangement (including a joint account, guarantee of profit, guarantee against loss, commission, markup, markdown, indication of interest and accommodation arrangement) in furtherance of which two or more broker-dealers furnish or submit quotations with respect to a particular security unless

such broker-dealer informs all broker-dealers furnishing or submitting such quotations of the existence of such correspondent and other arrangements, and the identity of the parties thereto.

(2) For the purpose of the above (j)(1):

(aa) the term "inter-dealer-quotation-system" shall mean any system of general circulation to broker-dealers which regularly disseminates quotations of identified broker-dealers.

(bb) the term "quotation" shall mean any bid or offer, or any indication of interest (such as OW or BW) in any bid or offer.

(cc) the term "correspondent" shall mean a broker-dealer who has a direct line of communication to another broker-dealer located in a different city or geographic area.

SDiv. 2007 The following shall constitute "manipulative, deceptive, or other devices or contrivances" within the meaning of Minnesota Statutes, Section 80A.03:

(a) any act of any broker-dealer designed to effect with or for the account of a customer any transaction in, or to induce the purchase or sale by such customer of, any security (other than United States Tax Savings Notes, United States Defense Savings Stamps, or United States Defense Savings Bonds, Series E, F and G) unless such broker-dealer, at or before the completion of each such transaction, gives or sends to such customer written notification disclosing (1) where he is acting as a broker for such customer, as a dealer for his own account, as a broker for some other person, or as a broker for both such customer and some other person; and (2) in any case in which he is acting as a broker for such customer or for both such customer and some other person, either the name of the person from whom the security was purchased or to whom it was sold for such customer and the date and time when such transaction took

place or the fact that such information will be furnished upon the request of such customer, and the source and amount of any commission or other remuneration received or to be received by him in connection with the transaction.

(b) any act of any broker-dealer or agent controlled by, controlling or under common control with, the issuer of any security, designed to effect with or for the account of a customer any transaction in, or to induce the purchase or sale by such customer of, such securities unless such broker-dealer or agent, before entering into any contract with or for such customer for the purchase or sale of such security, discloses to such customer the existence of such control, and unless such disclosure, if not made in writing, is supplemented by the giving or sending or written disclosure at or before the completion of the transaction.

(c) any act of any broker-dealer who is acting for a customer or for both such customer and some other person, or of any broker-dealer who receives or has promise of receiving a fee from a customer for advising such customer with respect to securities, designed to effect with or for the account of such customer any transaction in, or to induce the purchase or sale by such customer of, any security in the distribution of which such broker-dealer is participating or is otherwise financially interested unless such broker-dealer, at or before the completion of such transaction, gives or sends to such customer written notification of the existence of such participation or interest.

(d) any act of any broker-dealer designed to effect with or for any customer's account in respect to which such broker-dealer or his agent or employee is vested with any discretionary power any transaction of purchase or sale unless immediately after effecting such transaction such broker-dealer makes a record of such transaction, which record includes the name of such customer, the name, amount and price of the security, and the date and time when such

transaction took place. In addition, such broker-dealer shall send each month to each customer in whose account such broker-dealer exercises any discretionary authority, an itemized statement showing the funds and securities in the custody or possession of the broker-dealer at the end of such period, and all debits, credits, and transactions in such client's account during such period.

(e) any representation made to a customer by a broker-dealer who is participating or otherwise financially interested in the distribution of any security which is not admitted to trading on a national securities exchange that such security is being offered to such customer "at the market" or at a price related to the market price unless such broker-dealer knows or has reasonable grounds to believe that a market for such security exists other than that made, created or controlled by him, or by any person for whom he is acting or with whom he is associated in such distribution, or by any person contolled by, controlling or under common control with him.

(f) the use of financial statements purporting to give effect to the receipt and application of any part of the proceeds from the sale or exchange of securities, unless the assumptions upon which each such financial statement is based are clearly set forth as part of the caption to each such statement in type at least as large as that used generally in the body of the statement.

SDiv. 2008 "Broker-dealers" are affiliated by direct common control, for the purpose of Minnesota Statutes, Section 80A.04, Subd. 2, when eighty percent or more of the equity of each broker-dealer is beneficially owned by the same person or group of persons.

SDiv. 2009 Upon termination of the activities of a licensed person, the broker-dealer shall, within five business days, notify the Commissioner in writing of the termination stating the reason therefor and including the license.

SDiv. 2010 "Successor" for the purpose of Minnesota Statutes, 1973, Section 80A.05, Subd. 2, includes any person succeeding to

the business of a licensed broker-dealer or investment adviser under the following circumstances:

(a) When a licensee is a partnership, and a change in the membership of the partnership occurs which, under the law of the jurisdiction in which such partnership is formed, results in the creation of a new legal entity. This paragraph shall not apply, however, if more than one-half of the members of the predecessor partnership are no longer partners after such change in partnership;

(b) When a partnership or individual incorporates or otherwise changes its form of legal organization;

(c) When an entity formed under the laws of the particular jurisdiction changes the jurisdiction in which it is incorporated, organized or formed;

(d) When a licensee changes its name; or

(e) Upon the consolidation or merger of a licensee.

SDiv. 2011 (a) No person shall be issued a broker-dealer or investment adviser's license unless at least one person employed full-time in a supervisory capacity, by the applicant for such license, shall have been actively engaged in the securities business in a similar supervisory capacity for a minimum of three of the preceding five years, or shall have had substantially equivalent experience, satisfactory to the Commissioner.

(b) No person shall be issued a broker-dealer or investment adviser's license if any employee of such person was an officer, supervisor, or owner of 10% or more of the securities of, any firm liquidated under the Securities Investor Protection Act of 1970, unless good cause, satisfactory to the Commissioner, be shown that the issuance of the license would be in the public interest.

(c) The provisions of paragraph (a) of this section do not apply to any broker-dealer meeting all of the following conditions:

(1) His dealer transactions (as principal for his own account) are limited to the purchase, sale and redemption of redeem-

able shares of registered investment companies, except that a broker-dealer transacting business as a sole proprietor may also effect occasional transactions in other securities for his own account with or through another registered broker-dealer;

(2) His transactions as broker (agent) are limited to:

(aa) The sale and redemption of redeemable securities of registered investment companies;

(bb) The solicitation of share accounts insured by an instrumentality of the United States;

(cc) The sale of securities for the account of the customer to obtain funds for immediate reinvestment in redeemable securities of registered investment companies; and

(3) He promptly transmits all funds and delivers all securities received in connection with his activities as a broker-dealer, and does not otherwise hold funds or securities for, or owe money or securities, to customers.

SDiv. 2012 (a) No license shall be issued by the Commissioner after the effective date of this regulation for a broker-dealer or investment adviser unless each partner, officer or director, or person occupying a similar status or performing similar functions shall have successfully passed such examinations as the Commissioner may prescribe. The Commissioner may waive the requirement of this section for any partner, officer or director, or person occupying a similar status or performing similar functions who has satisfactorily completed an examination for principals given by the New York Stock Exchange, the National Association of Securities Dealers Inc., or the Securities and Exchange Commission. The Commissioner may waive the requirement of this section for any partner, officer or director who represents to the Commissioner in writing that he will not be engaged in the sale of securities, the business of advising others concerning

the value of securities in this State.

(b) No agent's license shall be issued by the Commissioner after the effective date of this regulation unless the applicant shall have successfully completed such examinations as the Commissioner may prescribe. The Commissioner may waive the requirement of this section for any applicant who has successfully completed a written examination given by the New York Stock Exchange, the National Association of Securities Dealers Inc., or the Securities and Exchange Commission.

(c) If any person required to pass an examination under paragraphs (a) or (b) of this section shall fail such examination, he may reapply to take the examination a second time thirty days after the date on which he was first examined, and a third time ninety days after the date he was first examined. No person shall be permitted to take an examination more than three times except as the Commissioner may in his discretion permit for good cause shown.

(d) Any broker-dealer, agent or investment adviser whose most recent license has been terminated for a period of one year or more immediately preceding the filing of a new application and who has not been actively engaged as a broker-dealer or agent respectively during that period shall be required to satisfactorily complete an examination prescribed by the Commissioner, or an examination for principals or agents respectively given by the New York Stock Exchange, the National Association of Securities Dealers Inc., or the Securities and Exchange Commission.

(e) The time and place at which the examination may be taken shall be determined by the Commissioner.

SDiv. 2013 (a) Every broker-dealer shall have and maintain the following net capital requirements:

(1) his aggregate indebtedness to all other persons shall not exceed 15 times his net capital; and

(2) his net capital shall not be less than $25,000.

(b) (1) The provisions of paragraph (a) of this rule shall not apply to any broker-dealer:

(aa) whose dealer transactions (as principal for his own account) are limited to the purchase, sale and redemption of redeemable shares of registered investment companies so long as his transactions as broker (agent) are limited to: (i) the sale and redemption of redeemable securities of registered investment companies; (ii) the solicitation of share accounts insured by an instrumentality of the United States; (iii) the sale of securities for the account of a customer to obtain funds for immediate reinvestment in redeemable securities of registered investment companies; and (iv) the sale of limited partnership interests; and he maintains a net capital of not less than $5,000; or

(bb) who promptly transmits all funds and delivers all securities received in connection with his activities as a broker-dealer, and does not otherwise hold funds or securities for, or owe money or securities to, customers; and he maintains a net capital of not less than $5,000; or,

(cc) who the Commissioner has, upon written application, exempted from the provisions of this rule, either unconditionally or on specified terms and conditions, because of the special nature of his business, his financial position, and the safeguards he has established for the protection of customers' funds and securities.

(2) The provisions of paragraph (a) of this rule shall not apply to any member in good standing and subject to the capital rules of the Midwest Stock Exchange, the American Stock Exchange or the New York Stock Exchange, if the rules, settled practices and applicable regulatory procedure of those exchanges

are deemed by the Commissioner to impose requirements more comprehensive than the requirements of this rule; provided, however, that the exemption as to the members of any exchange may be suspended or withdrawn by the Commissioner at any time, by sending ten (10) days written notice to such exchange, if it appears to the Commissioner to be necessary or appropriate in the public interest or for the protection of investors so to do. This exemption shall not be available to the members of any exchange whose capital rules do not provide that in the computation of net capital there shall be a deduction of not less than 10% of the contract price of each item in the securities failed to deliver account which is outstanding 40 to 49 calendar days, 20% of the contract price of each item in the securities failed to deliver account which is outstanding 50 to 59 calendar days, and 30% of the contract price of each item in the securities failed to deliver account which is outstanding 60 or more calendar days.

(c) For the purposes of this Rule:

(1) The term "aggregate indebtedness" shall be deemed to mean the total money liabilities of a broker-dealer arising in connection with any transaction whatsoever, including, among other things: money borrowed; money payable against securities loaned and securities "failed to receive"; the market value of securities borrowed (except for delivery against customers' sales) to the extent to which no equivalent value is paid or credited; customers' free credit balances; credit balances in customers' accounts having short positions in securities; and equities in customers' commodities futures accounts; but excluding:

(aa) Indebtedness adequately collateralized, as hereinafter defined, by securities or spot commodities owned by the broker-dealer;

(bb) Indebtedness to other broker-dealers ade-

quately collateralized, as hereinafter defined, by securities or spot commodities owned by the broker-dealer;

(cc) Amounts payable against securities loaned which securities are owned by the broker-dealer;

(dd) Amounts payable against securities failed to receive which securities were purchased for the account of, and have not been sold by, the broker-dealer;

(ee) Indebtedness adequately collateralized, as hereinafter defined, by exempted securities;

(ff) Amounts segregated in accordance with the Commodity Exchange Act and the rules and regulations thereunder;

(gg) Fixed liabilities adequately secured by real estate or any other asset which is not included in the computation of "net capital" under this rule;

(hh) Liabilities on open contractual commitments; and

(ii) Indebtedness subordinated to the claims of general creditors pursuant to a satisfactory subordination agreement, as hereinafter defined.

(jj) Liability Reserves established and maintained for refunds of charges required by Section 27(d) and 27(f) of the Investment Company Act of 1940, but only to the extent of the amounts on deposit in a segregated trust account in accordance with Rule 27d-1 under the Investment Company Act of 1940.

(2) The term "net capital" shall be deemed to mean the net worth of a broker-dealer (that is, the excess of total assets over total liabilities), adjusted by:

(aa) Adding unrealized profits (or deducting unrealized losses) in the accounts of the broker-dealer and, if such broker-dealer is a partnership adding equities

(or deducting deficits) in accounts of partners, as hereinafter defined;

(bb) Deducting fixed assets and assets which cannot be readily converted into cash (less any indebtedness secured thereby) including among other things, real estate; furniture and fixtures; exchange memberships; prepaid rent, insurance and expenses; good will; organization expenses; all unsecured advances and loans; customers' unsecured notes and accounts; deficits in customers' accounts, except in bona fide cash accounts within the meaning of section 4(c) of Regulation T of the Board of Governors of the Federal Reserve System; and the funds on deposit in a "segregated trust account" in accordance with Rule 27d-1 under the Investment Company Act of 1940, but only to the extent that the amounts on deposit in such segregated trust account exceed the amount of liability reserves established and maintained for refunds of charges required by Sections 27(d) and 27(f) of the Investment Company Act of 1940. Provided, however, that the cash and market value of securities, as reduced by the appropriate percentages provided in subparagraph (cc)(iii) below, which are deposited with a clearing fund maintained by a clearing corporation or similar department or association of a national securities exchange or registered national securities association using a continuous net settlement system for the clearance and settlement of securities transactions (hereinafter called "clearing agency") need not be deducted under the provisions of this subparagraph.

(cc) Deducting the percentages specified below of the market value of all securities, long and short (except exempted securities) in the capital, proprietary and other accounts of the broker-dealer, including securities

loaned to the broker-dealer pursuant to a satisfactory subordination agreement, as hereinafter defined, and if such broker-dealer is a partnership, in the accounts of partners, as hereinafter defined:

(i) In the case of nonconvertible debt securities having a fixed interest rate and a fixed maturity date which are not in default, if the market value is not more than 5 percent below the face value, the deduction shall be 5 percent of such market value; if the market value is more than 5 percent but not more than 30 percen t below the face value, the deduction shall be a percentage of market value, equal to the percentage by which the market value is below the face value; and if the market value is 30 percent or more below the face value, such deduction shall be 30 percent;

(ii) In case of cumulative, nonconvertible preferred stock ranking prior to all other classes of stock of the same issuer, which is not in arrears as to dividends, the deduction shall be 20 percent;

(iii) In the case of a debt security not in default which as a fixed rate of interest and a fixed maturity date and which is convertible into an equity security, the deduction shall be as follows: If the market value is 90% or more of the face value, the deduction shall be 30% of the market value, but in no event shall such deduction reduce the value of such security below 80% of face value for the purposes of this section; if the market value is below the face value by more than 10% but not more than 30%, the deduction shall be a percentage of market value equal to the percentage by which the market value is below the

face value; if the market value is 30% or more below the face value, the deduction shall be 30%;

(iv) On all other securities, the deduction shall be 30 percent; provided, however, that such deduction need not be made in the case of (1) a security which is convertible into or exchangeable for other securities within a period of 30 days, subject to no conditions other than the payment of money, and the other securities into which such security is convertible, or for which it is exchangeable, are short in the accounts of such broker-dealer or partner, or (2) a security which has been called for redemption and which is redeemable within 90 days.

(dd) Deducting 30 percent of the market value of all "long" and all "short" future commodity contracts (other than those contracts representing spreads or straddles in the same commodity and those contracts offsetting or hedging any "spot" commodity positions) carried in the capital, proprietary or other accounts of the broker-dealer and, if such broker-dealer is a partnership, in the accounts of partners as hereinafter defined;

(ee) Deducting, in the case of a broker-dealer who has open contractual commitments, the respective deductions as specified in subdivision (cc) of this subparagraph, from the value (which shall be the market value whenever there is a market) of each net long and each net short position contemplated by an existing contractual commitment in the capital, proprietary and other accounts of the broker-dealer and, if such broker-dealer is a partnership, in accounts of partners as hereinafter defined: Provided, however, that this deduction shall not apply to exempted securities, and that the deduction with respect to any individual commitment

shall be reduced by the unrealized profit, in any amount not greater than the deduction provided for in subdivision (cc) of this subparagraph (or increased by the unrealized loss), in such commitment; and that in no event shall an unrealized profit on any closed transactions operate to increase net capital;

(ff) Deducting an amount equal to 1 1/2% of the market values of the total long or total short futures contracts in each commodity, whichever is greater, carried for all customers;

(gg) Excluding liabilities of the broker-dealer which are subordinated to the claims of general creditors pursuant to a satisfactory subordination agreement as herein defined; and

(hh) Deducting, in the case of a broker-dealer who is a sole proprietor, the excess of (A) liabilities which have not been incurred in the course of business as a broker-dealer over (B) assets not used in the business.

(ii) Deducting 10% of the contract price of each item in the securities failed to deliver account which is outstanding 40 to 49 calendar days; deducting 20% of the contract price of each item in the securities failed to deliver account which is outstanding 50 to 59 calendar days; and deducting 30% of the contract price of each item in the securities failed to deliver account which is outstanding 60 or more calendar days.

(3) The term "exempted securities" shall mean those securities specifically defined as exempted securities in either Section 3(a) of the Securities Exchange Act of 1934 or Section 80A.15, Subdivision 1.

(4) The term "accounts of partners", where the broker-dealer is a partnership, shall mean accounts of partners who have

agreed in writing that the equity in such accounts maintained with such partnership shall be included as partnership property;

(5) The term "contractual commitments" shall include underwriting, when-issued, when-distributed and delayed delivery contracts, endorsements of puts and calls, commitments in foreign currencies, and spot (cash) commodities contracts, but shall not include uncleared regular way purchases and sales of securities and contracts in commodities futures, a series of contracts of purchase or sale of the same security conditioned, if at all, only upon issuance may be treated as an individual commitment;

(6) Indebtedness shall be deemed to be "adequately collateralized" within the meaning of this rule, when the difference between the amount of the indebtedness and the market value of the collateral is sufficient to make the loan acceptable as a fully secured loan to banks regularly making comparable loans to broker-dealers in the community;

(7) The term "satisfactory subordination agreement" shall mean a written agreement duly executed by the broker-dealer and the lender, which agreement is binding and enforceable in accordance with its terms upon the lender, his creditors, heirs, executors, administrators, and assigns, and which agreement satisfies all of the following conditions:

(aa) It effectively subordinates any right of the lender to demand or receive payment or return of the cash or securities loaned to the claims of all present and future creditors of the broker-dealer;

(bb) The cash or securities are loaned for a term of not less than one year;

(cc) It provides that the agreement shall not be subject to cancellation by either party, and that the loan shall not be repaid and the agreement shall not be terminated,

rescinded or modified by mutual consent or otherwise if the effect thereof would be to make the agreement inconsistent with the conditions of this rule or to reduce the net capital of the broker-dealer below the amount required by this rule;

(dd) It provides that no default in the payment of interest or in the performance of any convenant or condition by the broker-dealer shall have the effect of accelerating the maturity of the indebtedness;

(ee) It provides that any notes or other written instruments evidencing the indebtedness shall bear on their face an appropriate legend stating that such notes or instruments are issued subject to the provisions of a subordination agreement which shall be adequately referred to and incorporated by reference;

(ff) It provides that any securities or other property loaned to the broker-dealer pursuant to its provisions may be used and dealt with by the broker-dealer as part of his capital and shall be subject to the risks of the business;

(gg) One copy of such agreement, and of any notes or written instruments evidencing the indebtedness, are filed, within 10 days after such agreement is entered into, with the Commissioner together with a statement of the full name and address of the lender, and the business relationship of the lender to the broker-dealer, and whether the broker-dealer carried funds or securities for the lender at or about the time the agreement was entered into.

(8) The term "customer" shall mean every person except the broker-dealer; provided, however, that partners who maintain "accounts of partners" as herein defined shall not be deemed to be customers insofar as such accounts are concerned.

(9) The term "clearing fund" shall mean a fund

established by a clearing agency to receive and hold deposits of cash or securities or both cash and securities from members of such clearing agency for use in payment, and as security for payment, of the liabilities of such members to such clearing agency, or for use in payment by the clearing agency of liabilities it has incurred as a result of its clearing and settling of securities transactions.

(10) The term "continuous net settlement system" shall mean that system for the clearing and settlement of securities transactions whereby a clearing agency: (aa) compares trade execution data submitted by members to arrive at agreed upon contract terms; (bb) on a given date nets purchases and sales of securities by a member with such member's previously unfulfilled purchase or sale obligations with respect to such securities; (cc) allocates delivery obligations as to money and securities between members and the clearing agency itself for unsettled transactions; and (dd) acts as the other party i n the settlement of cleared transactions between members with respect to both money and securities.

(d) (1) Whenever any broker-dealer subject to the requirements of paragraph (a) of this section, or exempt under paragraph (b) hereof, falls below the required net capital or fails to continue to qualify for an exemption, he shall immediately cease his operations as a broker-dealer and notify the Commissioner in writing of his failure to comply with this rule, together with an explanation of the reasons for non-compliance. Activities as a broker-dealer shall not be again commenced until the Commissioner has been provided satisfactory evidence demonstrating that the broker-dealer is in compliance with

paragraph (a), and has provided his written consent thereto.

(2) Whenever any broker-dealer subject to these rules is in violation of the net capital rules of the Securities and Exchange Commission, or any securities exchange of which he is a member, he shall notify the Commissioner of such violation in the same manner as specified in paragraph (d)(1) above.

(3) Every broker-dealer subject to the requriements of paragraph (a) of this section, or exempt under paragraph (b) shall notify the Commissioner in writing whenever his aggregate indebtedness exceeds 12 times his net capital or his net capital is less than 120 percent of the minimum required.

SDiv. 2014 (a) No agent's license shall be issued or renewed unless the agent shall have first posted with the Commissioner a surety bond in the amount of $5,000, in the case of an agent for a broker-dealer, and $5,000 in the case of an agent for an issuer, on such form as the Commissioner may prescribe.

(b) An issuer or broker-dealer may post a blanket surety bond to cover all of its agents, in lieu of the bond required by paragraph (a) of this section. A blanket bond for the agents of a broker-dealer shall be in the sum of $5,000 for each agent up to a maximum of $50,000. A blanket bond for the agents of an issuer shall be in the sum of $5,000 for each agent up to a maximum of $50,000, or ten percent of the total offering price of the registration of securities of the issuer, whichever is less.

(c) No investment adviser's license shall be issued or renewed unless the investment adviser shall have first posted with the Commissioner a surety bond in the amount of $25,000, on such form as the Commissioner may prescribe.

(d) Any appropriate deposit of cash or security shall be accepted in lieu of any bond required by this section. An appropriate deposit requires, in the case of deposited securities, that such securities have a market value equal to 120 percent of the amount of the bond which would otherwise be required, and represent an interest in, or debt of, any of the persons whose securities are exempt from registration under Minnesota Statutes, Section 80A.15, Subdivision 1, Clauses (a), (b), (c), (d) or (e). At no time shall the market value of the securities on deposit be less than 105% of the amount of the required bond. Any deposit of cash or securities under this clause shall be made with an escrow agent, and under such terms and conditions as the Commissioner deems appropriate, and shall remain with the depository for a period of three years after the last securities transaction conducted by the licensee or the effective date of any bond acquired by the licensee, whichever first occurs.

(e) The provisions of SDiv. 2014(a) and (b) do not apply to any agent employed by a broker-dealer who continuously maintains net capital of not less than $100,000.

SDiv. 2015 (a) Every broker-dealer shall maintain accounts of customers in such form and manner as to show the following information: Name, address, age and in the case of a margin or discretionary account, the customer's signature; the signature of the agent introducing the account and the signature of the broker-dealer or the partner, officer or manager accepting the account for the broker-dealer. If the customer is associated with or employed by another broker-dealer, this fact must be noted. In discretionary accounts, the broker-dealer shall also record the date said account was authorized, the occupation and signature of the customer, and the signature of each person authorized to exercise discretion in each account.

(b) Every broker-dealer shall keep and preserve in each office of supervisory jurisdiction either a separate file on all written complaints of customers and action taken by the broker-dealer, if any, or a separate record of such complaints and a clear reference to the files containing the correspondence connected with such complaint as maintained in such office. A "complaint" shall be deemed to mean any written statement of a customer or any person acting on behalf of a customer alleging a grievance involving the activities of those persons under the control of the broker-dealer in connection with the solicitation or execution of any transaction or the disposition of securities or funds of that customer.

(c) Every licensed broker-dealer shall make and keep current the following books and records:

(1) Blotters (or other records of original entry) containing an itemized daily record of all purchases and sales of securities, all receipts and deliveries of securities (including certificate numbers), all receipts and disbursements of cash and all other debits and credits. Such record shall show the account for which each such transaction was effected, the name and amount of securities, the unit and aggregate purchase or sale price (if any), the trade date, and the name or other designation of the person for whom purchased or received or to whom sold or delivered.

(2) Ledgers (or other records) reflecting all assets and liabilities, income and expense and capital accounts.

(3) Ledger accounts itemizing separately as to each cash and margin account of every customer and of such broker-dealer and partners thereof, all purchases, sales, receipts and deliveries of securities for such account and all other debits and credits to such account.

(4) Ledger (or other records) reflecting the following:

(aa) Securities in transfer;

(bb) Dividends and interest received;

(cc) Securities borrowed and securities loaned;

(dd) Monies borrowed and monies loaned (together with a record of the collateral therefor and any substitution in such collateral);

(ee) Securities failed to receive and failed to deliver.

(5) A securities record or ledger reflecting separately for each security as of the clearance dates all "long" or "short" positions (including securities in safe-keeping) carried by such dealer for his account or for the account of his customers or partners and showing the location of all securities long and the offsetting position to all securities short and in all cases the name or designation of the account in which each position is carried.

(6) A memorandum of each order, and of any order instruction, given or received for the purchase or sale of securities, whether executed or unexecuted. Such memorandum shall show the terms and conditions of the order or instructions and of any modification or cancellation thereof, the account for which entered, the time of entry, the price at which executed and, the time of execution or cancellation. Orders entered pursuant to the exercise of discretionary power by any employee shall be so designated, and each such order shall be approved by an officer or partner. The term "instruction" shall be deemed to include instructions between partners and employees of a dealer. The term "time of entry" shall be deemed to mean the time when such broker-

dealer transmits the order or instruction for execution, or, if it is not so transmitted, the time when it is received.

(7) Copies of confirmations of all purchases and sales of securities and copies of notices of all other debits and credits for securities, cash and other items for the account of customers, partners, or officers, of such broker-dealer.

(8) A record in respect of each cash and margin account with such broker-dealer, containing the name and address of the beneficial owner of such account and, in the case of a margin account, the signature of such owner; provided that, in the case of a joint account or an account of a corporation, such records are required only in respect of the person or persons authorized to transact business for such accounts.

(9) A record of all puts, calls, spreads, straddles and other options in which such broker-dealer has any direct or indirect interest or which such broker-dealer has granted or guaranteed, containing, at least, an identification of the security and the number of units involved.

(10) A record of the proof of money balances of all ledger accounts in the form of trial balances, and a record of the computation of aggregate indebtedness and net capital shall be prepared currently at least once a month.

(11) This rule shall apply to every licensed broker-dealer except that a broker-dealer meeting all of the following conditions shall be exempt from the provisions of this rule:

(aa) His dealer transactions (as principal for his own account) are limited to the purchase, sale and redemption of redeemable shares of registered investment companies;

(bb) His transactions as broker (agent) are limited to: (i) the sale and redemption of redeemable securities of registered investment companies; or of interests or participations in an insurance company separate account, whether or not registered as an investment company; (ii) the solicitation of share accounts for savings and loan associations insured by an instrumentality of the United States; and (iii) the sale of securities for the account of a customer to obtain funds for immediate reinvestment in redeemable securities of registered investment companies; and

(cc) He promptly transmits all funds and delivers all securities received in connection with his activities as a broker-dealer, and does not otherwise hold funds or securities for, or owe money or securities to, customers.

In addition to the above, the Commissioner may exempt a broker-dealer from this rule, whether or not he complies with (aa)-(cc) above, if:

(dd) The broker-dealer is a fully-disclosed correspondent of another broker-dealer licensed under this chapter, and

(ee) Both the correspondent broker-dealer and the carying broker-dealer have entered into a written agreement with the Commissioner relating to record keeping and access to records.

(12) Any broker-dealer who is subject to the provisions of this rule shall at least once in each calendar quarter-year:

(aa) physically examine and count all securities held;

(bb) account for all securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive, and failed to deliver or otherwise subject to his control or direction but not in his physical possession by examination and comparison of the supporting detail records with the appropriate ledger control accounts;

(cc) verify all securities in transfer, in transit, pledged, loaned, borrowed, deposited, failed to receive, and failed to deliver or otherwise subject to his control or direction but not in his physical possession, where such securities have been in said

status for longer than thirty days;

(dd) compare the results of the count and verification with his records; and

(ee) record on the books and records of the broker-dealer all unresolved differences setting forth the security involved and date of comparison in a security count difference account no later than seven business days after the date of each required quarterly security examination, count, and verification in accordance with the requirements provided in (paragraph (c)(3) hereof,

provided, however, that such procedures need not be carried out by the broker-dealer for the calendar quarter-year during which the date of his annual report of financial condition (pursuant to Rule 17a-5) falls; and further provided, that no examination, count, verification and comparison for the purpose of this rule shall be within two months of or more than four months following a prior examination, count, verification and comparison made hereunder.

(13) The examination, count, verification and comparison may be made either as of a date certain or on a cyclical basis covering the entire list of securities. In either case the recordation shall be effected within seven business days subsequent to the examination, count, verification and comparison of a particular security. In the event that an examination, count, verification and comparison is made on a cyclical basis, it shall not extend over more than one calendar quarter-year, and no security shall be examined, counted, verified or compared for the purpose of this rule less than two months or more than four months after a prior examination, count, verification and comparison.

(d) Every broker-dealer shall preserve all records required by this SDiv. 2015 for a period of not less than three

years, the first two years in an easily accessible place and form. After the first two years, a photograph on film may be substituted for the records for the balance of the required time.

SDiv. 2016 (a) Every investment adviser shall make and keep true, accurate and current the following books and records relating to his investment advisory business:

(1) a journal or journals, including cash receipts and disbursements records, and any other records of original entry forming the basis of entries in any ledger;

(2) general and auxiliary ledgers (or other comparable records) reflecting asset, liability, reserve, capital, income and expense accounts;

(3) a memorandum of each order given by the investment adviser for the purchase or sale of any security, a memorandum of any instruction received by the investment adviser from the client concerning the purchase, sale, receipt or delivery of a particular security, and a memorandum of any modification or cancellation of any such order or instruction. Such memoranda shall show the terms and conditions of the order, instruction, modification or cancellation; shall identify the person connected with the investment adviser who recommended the transaction to the client and the person who placed such order, and shall show the account for which entered, the date of entry, and the bank, broker-dealer by or through whom executed where appropriate. Orders entered pursuant to the exercise of discretionary power shall be so designated;

(4) all check books, bank statements, cancelled checks and cash reconciliation of the investment adviser;

(5) all bills or statements (or copies thereof), paid or unpaid, relating to the business of the investment adviser as such;

(6) all trial balances, financial statements and internal audit working papers relating to the business of such investment adviser;

(7) originals of all written communications received and copies of all written communications sent by such investment adviser relating to:

(aa) any recommendation made or proposed to be made and any advise given or proposed to be given;

(bb) any receipt, disbursement or delivery of funds or securities; or

(cc) the placing or execution of any order to purchase or sell any security; provided, however,

(i) that the investment adviser shall not be required to keep any unsolicited market letters and other similar communications of general public distribution not prepared by or for the investment adviser, and

(ii) that if the investment adviser sends any notice, circular or other advertisement offering any report, analysis, publication or other investment advisory service to more than 10 persons, the investment adviser shall not be required to keep a record of the names and addresses of the persons to whom it was sent, except that if such notice, circular or advertisement is distributed to persons named on any list, the investment adviser shall retain with the copy of such notice, circular or advertisement a memorandum describing the list and the source thereof.

(8) a list or other records of all accounts in which the investment adviser is vested with any discretionary power with respect to the funds, securities or transactions of any client;

(9) all powers of attorney and other evidences of the granting of any discretionary authority by any client to the investment adviser, or copies thereof;

(10) all written agreements (or copies thereof) entered into by the investment adviser with any client or otherwise relating to the business of such investment adviser as such;

(11) a copy of each notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication recommending the purchase or sale of a specific security, which th e investment adviser circulates or distributes, directly or indirectly, to 10 or more persons (other than investment supervisory clients or persons connected with such investment adviser), and if such notice, circular, advertisement, newspaper article, investment letter, bulletin or other communication does not state the reasons for such recommendation a memorandum of the investment adviser indicating the reasons therefor;

(12) a record of every transaction in a security in which the investment adviser or any advisory representative (as hereinafter defined) of such investment adviser has, or by reason of such transaction acquires, any direct or indirect beneficial ownership, except (aa) transactions effected in any account over which neither the investment adviser nor any advisory representative of the investment adviser has any direct or indirect influence or control; and (bb) transactions in securities which are direct obligations of the United States. Such record shall state the title and amount of the security involved; the date and nature of the transaction (i.e., purchase, sale or other acquisition or disposition); the price at which it was effected, and the name of the broker-dealer or bank with or through whom the

transaction was effected. Such record may also contain a statement declaring that the reporting or recording of any such transaction shall not be construed as an admission that the investment adviser or advisory representative has any direct or indirect beneficial ownership in the security. A transaction shall be recorded not later than 10 days after the end of the calendar quarter in which the transaction was effected. For the purposes of this paragraph, the term "advisory representative" shall mean any partner, officer or director of the investment adviser; any employee who makes any recommendation, who participates in the determination of which recommendation shall be made, or whose functions or duties relate to the determination of which recommendation shall be made; any employee who, in connection with his duties, obtains any information concerning which securities are being recommended; and any person in a control relationship to the investment adviser who obtains information concerning securities recommendations being made by such investment adviser other than as a regular client of such investment adviser. An investment adviser shall not be deemed to have violated the provisions of this paragraph because of his failure to record securities transactions of any advisory representative if he establishes that he instituted adequate procedures and used reasonable diligence to obtain promptly reports of all transactions required to be recorded.

(b) If an investment adviser subject to paragraph (a) of this regulation has custody or possession of securities or funds of any client, the records required to be made and kept under paragraph (a) above shall include:

(1) a journal or other record showing all purchases, sales, receipts and deliveries of securities (including certificate numbers) for such accounts and all other debits and

credits to such accounts;

(2) a separate ledger account for each such client showing all purchases, sales, receipts and deliveries of securities, the date and price of each such purchase and sale, and all debits and credits;

(3) copies of confirmations of all transactions effected by or for the account of any such client;

(4) a record for each such security in which any such client has a position, which record shall show the name of each such client having any interest in such security, the amount or interest of each such client, and the location of each such security;

(c) Every investment adviser subject to paragraph (a) of this regulation who renders any investment supervisory or management service to any client shall, with respect to the portfolio being supervised or managed and to the extent that the information is reasonably available to or obtainable by the investment adviser, make and keep true, accurate and current:

(1) records showing separately for each such client the securities purchased and sold, and the date, amount and price of each such purchase and sale;

(2) for each security in which any such client has a current position, information from which the investment adviser can promptly furnish the name of each such client, and the current amount or interest of such client;

(d) Any books or records required by this regulation may be maintained by the investment adviser in such manner that the identity of any client to whom such investment adviser renders investment supervisory services is indicated by numerical or alphabetical code or some similar designation. Such code or designation shall be made available to the Commissioner upon demand.

(e) (1) All books and records required to be made under the provisions of paragraphs (a), (b) and (c), inclusive, of this regulation shall be maintained and preserved in an easily accessible place for a period of not less than three years from the end of the fiscal year during which the last entry was made on such record, the first two years in an appropriate office of the investment adviser.

(2) Partnership articles and any amendments thereto, articles of incorporation, charters, minute books, and stock certificate books of the investment adviser and of any predecessor, shall be maintained in the principal office of the investment adviser and preserved until at least three years after termination of the enterprise.

(f) An investment adviser subject to paragraph (a) of this regulation, before ceasing to conduct or discontinuing business as an investment adviser, shall arrange for and be responsible for the preservation of the books and records required to be maintained and preserved under this rule for the remainder of the period specified in this regulation, and shall notify the Commissioner in writing the exact address where such books and records will be maintained during such period.

(g) After a record or other document has been preserved for two years, a photograph on film may be substituted for the balance of the required time.

(h) (1) Any book or other record made, kept, maintained and preserved in compliance with the Rules under the Securities Exchange Act of 1934, which is substantially the same as the book or other record required to be made, kept, maintained and preserved in compliance with this regulation, shall be deemed to be made, kept, maintained and preserved in compliance with this regulation.

(2) A record made and kept pursuant to any provision of paragraph (a) of this regulation, which contains all

the information required under any provision of paragraph (a), need not be maintained in duplicate in order to meet the requirements of the other provision of paragraph (a) of the regulation.

(i) As used in this regulation, the term "discretionary power" shall not include discretion as to the price at which or the time when a transaction is or is to be effected if, before the order is given by the investment adviser, the client has directed or approved the purchase or sale of a particular security.

SDiv. 2017 (a) Every broker-dealer shall, within 90 days following the close of its fiscal year, submit an annual report to the Commissioner in such form, and containing such information as the Commissioner shall prescribe. At a minimum, the report shall contain audited financial statements certified by an independent certified public accountant consisting of a balance sheet, income statement, and reconciliation of surplus prepared in accordance with generally accepted accounting principles.

(b) Any report required to be filed with the Securities and Exchange Commission which contains essentially the same information as the Commissioner shall prescribe under paragraph (a) may be filed in lieu of the form required by paragraph (a).

(c) The Commissioner may at any time require such report as he deems necessary to determine whether the broker-dealer is in compliance with the net capital requirement and aggregate indebtedness limitation of these rules.

(d) As a condition of granting any license, the Commissioner may, by order, impose a more frequent reporting requirement upon any broker-dealer.

SDiv. 2018 Every application for registration by coordination shall be accompanied by a copy of the warrant or option to the underwriter and any agreements pursuant thereto, if the underwriter is to receive a warrant or option.

SDiv. 2019 (a) Except as provided in Minnesota Statutes, Section 80A.15, Subdivision 2(i), and except for negotiations with and among underwriters and members of a selling group, in connection with any offering made pursuant to Minnesota Statutes, Section 80A.11 a prospectus or offering circular complying with the provisions of Minnesota Statutes, Section 80A.11, Subdivision 2, shall be given to each person to whom an offer is made before or concurrently with (1) the first written offer made to him (otherwise than by means of a public advertisment) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by him as a participant in the distribution, (2) the confirmation of any sales made by or for the account of any such person, (3) payment pursuant to any such sale, or (4) delivery of the security pursuant to any such sale, whichever first occurs. An underwriter or broker-dealer is deemed to be offering part of an unsold allotment or subscription taken by him as a participant in the distribution in connection with any transaction executed by him prior to the expiration of 40 days after the effective date of the registration statement or the first date upon which a bona fide offer of the security was made to the public by the issuer or by or through an underwriter after such effective date, whichever is later, or, with respect to securities of an issuer which have not previously been sold pursuant to an earlier effective registration statement, prior to the expiration of 90 days after such date.

(b) For the purpose of this section, the following terms shall have the meanings herein ascribed to them:

(1) "Offering circular" means an offering circular complying with the requirements of Rule 256 and Form 1-A under the Securities Act of 1933.

(2) "Prospectus" means any prospectus, notice, circular, advertisement, letter, or communication, written or by radio or

television, which offers any security for sale or confirms the sale of any security; except that (aa) a communication sent or given after the effective date of the registration statement (other than a prospectus permitted under Subsection (b) of Section 10 of the Securities Act of 1933) shall not be deemed a prospectus if it is proved that prior to or at the same time with such communication a written prospectus (meeting the requirements of Minnesota Statutes, Section 80A.11, Subdivision 2, at the time of such communication) was sent or given to the person to whom the communication was made, and (bb) a notice, circular, advertisement, letter, or communication in respect of the security shall not be deemed to be a prospectus if it states from whom a written prospectus meeting the requirements of Section 80A.11, Subdivision 2 may be obtained and, in addition, does no more than identify the security, state the price thereof, state by whom orders will be executed, and contain such other information as the Commissioner deems necessary or appropriate in the public interest and for the protection of investors.

(3) "Underwriter" means any person who has purchased from an issuer with a view to, or offers or sells for an issuer in connection with, the distribution of any security, or participates or has a direct or indirect participation in any such undertaking, or participates or has a participation in the direct or indirect underwriting of any such undertaking; but such terms shall not include a person whose interest is limited to a commission from an underwriter or broker-dealer not in excess of the usual and customary distributor's or seller's commission.

(c) A prospectus or offering circular does not comply with the provisions of Minnesota Statutes, Section 80A.11, if the issuer or other person on whose behalf the offering is being made, or any broker-dealer or underwriter is offering part of an unsold allotment and;

(1) any material change has occurred in the information contained in the prospectus or offering circular and the prospectus or offering circular has not been updated to reflect such change; or

(2) the prospectus or offering circular is more than nine months old, except in the case of a prospectus or offering circular for stock option plans or stock purchase plans in which case the prospectus shall be no more than twelve months old.

SDiv. 2020 (a)(1) As a condition of registration of securities by an issuer, restrictions on transferability of all cheap stock owned by officers, directors, or persons owning greater than ten (10) percent of the then outstanding stock of the issuer, may be required. The restrictions on transferability may be by means of escrow of shares, legending of share certificates, or by other means, as may be determined by the Commissioner upon the facts and circumstances of each case to be necessary for the protection of public investors, or by any combination of the foregoing.

(2) The Commissioner shall determine conditions of escrow which he deems applicable whenever escrow of securities may be necessary, and shall prescribe forms embodying such conditions of escrow. The Commissioner may prescribe additional conditions applicable to each particular case which shall be typed upon the form in space provided, or upon separate sheets which shall be attached to and made a part of the prescribed form. All escrow agreements shall be prepared on forms so prescribed by the Commissioner. The Commissioner shall require that the escrow agent be a national bank, a state bank, or a trust company.

(3) Whenever an escrow is required by the Commissioner, he shall be deemed a party to the agreement.

(b) When used in this rule or in any escrow agreement entered into pursuant to this rule, unless the context otherwise requires:

(1) Accepted for filing means a written notation on the

agreement that it is accepted for filing by the Commissioner and will be incorporated by reference in the order for registration.

(2) Conditions of escrow means those conditions specified in the escrow agreement which must be performed by the designated signatory thereto before the escrowed shares or any property deposited into escrow pursuant to the escrow agreement or supplemental escrow agreement may be released from escrow.

(3) Deposited in escrow means the delivery by or on behalf of a depositor to the escrow agent of any certificates, instruments, documents or other evidence of title, evidencing ownership in securities required to be escrowed by terms of the escrow agreement.

(4) Depositor means (aa) any person whose securities are deposited in escrow pursuant to an escrow agreement signed by him, or (bb) any other person who, because of subsequent transactions by any depositor, becomes entitled to escrowed shares upon release from escrow.

(5) Escrow agent means an independent corporate fiduciary acceptable to the Commissioner and signatory to the escrow agreement who receives securities for deposit in escrow pursuant to the terms and conditions of the escrow agreement.

(6) Escrow agreement means an agreement, in form and content prescribed by the Commissioner, executed by the escrow agent and all depositors and noted by the Commissioner as accepted for filing.

(7) Escrowed shares means all securities, including all rights and title to and interests therein, deposited in escrow pursuant to the escrow agreement or any supplemental escrow agreement.

(8) Issuer means the issuer as defined in Minnesota Statutes, Section 80A.14(i), whose securities are proposed to be offered or offered for sale to public investors purusant to an order of registration.

(9) Price paid by depositors means the amount in cash or other tangible assets having an established market value paid to the issuer for the depositors' shares.

(10) Price paid by public investors means the aggregate offering price of all securities sold in an offering registered under the act.

(11) Public investors include (aa) all holders of securities issued or purchased pursuant to registration under the act, and (bb) all holders of securities issued or purchased in any transaction exempt from registration which transaction occurred subsequent to a registration for which shares were required to be escrowed.

(12) Receipt for escrowed shares means a receipt, which may be included in the escrow agreement or supplemental escrow agreement, signed by the escrow agent and delivered to the Commissioner, which receipt describes the escrowed shares or any authorized dividend and certifies that the escrowed shares or any authorized dividend with respect thereto have been deposited in escrow.

(13) Release of escrowed shares means the delivery of escrowed shares by the escrow agent to any person thereto entitled by terms of the escrow agreement for purposes therein specified.

(14) Securities purchased by public investors include all securities outstanding by reason of issuance pursuant to registration or by reason of issuance in a transaction exempt from registration subsequent to registration.

(15) Supplemental escrow agreement means an agreement between escrow agent and depositors whereby all rights to authorized dividends with respect to escrowed shares are deposited in escrow pursuant to the conditions of escrow contained in the escrow agreement.

(16) Term of escrow means the duration of time within

which the condition of escrow must be performed before the escrow agent may release the escrowed shares.

SDiv. 2021 (a) Where the Commissioner determines that protection of public investors requires that all or some portion of cheap stock be deposited in escrow, he shall so notify the issuer or depositors, specifying the additional terms and conditions to be included in the agreement. The issuer or depositors shall then prepare, on forms prescribed by the Commissioner, and submit for approval a proposed escrow agreement.

(b) Upon notification by the Commissioner that the proposed escrow agreement is approved as to form, the depositors and escrow agent shall execute an original and such copies of the approved escrow agreement as may be necessary, and shall file the same with the Commissioner. An original of said escrow agreement will remain on file with the Commissioner, and copies noted as accepted for filing will be returned to the issuer. No securities shall be registered until an executed original of the escrow agreement is filed with the Commissioner. The conditions of the escrow agreement shall be incorporated by reference in the order of registration: and escrowed securities shall be subject to the continuing jurisdiction of the Commissioner until he orders termination of the escrow.

(c) The Commissioner in his discretion may remove the conditions and restrictions imposed by this chapter from any part or all of the escrowed shares when he deems such removal justifiable or when he deems that the circumstances under which the conditions and restrictions were imposed no longer exist. Events warranting a consideration of the circumstances with regard to the foregoing determination include, but are not limited to, the following:

(1) The need of a depositor for funds to meet emergency needs which were not readily foreseeable at the time of registration and which cannot otherwise be satisfactorily met, provided release from escrow would not result in substantial detriment to public investors.

(2) Upon receipt by public investors of cash and/or actively traded securities of another corporation of a market value

at least equal to the price paid by the public investors pursuant to bona fide arm's length negotiations with an independent third person for the sale of substantially all the assets of the issuer or in connection with a merger or consolidation.

(3) Whenever the issuer has demonstrated annual net earnings, after taxes, determined in accordance with generally accepted accounting principles and excluding extraordinary items, during any two consecutive years after the date of the order of registration, of at least five percent (5%), on an amount determined by multiplying the number of outstanding shares of the issuer by the average price per share paid by public investors.

(4) When, upon proposal of merger and consolidation or other organic change, a depositor exercised his rights under Minnesota Statutes, Sec. 301.40 (1971) or Minnesota Statutes, Sec. 301.44 (1971), provided that, in the opinion of the Commissioner, the proposed manner of sale of the escrowed shares does not tend to work fraud or inequity on other shareholders, present or proposed.

SDiv. 2022 (a)(1) Where the offering of securities is not firmly underwritten, and in the opinion of the Commissioner, the protection of public investors so requires, the Commissioner may requir as a condition of registration that all or a portion of the proceeds from the sale of the securities registered shall be impounded with an impoundment agent satisfactory to the Commissioner. In cases where the offering of the securities is not firmly underwritten, the Commissioner shall require, unless reason for exception can be demonstrated, that the proceeds be impounded. The conditions of impoundment shall be determined by the Commissioner in each case.

(2) The Commissioner shall determine conditions of impoundment which he deems applicable to all impoundment agreements, and shall prescribe forms embodying such general conditions. The Commissioner may prescribe additional conditions applicable to each particular case, which shall be typed upon the form in space provided or upon separate sheets which shall be attached to and made a part

of the prescribed form. All impoundment agreements shall be prepared on forms so prescribed by the Commissioner. Upon notification by the Commissioner of the additional terms and conditions of impoundment, the issuer shall submit a proposed impoundment agreement for approval as to form. Upon notification by the Commissioner that the impoundment agreement is approved as to form, the issuer, the impoundment agent and any agent or underwriter shall execute an original and such copies of the impoundment agreement as may be necessary, and shall file the same with the Commissioner. An original of said impoundment agreement will remain on file with the Commissioner, and copies noting acceptance for filing will be returned to the issuer. No securities shall be registered until an executed original of the impoundment agreement is filed with the Commissioner. The Commissioner shall require that the impoundment agent be a national bank, a state bank, or a trust company.

(3) The conditions of the proceeds impoundment agreement shall be incorporated by reference in the order of registration, and impounded proceeds shall be subject to the continuing jurisdiction of the Commissioner until he directs termination of the impoundment.

(b) Definitions. When used in this chapter of these regulations or in any proceeds impoundment agreement entered into pursuant to these regulations, unless the context otherwise requires:

(1) Conditions of impoundment means those conditions specified in the impoundment agreement which must be performed before any issuer or impoundment agent may apply to the Commissioner for termination of the impoundment agreement and the release of impounded proceeds.

(2) Impoundment means the receipt by the impoundment agent of all proceeds from the sale of securities subject to the impoundment agreement, whether sold by the issuer, by an agent for the issuer or by any underwriter.

(3) Impoundment agent means an independent corporate fiduciary which will impound all proceeds from sale of securities

subject to the impoundment agreement according to the conditions and for the term of the impoundment agreement.

(4) Impoundment agreement means an agreement, accepted by the Commissioner for filing, and executed by the impoundment agent, the issuer, and any underwriter or agent engaged in the sale of securities subject to the impoundment agreement, specifying the conditions and term of impoundment.

(5) Proceeds include all valuable consideration given by any person in connection with the purchase of any securities subject to the impoundment agreement.

(6) Release of impounded proceeds means release of the impounded proceeds by the impoundment agent at the direction of the Commissioner to any person entitled thereto according to the terms of the impoundment agreement.

(7) Securities subject to the impoundment agreement means all securities sold pursuant to an order of registration which requires the impoundment of proceeds.

(8) Subscribers include all persons who subscribe for securities subject to the impoundment agreement and deliver payment therefor.

(9) Terms of impoundment means the number of days, specified in the impoundment agreement, beginning from date of order or registration, within which the issuer or any agent or underwriter must sell the securities subject to the impoundment agreement in order to meet the minimum conditions of impoundment relating to the amount of proceeds.

(10) Termination of impoundment means a written authorization by the Commissioner directing the impoundment agent to terminate the impoundment and to release the impounded proceeds.

SDiv. 2023 (a) The Commissioner shall authorize the impounding agent to terminate the impoundment and release the impounded proceeds to the issuer when the full amount specified in the impoundment agreement has been impounded, and any other conditions to such release

have been satisfied, unless there have been material changes in the plan of operation or in other material circumstances that would render the amount of impounded proceeds inadequate to finance the proposed plan of operation, or unless such other material changes have occurred as would render the representations contained in the prospectus by which securities were offered for sale to be fraudulent, false or materially misleading.

(b) An application to the Commissioner for authorization to terminate the impoundment and release the impounded proceeds shall contain:

(1) a statement of the issuer and any agent or underwriter engaged in the sale of securities subject to the impoundment agreement, setting forth the number of securities sold, and stating that all proceeds from the sale of the securities subject to the impoundment agreement have been delivered to the impoundment agent in accordance with the terms and conditions of the impoundment agreement, and that there have been no material adverse changes in the financial condition of the issuer or in other circumstances that would render the amount of impounded proceeds inadequate to finance the proposed plan of operations and that there have been no other material changes which would render the representations contained in the prospectus or offering circular to be fraudulent, false or materially misleading; and

(2) a statement of the impoundment agent signed by an appropriate officer setting forth the aggregate amount and the date received of the impounded proceeds; and

(3) such other information as the Commissioner may require in a particular case.

SDiv. 2024 (a) So long as a registration statement is effective, the person filing the registration statement shall file three quarterly reports in such form, and containing such information as the Commissioner prescribes. At a minimum, the quarterly report shall contain the following information:

(1) The date of the report and quarterly period covered by the report;

(2) The exact name of the registrant;

(3) The state or other jurisdiction of incorporation or organization;

(4) The address of the principal executive offices;

(5) The telephone number of the registrant;

(6) A balance sheet, income statement, statement of changes in financial position (none of which need be audited), and such other disclosure as may be needed to make the statements not misleading, all of which may be waived;

(7) A description of all sales of unregistered securities made within the quarterly period covered by the report including:

(aa) The type of securities sold, and the date of sale;

(bb) The number and dollar amount of securities sold;

(cc) The persons or class of persons to whom such securities were sold;

(dd) The market price of the securities sold on the date of sale, if applicable;

(ee) The name of any broker-dealer or agent participating in such sale, and the amount of commissions or other remuneration paid, if applicable;

(ff) The exemptions claimed for any such sales; and

(gg) Whether the securities have been legended and if stop transfer instructions have been placed on said securities, and if no restrictions, the reasons therefor.

(8) A description of all securities of the registrant repurchased or otherwise reacquired by the registrant within the quarterly period covered by the report; and

(9) The names and addresses of all officers and directors, or persons occupying similar status or performing similar functions if such information has changed since the most recent report (whether it was a quarterly report or an annual report).

(b) Any registrant filing quarterly reports under the Securities Exchange Act of 1934 or the Investment Company Act of 1940 may file, in lieu of the report required by Subdivision 1 of this Section, a duplicate of the quarterly report filed with the Securities and Exchange Commission.

(c) The quarterly report shall be filed within 45 days following the end of each quarter of each fiscal year except for the final quarter of the issuer's fiscal year, for which no quarterly report need be filed, unless an extension of time is granted by the Commissioner for good cause shown.

SDiv. 2025 (a) Except as provided in paragraph (c) of this section, within 30 days after the end of each six month period following the effective date of the registration statement under Minnesota Statutes, Section 80A.11, the issuer or other person for whose account the securities covered by such registration statement are offered or sold except for registered investment companies, shall file a report of sales in such form as the Commissioner shall prescribe. A final report containing the same information required by such form shall be made upon completion or termination of the offering and may be made prior to the end of the six month period in which the last sale is made.

(b) Any registrant filing reports with the Securities and Exchange Commission which contains substantially the same information as is required by the form prescribed by the Commissioner and which are filed at substantially the same time as the report required by paragraph (a) of this section is required to be filed may file, in lieu of the report required by the Commissioner's form, the report filed with the Securities and Exchange Commission.

(c) If, by the terms of the order for registration, the offering period or the term of any impoundment agreement entered into in connection with the registration is less than six months, the final report required by paragraph (a) of this section shall be filed within 10 days after the date the offering or impoundment agreement terminates pursuant to the order of registration.

SDiv. 2026 So long as a registration statement is effective, within 150 days of the end of the fiscal year, the registrant shall distribute an annual report to all shareholders. Said annual report shall contain a balance sheet, income statement, statement of changes in financial position, all of which must be audited by an independent certified public accountant with his opinion expressed thereon, and such other information as may be necessary for complete disclosure.

SDiv. 2027 (a) So long as a registration statement is effective, the issuer shall file an annual report in such form, and containing such information as the Commissioner prescribes. At a minimum, the annual report shall contain the following:

(1) The date of the report and fiscal year covered by the report;

(2) The exact name of the issuer;

(3) The state or other jurisdiction of incorporation or organization;

(4) The address of the issuer's principal executive offices;

(5) The telephone number of the issuer;

(6) A description of all sales of unregistered securities made within the fiscal year covered by the report including:

(aa) The type of securities sold;

(bb) The number and dollar amount of securities sold;

(cc) The persons or class of persons to whom such securities were sold;

(dd) The market price of the securities sold on the date of sale, if applicable;

(ee) The name of any broker-dealer or agent participating in such sale, and the amount of commissions or other remuneration paid, if applicable; and

(ff) The exemptions claimed for any such sales;

(7) A description of all securities of the issuer repurchased or otherwise reacquired by the issuer within the fiscal year covered by the report;

(8) The names and addresses of all officers and directors, or persons occupying similar status or performing similar functions;

(9) A description of the business of the issuer, including its products and services, competitive conditions, sources of supply, the number and general function of employees, its market area, and any other factors which materially affect the business or operations of the issuer;

(10) A summary of operations for the fiscal year covered by the report including, without limitation, gross revenues, cost of goods sold or services provided, net income, debt service and earnings per share of each class of equity security outstanding, together with a comparison of similar figures for the fiscal year preceding the fiscal year covered by the report. The comparison required by this paragraph may be presented in columnar form;

(11) A brief description of the location and general character of plants, mines and other materially important physical properties of the issuer;

(12) A description of any material legal proceedings pending against the company;

(13) An explanation of any increase or decrease in the number of outstanding securities, in any class, of the issuer;

(14) The approximate number of holders of record of each outstanding class of equity securities;

(15) A list in tabular form of the name and address of each executive officer, and any person known to the issuer who beneficially owns 10 percent or more of any class of outstanding voting securities of the issuer, showing for each the title of the class owned, the type of ownership, the amount owned and the percent of class owned;

(16) A list in tabular form of the amount of remuneration received and the capacity in which such remuneration was received for each executive officer and director;

(17) A list and description of the number and exercise price of all options outstanding which are beneficially owned by any officer or director;

(18) A description of any transactions in the last fiscal year or any currently pending transaction to which the issuer or any of its subsidiaries was a party and in which any director, officer, ten percent shareholder or any affiliate had or will have a direct or indirect material interest, and a description of the nature of such interest; and

(19) Financial statements complying with the requirements of SDiv.2032 of these regulations.

(b) Any issuer filing annual reports under the Securities Exchange Act of 1934 or the Investment Company Act of 1940 may file, in lieu of the report required by paragraph (a) of this section, a duplicate copy of the annual report filed with the Securities and Exchange Commission.

(c) The annual report required by this section shall be filed on or prior to the 90th day (or 120th day in the case of issuers registered under the Investment Company Act of 1940) following the close of the issuer's fiscal year, except that if the information required by item (19) is not reasonably available at such time, such information may be filed on or before the 150 day following the close of the issuer's fiscal year.

SDiv 2028 Application

Regulations under this Section of the Act are divided into separate subchapters based upon the type of security involved. However, SDiv 2029 - 2041 shall apply to all securities, and should be followed in all instances unless they are inconsistent with another regulation in the appropriate subchapter for the type of security proposed to be registered. In that instance, the subchapter requirements will apply. Reg. 2028 to 2109 shall not apply to securities or transactions exempted by Minnesota Statutes, 1973 Supplement, Section 80A.15, Subdivisions 1 or 2, nor shall they apply to securities

registered by notification.

Subchapter 1 Equity Securities Regulation SDiv 2029-2041

Subchapter 2 Senior Securities Regulation SDiv 2042-2046

Subchapter 3 Investment Companies Regulation SDiv 2047-2057

Subchapter 4 Real Estate Limited Partnerships SDiv 2058-2066

Subchapter 5 Oil and Gas Programs SDiv 2067-2080

Subchapter 6 Cattle Feeding ~~and Breeding~~ Programs SDiv 2081-2089

Subchapter 7 Real Estate Investment Trusts SDiv 2090-2109

Subchapter 1 - Equity Securities

SDiv 2029 Minimum Investment Required

(a) Unless an issuer or its predecessors has demonstrated profitable operations for two of the three fiscal years prior to registration, determined in accordance with generally accepted accounting principles, after taxes, and excluding extraordinary items, the "fair value of the equity investment" of such issuer shall be at least 15% of the "total equity investment" which would result from the sale of all of the securities proposed to be offered.

(b) "Fair value of the equity investment" shall mean the higher of:

(1) the total of all sums irrevocably conveyed to the issuer in cash, together with the reasonable value of all tangible assets of established market value irrevocably conveyed to the issuer; or

(2) the total shareholders equity as set forth in a certified balance sheet prepared in accordance with SDiv less the value assigned to any intangible assets, or assets which do not have an established market value.

(c) "Total equity investment" shall mean the sum of:

(1) The "fair value of the equity investment," plus

(2) The gross amount to be raised in the proposed offering, without dimunition for sales commissions or expenses of any kind.

(d) In determining compliance with this subchapter, the Commissioner may recognize the appraised value of the issuer's real property. In no event will the appraised value, if higher

than the acquisition cost, be considered unless the following has occurred:

Since acquisition of the property, at least one of the following has occurred and it reasonably indicates that a material increase in the value thereof has resulted:

(1) erection of a structure on the land;

(2) substantial improvements to existing structures located on the realty;

(3) rezoning to a broader zone;

(4) availability of utility services previously unavailable to the property, but excluding such normal utilities as telephone, normal electric and normal gas. Examples of the utilities but without being limited as to the general type thereof are water, sewer, highline service and trackage.

(5) a material change in the nature of the surrounding property;

(6) elimination of an element that had a derogatory influence on the value of the subject property, (e.g., covering of a dump);

(7) the existence of any other element, appropriately documented, that would normally indicate a substantial increase in the value of the property.

(8) holding of the property for at least twenty-four (24) months prior to the application for registration.

The utilization of an appraisal value in determining whether the minimum equity investment has been made lies within the sole discretion of the Commissioner. The Commissioner may require, at the issuer's expense, an independent appraisal by a qualified real estate appraiser selected by the Commissioner prior to rendering his decision regarding recognition of the appraised value. This appraisal may be in addition to any independent appraisals that may have been made at the issuer's request prior to filing the application.

If the Commissioner permits the appraised value to be used for the purposes of complying with the minimum equity investment, that appraised value may not be reflected in any form, either in the prospectus or in the issuer's financial statements or any footnotes thereto, unless required to conform with generally accepted accounting principles.

(e) If the offering is of the "minimum-maximum" type, the minimum investment required by subdivision 1 of this regulation shall be met in all situations comtemplated by the offering.

SDiv 2030 Cheap Stock

(a) The quantity of cheap stock, expressed as a percentage of the total number of shares to be outstanding after the proposed offering, shall not exceed the following percentages, depending on the "fair value of the equity investment" as defined in SDiv 2029(b):

Equity Investment	Cheap Stock
15%	30%
20%	40%
30%	60%
40%	80%
45%	90%

In the case of a "minimum-maximum" offering, the allowable ratio, of 1 to 2, between the fair value of the equity investment and stock shall not be exceeded at any time.

(b) Cheap stock means securities:

(1) issued in consideration of property tangible or intangible, or services, the value of which has not been reasonably established, or

(2) issued at a price substantially less than the public offering price of the securities and which can not be justified with reference to the existence of an active public market for such securities. Securities issued at a price substantially less than the public offering price of the securities means:

(aa) securities issued for less than 66 2/3% of the public offering price if the securities were issued less than one year prior to registration:

(bb) securities issued for less than 50% of the public offering price if the securities were issued two years prior to registration;

(cc) securities issued for less than 33 1/3% of the public offering price if the securities were issued more than two years but less than three years prior to registration.

In the case of unexercised options, or other securities convertible into the same class of security as that proposed to be offered, the aggregate of the cash amount paid and the cash amount required to be paid pursuant to the conversion or exercise privilege shall be divided by the number of shares issuable upon conversion or exercise to determine whether the securities were "issued at a price substantially less than the public offering price."

(c) Cheap stock does not include securities which have been outstanding more than three years at the time of the proposed registration, if the issuer had been in active, continuous business operation for more than three years immediately prior to the proposed registration.

SDiv 2031 Employee and Director's Options and Other Forms of Compensation through Securities.

(a) Outstanding options to employees and directors shall not exceed 12% of the to be outstanding common shares of the issuer.

(b) Options to employees and directors shall be qualified options, as defined in Section 422 (b) of the Internal Revenue Code of 1954, as amended, except as provided in (c) below.

(c) Options to employees may be non-qualified, provided that:

(1) such non-qualified options do not exceed 5% of the to be outstanding common shares of the issuer;

(2) the exercise price shall be no less than 100% of the fair market value on the date of grant;

(3) no such options are granted to any individual who, immediately after such option is granted, owns stock possessing more than 10% of the total combined voting power or value of all classes of stock of the issuer;

(4) the grant of such options would not cause the 12% limitation set forth in (a) above to be exceeded.

(d) Issuers shall represent, either in the prospectus or offering circular, that so long as their securities are registered in this state, the above limitations will not be exceeded.

(e) No shares shall be issued to employees or directors unless they shall have paid fair market value therefor, in cash, other than pursuant to the above provisions or pursuant to a stock purchase plan qualifying under Section 423 of the Internal Revenue Code of 1954, as amended, or unless they are issued under the same terms and conditions as shares are issued to all holders of the same class of securities of the corporation.

(f) Nothing in the above shall prohibit simultaneous granting of a qualified and non-qualified option to the same individual so long as he or she qualifies for both under the terms set forth above and so long as the maximum number of shares which may be granted under both options does not cause any of the above percentage limitations to be exceeded.

SDiv. 2032 Options, Warrants and Cheap Stock to Under-Writers

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

(a) The issuer shall either:

(1) not have a public market for its securities, or

(2) not have previously issued options, warrants or cheap stock to any underwriter in connection with more than one public offering of its securities.

(b) The securities may be issued only to a managing underwriter, and no securities may be issued in connection with a best efforts underwriting unless the entire issue is sold, provided however, that securities may be issued in connection with a "minimum-maximum" offering if the amount to be issued is pro-rated depending on the amount of the underwriting which is sold.

(c) Neither the exercise of the options or warrants, nor the resale, transfer, or assignment (except as provided in (d) below) of any cheap stock, may be accomplished for a period of one year from the completion of the public offering.

(d) The securities shall be non-transferable except by will, pursuant to the laws of descent and distribution, or pursuant to the operation of laws, provided, however, the securities may be transferred without payment therefore to:

(1) partners of the underwriter if the underwriter is a partnership,

(2) persons who are both officers and shareholders of the underwriter if the underwriter is a corporation, or

(3) employees of the underwriter.

(e) The initial exercise price of the options or warrants is at least equal to the public offering price plus either:

(1) seven percent (7%) each year they are outstanding, commencing one year after issuance, so that the exercise price throughout the second year is 107%, throughout the third year 114%, throughout the fourth year 121%, and throughout the fifth year 128%, or

(2) twenty percent (20%) at any time after one year from the date of issuance.

(f) The anti-dilution provisions of the securities, or the agreement under which the securities are to be issued, shall give no greater protection, rights or adjustments to the underwriter than are given the public purchasers in the proposed offering. Normally, adjustments in the exercise price or the number of shares

should occur only in the cases of stock splits (both "forward" and "reverse"), stock dividends, and mergers or acquisitions.

(g) The term of any options or warrants shall not be longer than five years.

(h) The prospectus or offering circular used in connection with the public offering shall contain a full disclosure as to the terms and reasons for the issuance of the securities, and if such reason is in connection with future advisory services to be performed by the underwriter without additional compensation, a statement to that effect shall appear in the prospectus or offering circular.

(i) Shares of stock underlying warrants, options and/or stock acquired directly by an underwriter and related persons, whether acquired prior to, at the time of, or after the offering (but which is determined to be in connection with or related to the offering) shall not, in the aggregate, be more than ten (10%) per cent of the total number of shares being offered in the proposed offering. For purposes of this limitation, over-allotment shares and shares underlying warrants, options, or convertible securities which are a part of the proposed public offering are not to be counted as part of the aggregate number of shares being offered against which the 10% limitation is to be applied.

(j) If the offering is being made, either in part or in whole, on behalf of selling shareholders, such shareholders may, either individually or collectively, participate in the issuance of securities to the underwriter in the same proportion that their offering bears to the total public offering.

SDiv 2033 Options, Warrants and Convertible Securities Issued in Connection with Financing.

Options, warrants and convertible securities issued to financial institutions, other than underwriters, in connection with financing arrangements made by the issuer shall meet the following criteria unless good cause for an exception or variance is shown:

(a) The securities are issued contemporaneously with the issuance of the evidence of indebtedness of the loan and expire no later than the final maturity date of the loan.

(b) The securities are issued as a result of bona fide negotiation between the issuer and parties not affiliated with the issuer.

(c) The exercise or conversion price of such securities is not less than the fair market value of the shares into which they are exercisable or convertible on the date that the loan is approved.

(d) The number of shares issuable upon conversion or exercise multiplied by the conversion or exercise price thereof does not exceed the principal amount of the loan.

(e) The aggregate number of shares into which these securities are converted or exercised shall not exceed 10% of the shares to be outstanding upon completion of the proposed public offering.

(f) For purposes of the regulation, "loan" shall mean any direct obligation of the issuer including obligations which are guaranteed by any person or persons. In the case of an affiliated person guaranteeing an obligation of the company, such person may not receive options, warrants or convertible securities.

SDiv. 2034 Commissions and Expenses.

(a) Selling expenses in connection with an offering of securities (whether such offering is sold entirely or partially within Minnesota) shall include underwriting discounts or commissions; the value of options or warrants excluding over-allottment options to acquire securities granted or proposed to be granted in connection with the offering to an underwriter, or its partners, officers, directors or shareholders, or otherwise as such underwriter may lawfully direct; finder's fees paid or to be paid in connection with the offering, whether such fees are paid by the issuer or an affiliate of the issuer; the value of the difference between the fair value at the time of issuance and the price paid for securities of the issuer issued within two years prior to the offering or proposed to be issued to an underwriter

or any of its partners, officers, directors or shareholders, to the extent such sales or issuances may be deemed by the Commissioner to have been in lieu of commissions, or material in the selection of an underwriter by the issuer, or otherwise directly or indirectly connected with the offering; and all other expenses directly or indirectly incurred in connection with the offering, including nonaccountable expenses of the underwriter, but excluding, however,

(1) attorneys' fees for services in connection with the offer, sale and issuance of the securities and their qualification for offer and sale under applicable laws and regulations;

(2) charges of transfer agents, registrars, indenture trustees, escrow holders, depositaries, auditors, accountants, engineers, appraisers and other experts;

(3) cost of prospectuses, circulars and other documents required to comply with such laws and regulations;

(4) other expenses incurred in connection with such qualification and compliance with such laws and regulations;

(5) cost of authorizing and preparing the securities and documents relating thereto, including issue taxes and stamps;

and shall at all times be reasonable, and, unless good cause for an exception is shown, shall not exceed the following percentages for the specified types of companies or securities based upon percentages of the aggregate offering price:

(aa) Finance, mortgate and related companies... 10%

(bb) Bonds, notes, debentures and secured issuers..... 10%

(cc) Common stocks..... 15%

(dd) Preferred stocks and other stock senior to common stock..... 10%

(ee) Investment companies..... 10%

(ff) REITs..... 10%

(gg) Investment contracts..... 10%

(b) Options or warrants to underwriters, or their partners, officers, directors or shareholders or otherwise as lawfully directed by such underwriters, shall be valued at market value, if any exists. In cases where no market value exists, an option or warrant to acquire common stock shall be valued at 20% of the public offering price of such numbers of shares under option or warrant.

(c) An issuer should not normally pay or assume any liability for expenses, excluding options to underwriters, incurred in connection with the sale of securities made by or on behalf of a selling security holder, whether or not such expenses constitute selling expenses as defined in paragraph (a) above, except that the issuer may:

(1) Provide for services customarily rendered to all security holders in connection with the transfer of securities, including the services of transfer agents and registrars;

(2) Provide audited financial statements if such statements are needed by the issuer for its own purposes; and

(3) Pay all expenses in connection with the sale of securities

(aa) made by a person who purchased such securities from the issuer pursuant to an arm's-length agreement which required the issuer to pay such expenses in the event of a resale by the original purchaser, or made by a transferee of such purchaser, or

(bb) made by a security holder where there is no preexisting public market and a majority of the other shareholders consent to such payment.

When an offering is made simultaneously by an issuer and one or more of its security holders, the expenses, except as provided above, should be apportioned among the issuer and the selling security holders in accordance with the aggregate offering price of the securities being sold by each party.

SDiv. 2035 Loans

(a) Every issuer shall disclose in an appropriate section of the prospectus or offering circular the details of every loan made by such issuer to an officer, director, employee or principal share-

holder if such loan was outstanding, either in whole or in part, as of a date one year prior to the date of application for registration, provided, however, that no disclosure need be made for a loan made in the ordinary course of business, such as travel advances, expense account advances, relocation advances, and salary advances (not exceeding 20% of that individual's annual compensation from the issuer in the one year period immediately preceding the date of the application).

(b) Every loan required to be disclosed by paragraph (a) above shall be repaid within one year from the date of registration, and this shall be disclosed in the prospectus or offering circular.

(c) Every issuer whose prospectus or offering circular discloses a loan required to be disclosed by paragraph (a) above shall include in such prospectus or offering circular the following language, or substantially similar language acceptable to the Commissioner:

> The Company has agreed with certain state regulatory authorities that so long as the company's securities are registered in such states, or one year from the date of this (prospectus) (offering circular), whichever is longer, the company will not make loans to its officers, directors, employees or principal shareholders, except for loans made in the ordinary course of business, such as travel advances, expense account advances, relocation advances, or reasonable salary advances.

SDiv. 2036 Interest of Management and Others in Certain Transactions

(a) The prospectus or offering circular should describe briefly any material interest, direct or indirect, of any of the following persons in any material transactions during the last three years, or in any material proposed transactions, to which the registrant or any of its subsidiaries was, or is to be, a party:

(1) Any affiliate of the registrant

(2) Any associate or affiliate of any of the foregoing persons.

Official instructions and other applicable interpretations promulgated by the United States Securities and Exchange Commission pursuant to Form S-1 will be deemed to apply to this regulation.

(b) For every transaction which would be required to be disclosed by paragraph (a) above, the prospectus or offering circular should include the following language, or substantially similar language acceptable to the Commissioner:

> The Company's management believes that the terms of this transaction were (are) no less favorable to the company than would have been obtained from a non-affiliated third party for similar (services) (equipment) (space) (or whatever descriptive term is appropriate).

If the inclusion of such language would be false or misleading, or tend to work a fraud upon the investor, complete disclosure of the transaction should be included in the prospectus or offering circular.

SDiv. 2037 Voting Rights of Common Stock

(a) Common shares and similar equity securities shall have equal voting rights on all matters where such vote is permitted by applicable law.

(b) If an issuer has more than one class of common stock authorized, the offering to the public of a class of common stock that has (1) no voting rights or (2) less than equal voting rights in proportion to the shares of each class outstanding, shall not be registered, regardless of preferential treatment on matters such as dividends or liquidation (unless such preference be a satisfactory substitute, in the discretion of the Commissioner, for such voting rights).

(c) The intent of this regulation shall not be circumvented by the issuance of securities convertible into common stock, or securities voting with the common, unless the issuance thereof can be justified to the Commissioner. Nothing herein, however, shall prevent increased voting rights as described in SDiv.

SDiv. 2038 Assessments

Corporate securities should be nonassessable, except that

(a) issuers organized solely to supply services or property to their members on a continuing basis may provide for an equitable assessment corresponding to the services or property supplies; or

(b) where applicable laws require assessments, such assessable securities will be allowed; provided, however, that full and complete disclosure of such assessability is provided the investor in the prospectus or offering circular.

SDiv. 2039 Speculative Issues

As a condition to permitting any offering involving securities which the Commissioner shall deem speculative, the Commissioner may require any one or more of the following:

(a) that the prospectus or offering circular conspicuously state on its cover that the securities offered thereby are speculative or a brief description of the material risks involved in the purchase of the securities with a cross-reference to further discussion (in greater detail) in the body of the prospectus and/or that each investor receive a statement concerning the speculative nature of the securities, sign a copy thereof, and file same with the Commissioner;

(b) that the prospectus or offering circular conspicuously state on its cover that the offering involves substantial dilution of the book value of the common stock from the public offering price and further state within its body, in reasonable detail, the amount and nature of such dilution;

(c) that the prospectus include an undertaking to make available, on a quarterly or semi-annual basis, summary statements

of earnings, and on an annual basis audited statements of earnings and financial condition, to the Commissioner, its stockholders and any registered dealer making a market in such securities, for a period not to exceed two (2) years from the date of effectiveness of the registration.

SDiv. 2040 Sliding Scale Contracts

(a) No securities except as hereinafter provided, shall be sold pursuant to a contract whereby the price of the securities varies among different purchasers of the same offering or whereby such price varies as a result of the quantity of securities sold, except that in the case of quantity discounts qualification may be approved provided that there is compliance with all of the following six conditions.

(1) There is no variance in the net proceeds to the issuer from the sale of the securities to different purchasers of the same offering;

(2) All purchasers of the securities are informed of the available quantity discounts;

(3) The same quantity discounts are allowed to all purchasers of all securities which are part of the offering;

(4) The minimum amount of securities on the purchase of which quantity discounts are allowed is not less than $10,000;

(5) The variance in the price of the securities results solely from a different range of commissions, no discounts are allowed to any group of purchasers, and all discounts allowed are based on a uniform scale of commissions;

(6) The applicant for registration of the securities justifies allowance of the proposed quantity discounts by a showing that the aggregate amount thereof does not exceed, and that the measure of such discounts is reasonably related to, the savings of selling expense to be achieved in the sale of the quantities of securities of which such discounts are allowed.

(b) The foregoing rule does not prohibit a quantity discount offered by an investment company registered under the Investment Company Act of 1940, as permitted by the Regulations under that Act, and does not apply to qualified stock options or debt instruments.

SDiv. 2041 Inactive Companies. An application to qualify securities or continue registration of securities for nonissuer transactions should show that the issuer's assets are productively employed in the operation of an on-going business. Ordinarily an issuer showing annual gross receipts from operations of not less than $250,000 will be deemed to meet this requirement.

Subchapter 2 - Senior Securities

SDiv. 2042 Dividend and Interest Coverage

(a) Preferred Stock. In connection with the offering of preferred stock, whether or not convertible, the net earnings of the issuer, computed in accordance with generally accepted accounting principles, after taxes and exclusive of extraordinary income, for

(1) its last fiscal year prior to the public offering, or

(2) the average of its last three fiscal years prior to the public offering,

shall be sufficient to cover the dividends on the securities proposed to be offered to the public.

(b) Debt Securities. In connection with the offering of debentures, notes, bonds, investment certificates, or similar interest-bearing securities, whether convertible or not, the cash flow of the issuer, computed in accordance with generally accepted accounting principles, exclusive of extraordinary income, for

(1) its last fiscal year prior to the public offering, or

(2) the average of its last three fiscal years prior to the public offering,

shall be sufficient to cover the interest on the securities proposed to be offered to the public.

(c) If the issuer has made, or proposes to make, any material acquisitions subsequent to the last year specified in (a) or (b) of this regulation, the earnings or cash flow for such year shall be restated on a pro forma basis to include such acquisitions provided however, that if the earnings or cash flow tests of (a) or (b) of this regulation would not be met without an entity which, at the date of registration, has not yet been acquired, then appropriate protective provisions, such as an impoundment of all proceeds of the offering, shall be made to the end that should the acquisition not take place, the proceeds of the offering would be returned to the purchasers.

(d) This regulation shall not apply to the offering or sale of securities of a non-profit or community development issuer, so long as the prospectus or offering circular, and all advertising material contain prominent disclosure of the financial condition of the issuer.

(e) If the securities proposed to be offered are unconditionally guaranteed, both as to interest or dividends and as to the repayment of principal, by an entity other than the issuer, then the earnings or cash flow of the guarantor shall be used in determining whether the securities qualify for registration pursuant to (a) or (b) above.

SDiv. 2043 Voting Rights of Preferred Stock

In the case of an offering or proposed offering of preferred shares (which are non-participating and non-convertible) without full voting rights, provision should be made under which the holders of such preferred shares shall have the right to reasonable representation on the board of directors of the issuer upon default, for a reasonable, specific period, whether consecutive or not, of payment of dividends on such preferred shares, which right shall continue until the full payment of all arrears in dividends on such preferred shares. The right to elect a majority of the board of directors is presumptively reasonable.

SDiv. 2044 Protective Provisions for Preferred Shares

The charter documents of a corporation proposing to issue preferred shares which are nonparticipating and nonconvertible should normally provide reasonable protective provisions for the preferred shareholders, including where appropriate (a) a provision that the

dividends on such shares shall be cumulative, (b) a provision prohibiting any dividends on common stock during the existense of any arrears on the preferred shares, (c) an appropriate requirement for the approval by the vote or written consent of a specified percentage of the preferred shares of any adverse change in the rights of such shares and of the issuance of any shares having priority over such preferred shares, and (d) appropriate dividend restrictions on the common stock.

SDiv. 2045 Debt Securities.

The indenture or other instrument pursuant to which non-convertible debt securities are proposed to be issued should normally provide for the following:

(a) A sinking fund provision whereby all or a reasonable portion of the issue is to be retired in installment prior to maturity. The deferral of sinking fund payments and the amount of the balloon payment at maturity which will be permitted will depend upon the financial condition and other circumstances of the issuer.

(b) An appropriate negative pledge or equal protection clause restricting the creation of liens on the property of the issuer.

(c) If the debt is unsecured, an appropriate restriction on the creation of other funded debt.

(d) An appropriate restriction on the payment of dividends upon stock of the issuer.

Such protective provisions will not be required in connection with debt securities having a rating making such provisions unnecessary.

SDiv. 2046 Convertible Senior Securities.

The charter documents or other instruments of a corporation proposing to issue convertible preferred shares or the indenture or other instrument pursuant to which convertible debt securities or options or warrants are proposed to be issued should normally contain an appropriate antidilution provision providing for an adjustment of the number of shares into which such shares or units are convertible or the number of shares purchasable pursuant to such options or warrants upon

any stock split or stock dividend or other recapitalization of the issuer.

Subchapter 3 - Investment Companies

SDiv. 2047 Definitions

Terms appearing in this subchapter which also appear in, and are defined by, the Investment Company Act of 1940 shall be accorded the same meaning within this subchapter as assigned by that Act.

SDiv. 2048 Application

Every investment company shall comply with the regulations in this subchapter except that closed-end companies shall be governed by the provisions of SDiv 2057 where that regulation conflicts with any other regulation of this subchapter.

SDiv. 2049 Investment Restrictions

The investments of the company shall be restricted in the following respects:

(a) No diversified investment company shall purchase the securities of any issuer, excluding government securities, if, by reason thereof the value of its investment in all securities of that issuer will exceed 5% of the value of its total assets, provided however, that this limitation shall not apply to shares of an investment company acquired in connection with a merger, consolidation or acquisition of assets between investment companies. The surviving company in such a merger, consolidation or acquisition shall, in addition, have ninety (90) days within which to adjust its portfolio holdings to conform to the limits set by this section.

(b) The company may not purchase or retain any securities of another issuer of which those persons affiliated with the fund or its investment adviser or manager owning, individually, more than one-half of one percent of said issuer's outstanding stock (or securities convertible into stock) own, in the aggregate, more than five percent of said issuer's outstanding stock (or securities convertible into stock).

(c) The company shall not purchase any securities of the classes herein defined, if by reason thereof the value of its aggregate investment in such classes of securities will exceed the

respective amounts set forth below:

(1) 10% of its total assets in securities of issuers which the company is restricted from selling to the public without registration under the Securities Act of 1933.

(2) 5% of its total assets in securities of unseasoned issuers, including their predecessors, which have been in operation for less than three years, and equity securities of issuers which are not readily marketable.

(3) 5% of its total assets in puts, calls, straddles, spreads, and any combination thereof.

(4) 5% of its total assets in securities of another investment company, except that there shall be no such limitation when a merger consolidation or acquisition of assets between the companies is involved.

(d) The investment by any company of any part of its total assets in any of the following is not permitted:

(1) real estate or interests therein, excluding readily marketable securities.

(2) commodities or commodity futures contracts, or

(3) interests in oil, gas, or other mineral or exploration or development programs, excluding readily marketable securities.

(e) The fundamental investment policies of the company shall be stated in the prospectus in reasonable detail and shall not be materially changed in any respect unless authorized by the vote of a majority of the outstanding voting securities of the company.

SDiv. 2050 Speculative Activities. The policy stated or followed by any investment company of engaging in any material respect in any of the following or related speculative activities, whether individually or in combination, and the relatively greater risks or costs involved in such activities, shall be disclosed or clearly referred to in bold face type on the cover of the prospectus or on a prospectus supplement satisfactory in form to the Commissioner:

(a) Borrowing money for investment in securities, excluding borrowing for temporary purposes.

(b) Purchasing securities for short-term trading.

(c) Purchasing restricted securities as herein defined.

(d) Purchasing put or call options or combinations thereof.

(e) Short selling of securities, excluding short selling against the box.

SDiv. 2051 Maximum Expenses

The aggregate annual expenses of every character paid or incurred by an investment company, including management and advisory fees but excluding interest, taxes, and brokerage commissions, and extraordinary expenses, whether such expenses are payable by the company or its shareholders, calculated at least quarterly on a basis consistently applied, shall be reasonable, but in no event shall exceed 2% of the first $30,000,000 of its net assets and 1% of any additional net assets. The investment adviser or manager shall reimburse the investment company not less than annually for the amount by which such aggregate annual expenses exceed the amounts herein provided, up to an amount not exceeding its management and advisory fees for the period for which reimbursement is made, prior to publication of the company's annual report, and shall promptly notify the Commissioner if the aggregate expense limitation is exceeded by reason of any extraordinary expenses. The Commissioner may require the investment adviser or manager to maintain financial resources reasonably sufficient to enable it to meet its reimbursement obligation hereunder.

SDiv. 2052 Minimum Capitalization.

An investment company having net assets of less than $1,000,000 may not qualify its securities for registration unless:

(a) the securities are being offered pursuant to a firm underwriting commitment which will, upon expiration of the initial offering period, capitalize the fund at not less than $1,000,000; or

(b) all proceeds of the offering are deposited in an escrow account, subject to their return in full to the investors if the minimum capitalization of $1,000,000 is not achieved within three

months after the date of the offering.

SDiv. 2053 Redemption.

All payments by an investment company upon redemption of securities of which it is the issuer shall be made in cash, except that the payments in cash by a company which has filed an election pursuant to Rule 18f-1 under the Investment Company Act of 1940 may be limited to the amount specified thereunder. The company shall give prompt written notice to the Commissioner prior to effecting any redemption in assets other than cash, specifying the manner in which such redemption will be effected and the securities to be distributed upon redemption. The redemption fee payable by any shareholder shall not exceed 1% of the amount receivable upon redemption of his shares, except that if the shares of a company are sold without sales commissions, the redemption fee shall not exceed 2% of such amount.

SDiv. 2054 Allocation of Brokerage Transactions.

An investment company shall not effect any brokerage transactions in its portfolio securities with any broker-dealer affiliated directly or indirectly with its investment adviser or manager, or with any broker-dealer providing the investment adviser or manager with statistical or research information or other services which might be of value to the adviser or manager, unless such transactions are effected at competitive brokerage rates. A statement that all portfolio securities will be purchased and sold through a particular broker-dealer or group of broker-dealers, without the further qualification that the company will seek the best price and service available, will be considered unfair per se. The Commissioner may require the company to file periodic reports concerning all brokerage transactions.

SDiv. 2055 Contractural or Periodic Payment Plans

An investment company offering contractural or periodic payment plans for the accumulation of securities of another investment company, or of its own securities through single payment or periodic payment plans shall be subject to the following restrictions:

(a) The fee payable by the investor as compensation for services of the custodian or services delegated to others by the custodian in maintaining the plans shall be reasonable in light of the services required to be rendered. The following information shall be included in one section of the prospectus:

(1) a statement clearly setting forth all deductions which may be made from plan payments, from fund shares, or from distributions of dividends and capital gains including, but not limited to:

(aa) sales charges

(bb) custodian fees to be deducted prior to completion of the plan expressed as a dollar amount and as a percentage of both the minimum and maximum monthly plans;

(cc) custodian fees to be deducted after completion of plan payments;

(dd) penalties for late payment of any periodic installment;

(ee) charges upon liquidation, withdrawal, or transfer of a shareholder's account; and

(ff) charges for any other bookkeeping or administrative services the custodian or sponsor may perform.

(2) A statement that these charges are in addition to the costs to which the shares of the underlying fund are subject, including the pro-rata management fees and all other expenses paid by the underlying fund.

(3) If the shares of the underlying fund may be purchased separately, a statement to that effect and a statement that the costs of acquiring and holding those shares would be substantially reduced if they were purchased separately.

(b) The investment company offering the contractual plans must have the right to purchase shares of the underlying investment company at their net asset value without imposition of any sales charges.

(c) The distribution of any prospectus of the company offering the contractual plans in connection with the solicitation of a resident of this State shall be accompanied by the prospectus of the underlying investment company.

(d) Any charges occasioned by a late payment under a contractual plan, or by liquidation or transfer of a shareholder's interest, or for any bookkeeping or administrative services the custodian may perform, must bear a reasonable relationship to actual administrative costs incurred by the custodian or trustee by virtue of his performance of such services.

(e) In the event of default in one or more of the monthly payments the investor shall be given a grace period of not less than ninety days in which to cure the default before forced liquidation.

(f) The operational aspects of the plans must be fully disclosed and clearly explained, and the offering in all other respects must comply with SDiv. 2047-2057.

SDiv. 2056 Mutual Fund and Insurance Plans

(a) Any company offering to investors a portfolio of mutual fund shares to be pledged as security for a loan by the company in payment of the premium on a policy of insurance shall be subject to the following requirements:

(1) The investment company shares to be offered to residents of this State shall be limited to those which could be sold in conformity with Minnesota Statutes, 1974, Sections 80A.10 or 80A.11.

(2) The policy of insurance offered by the company shall be written only by an insurance company licensed to write insurance by the Insurance Division of the Department of Commerce of the State of Minnesota.

(3) Distribution of the securities shall be made only through persons who are licensed both as securities agents and insurance agents by the Department of Commerce of this State.

(4) The purchaser of a plan shall have the right of discontinuing the insurance policy at any time without

forfeiting any interest in the accumulated securities, other than that interest required to satisfy the liability for any portion of the loan which may become due and payable upon discontinuance.

(5) The purchaser of a plan shall have the right to discontinue the purchase of securities without forfeiting any securities already purchased, other than those required to satisfy his liability for the loan which may become due and payable upon discontinuance, and without forfeiting or causing the cancellation of the policy of insurance.

(6) The rate of interest charged by the company upon the loan which pays the premium on the insurance contract shall not exceed the maximum rate allowable under Minn. Stat. Sec. 334.01 (1971).

(7) The operational aspects of the plans and the penalizing effect of early termination or failure to maintain the required minimum investment balance must be fully disclosed, and all other aspects of the offering must appear fair and equitable.

(b) The application for registration shall be accompanied by a statement by the issuer containing the following information:

(1) A list of all mutual funds proposed to be offered to residents of Minnesota and a statement that each mutual fund so listed is registered for sale in this State;

(2) A list of all insurance companies writing policies to be offered to residents of Minnesota and a statement that each insurance company so listed is licensed to write insurance in this State;

(3) A statement that all persons authorized to distribute plans in Minnesota are licensed both as a securities agent and an insurance agent by the Department of Commerce.

SDiv. 2057 Closed End Investment Companies

In addition to the requirements of this subchapter, the following shall apply to closed end investment companies. If any of the other

requirements of this subchapter conflict with the requirements contained herein, those contained herein shall apply to closed-end investment companies. "Closed-end investment company" or "closed-end fund" means an investment company (as defined in the Investment Company Act of 1940) the equity securities of which are not redeemable.

(a) The offer or sale of securities of a closed-end investment company, as defined in the Investment Company Act of 1940, may be deemed unfair and inequitable to the purchasers thereof unless its prospectus, advisory contract, or organizational instruments include provisions satisfying the following requirements. Each registered investment company shall notify the Commissioner promptly when it is not in compliance with any of the following requirements, and its registration statements shall be subject to revocation or suspension.

(b) No closed-end fund shall be registered for public offering in this state unless such fund adheres to, and discloses in its prospectus, each of the following policies:

(1) The fund shall not at the time of purchase, as to 100% of its total assets:

(aa) invest more than 30% of its total assets in restricted debt securities; unless permitted by the Commissioner upon proper justification;

(bb) invest more than 15% of its total assets in all forms of illiquid securities, including, but not limited to, commodities, real estate, general and limited partnership interests, oil and gas interests, options and warrants, puts, calls, straddles, spreads, and restricted securities, except as provided in (1) above;

(cc) invest in securities carrying more than 10% of the voting rights of any issuer;

(dd) invest in more than 10% of the equity securities of any one issuer;

(ee) invest more than 10% of its total assets in the securities of real estate investment trusts or

other investment companies, provided that investments in excess of 10% may be permitted by the Commissioner upon a showing that such investments involve no duplication to management or advisory services with those of the fund.

(2) The fund shall not at any time, as to 75% of its total assets, invest more than 5% of such assets in the securities of any one issuer, exclusive of government securities.

(3) The fund shall not effect any brokerage transactions in its portfolio securities with any broker-dealer affiliated directly or indirectly with its investment adviser or manager, unless such transactions (including the frequency thereof, the receipt of commissions payable in connection therewith, and the selection of the affiliated broker-dealer effecting such transactions) are not unfair or inequitable to the shareholders of the fund.

(c) Notwithstanding paragraph (b) above, because of the possible risk to the investor, no closed end fund which engages in any of the following or related speculative activities shall be registered for public offering in this state unless the appropriate disclosure is made in bold face type on the cover of both the preliminary and final prospectuses, or on a prospectus supplement satisfactory in form to the Commissioner, as follows:

"These securities may involve a high degree of risk because the fund is authorized:

(1) to engage in short term trading resulting in portfolio turnover greater than 100% annually (see page _____).

(2) to leverage more than 10% of its total assets (see page ____).

(3) to invest more than 5% of assets in restricted securities exclusive of debt securities (see page ____).

(4) to engage in short sales, excluding short sales against the box (see page _____).

(5) to invest more than 5% of its total assets in foreign securities where the fund must pay an interest equalization tax.

(6) in relation to 85% of its total assets, to invest more than 5% of such assets in any one issuer."

Subchapter 4. Real Estate Limited Partnerships.

SDiv. 2058 Definitions.

(a) Acquisition Fee - the total of all fees and commissions paid in connection with the purchase, construction, or development of property by a program. Included in the computation of such fees or commissions shall be any real estate commission, acquisition fee, selection fee, development fee, construction fee, non-recurring management fee, or any fee of a similar nature, however designated.

(b) Appraised Value - value according to an appraisal made by an independent qualified appraiser.

(c) Assessments - additional amounts of capital which may be mandatorily required of or paid at the option of a participant beyond his subscription commitment.

(d) Capital Contribution - The gross amount of investment on a program by a participant, or all participants as the case may be.

(e) Cash Flow - program cash funds provided from operations, including lease payments on net leases from builders and sellers, without deduction for depreciation, but after deducting cash funds used to pay all other expenses, debt payments, capital improvements and replacements.

(f) Cash Available for Distribution - Cash available for distribution shall mean cash flow less amount set aside for restoration or creation of reserves.

(g) Construction Fee - a fee for acting as general contractor to construct improvements on a program's property either initially or at a later date.

(h) Cost of Property - the sum of the price paid by the buyer for property plus all costs, payments, and expenses and cost of improvements, if any, reasonably and properly allocable to the property in accordance with generally accepted accounting principles (cost may include acquisition fees, loan "points", prepaid interest, and debts).

(i) Development Fee - a fee for the packaging of a program's property, including negotiating and approving plans, and undertaking to assist in obtaining zoning and necessary variances and necessary financing for the specific property, either initially or at a later date.

(j) Net Worth - the excess of total assets over total liabilities as determined by generally accepted accounting practices.

(k) Non-Specified Property Program - a program where, at the time a securities registration is ordered effective, less than 75% of the net proceeds from the sale of program interests is allocable to the purchase, construction, or improvement of specific properties. Reserves shall be included in the non-specified 25%.

(l) Participant - the holder of a program interest.

(m) Program Management Fee - a fee paid to the sponsor or other persons for management and administration of the program.

(n) Property Management Fee - the fee paid for day-to-day professional property management services in connection with a program's real property projects.

(o) Sponsor - a "sponsor" is any person directly or indirectly instrumental in organizing, wholly or in part, a program or any person who will manage or participate in the management of a program, and any affiliate of any such person, but does not include a person whose only relation with the program is as that of an independent property manager, whose only compensation is as such. "Sponsor" does not include wholly independent third parties such as attorneys, accountants, investment advisors, and underwriters whose only compensation is for professional services rendered in connection with the offering of syndicate interests.

SDiv. 2059 Requirements of Sponsors.

(a) Experience.

The sponsor, general partner, the chief operating officer, or an affiliate providing services to the program shall have had not less than two years relevant experience in the real estate field, shall

have had not less than four years relevant experience in the kind of service being rendered or otherwise must demonstrate sufficient knowledge and experience to perform the services proposed and shall have the knowledge and experience to acquire and manage the type of properties to be acquired.

(b) Net Worth Requirement of General Partner

The financial condition of the general partner or general partners must be commensurate with any financial obligations assumed in the offering in the operation of the program. At a minimum, the net worth of the general partner(s) shall be the greater of:

(1) an amount at least equal to 5% of all offerings sold within the prior 12 months plus 5% of the gross amount of the current offering, or

(2) 15% of the gross amount of the current offering in offerings of less than $2,500,000. If the offering exceeds $2,500,000, the net worth must be at least 10% of the gross amount of the offering.

However, in no event shall the required net worth exceed $1,000,000. In determining net worth for this purpose, promissory notes shall be excluded and depreciation of real property owned by the general partner(s) shall be included. Also, evaluation will be made of contingent liabilities to determine the appropriateness of their inclusion in computation of net worth. Net worth of individual sponsors shall be determined exclusive of home, home furnishings, and automobiles.

(c) Reports to Commissioner

The sponsor shall submit to the Commissioner any information required to be filed with the Commissioner, including, but not limited to, reports and statements required to be distributed to limited partners.

(d) Liability

Sponsors shall not be indemnified by the participants for acts of negligence or misconduct or for the breach of any fiduciary obligation imposed upon the sponsors by law.

(e) Additional Requirements

(1) the sponsor shall maintain an ongoing place of business.

(2) the sponsor shall have full time employees who will devote a reasonable portion of their time to partnership business, or, in the alternative, shall show to the satisfaction of the Commissioner that adequate management arrangements have been made.

(3) the sponsor shall provide evidence of ability to act in a fiduciary capacity for the limited partners; such evidence may include the holding of a state granted or regulated securities or real estate license.

SDiv. 2060 Suitability of the Participant

(a) Given the limited transferability, the relative lack of liquidity, and the specific tax orientation of many real estate programs, the sponsor and its selling representatives should be cautious concerning the persons to whom such securities are marketed. Suitability standards for investors will, therefore, be imposed which are reasonable in view of the foregoing and of the type of program to be offered. Sponsors will be required to set forth in the prospectus the investment objectives as a program, a description of the type of person who could benefit from the program and the suitability standards to be applied in marketing it. The suitability standards proposed by the sponsor will be reviewed for fairness by the Commissioner in processing the application. In determining how restrictive the standards must be, special attention will be given to the existence of such factors as high leverage, substantial prepaid interest, balloon payment financing, excessive investments in unimproved land, and uncertain or no cash flow from program property. As a general rule, programs structured to give deductible tax losses of 50% or more of the capital contribution of the participant in the year of investment should be sold only to persons in higher income tax brackets considering both state and federal income taxes. Programs which involve more than ordinary investor risk should emphasize suitability standards involving substantial net worth of the investor.

(b) Sales to Appropriate Persons

(1) The sponsor and each person selling limited partnership interests on behalf of the sponsor or partnership shall make every reasonable effort to assure that those persons being offered or sold the limited partnership interests are appropriate in light of the suitability standards set forth as required above and are appropriate to the investor's investment objectives and financial situations.

(2) The sponsor or his representative shall ascertain that the investor can reasonably benefit from the program, and the following shall be relevant to such determination:

(aa) The investor has the capacity of understanding the fundamental aspects of the Program, which capacity may be evidenced by the following:

(i) the nature of employment experience;

(ii) educational level achieved;

(iii) access to advice from qualified sources, such as attorney, accountant, tax adviser, etc.;

(iv) prior experience with investments of a similar nature.

(bb) The investor has apparent understanding:

(i) of the fundamental risks and possible financial hazards of the investments;

(ii) of the lack of liquidity of this investment;

(iii) that the investment will be directed and managed by the sponsor; and

(iv) of the tax consequences of the investment.

(cc) The investor has the financial capability to invest in this program.

(c) Maintenance of Records

The sponsor shall maintain a record of the information obtained to indicate that a participant meets the suitability standards employed in connection with the offer and sale of its interests and a representation of the participant that he is purchasing for his

own account or, in lieu of such representation, information indicating that the participants for whose account the purchase is made meet such suitability standards. Such information may be obtained from the participant through the use of a form which sets forth the prescribed suitability standards in full and which includes a statement to be signed by the participant in which he represents that he meets such suitability standards and is purchasing for his own account. However, where the offering is underwritten or sold by a broker-dealer, the sponsor shall obtain a commitment from the broker-dealer to maintain the same record of information required of the sponsor.

(d) Minimum Investment

In income-oriented offerings, a minimum initial cash purchase of $2,500.00 per investor shall be required. In tax oriented offerings the minimum initial cash purchase shall be $5,000 per investor. Assignability of the interests must be limited so that no assignee (transferee) or assignor (transferor) may hold interests less than the minimum purchase, except by gifts, inheritance, intra-family transfers, family dissolutions, transfers to affiliates, or by operation of law.

SDiv. 2061 Fees, Compensation and Expenses

(a) Fees, Compensation and Expenses to be Reasonable

(1) The total amount of compensation of all kinds which may be paid directly or indirectly to the sponsor or its affiliates shall be reasonable, considering all aspects of the program and the investors. Such compensation may include:

(aa) Organization and offering expenses

(bb) Compensation for acquisition, development or construction services

(cc) Compensation for program management, or property management fee

(dd) Additional compensation to the sponsor subordinated interests and promotional interests

(ee) Real estate brokerage commissions on sale or resale of property

(2) Except to the extent that a subordinated interest is permitted for promotional activities pursuant to paragraph (e) hereof, compensation may only be paid for reasonable and necessary goods, property or services.

(3) The application for qualification or registration and the prospectus or offering circular must fully disclose and itemize all compensation which may be received from the program directly or indirectly by the sponsor, its affiliates and underwriters, what the compensation is for and how and when it will be paid. This shall be set forth in one location in tabular form.

(b) Organization and Offering Expenses. All organizational and offering expenses, including commissions, incurred in order to sell program interests shall be reasonable. In no event shall these expenses exceed 15% of the gross proceeds of the offering.

(c) Compensation for Acquisition Services

(1) The total of all acquisition fees paid to the sponsor or an affiliate involved in the transaction by the program and any other person shall not exceed 18% of the gross proceeds of the offering. The acquisition fee paid to the sponsor shall be reduced to the extent that other real estate commissions, acquisition fees, finder's fees, or other similar fees or commissions are paid by any person in connection with the transaction.

(2) The sponsor shall set forth in a separate section in the forepart of the prospectus the amount of all acquisition fees which may be received or paid. This amount shall be expressed in both absolute dollars and as a percentage of the gross proceeds of the offering and may in addition be expressed as a percentage of the cost of property.

(3) The sum of the purchase price of the program's properties plus the acquisition fees paid shall not exceed the appraised value of the properties.

(d) Program or Property Management Fee

(1) A sponsor of a program owning unimproved land shall be entitled to annual compensation not exceeding 1/4 of

1% of the cost of such unimproved land for operating the program until such time as the land is sold or improvement of the land commenced by the limited partnership. In no event shall this fee exceed a cumulative total of 2% of the original cost of the land regardless of the number of years held.

(2) A sponsor of a program holding property in government subsidized projects shall be entitled to annual compensation not exceeding 1/2 of 1% of the cost of such property for operating the program until such time as the property is sold.

(3) A sponsor of a program owning improved land other than that specified in (2) above, shall be entitled to annual compensation not exceeding 5% of gross income from the properties as a property management fee.

(e) Subordinated Interests

An adequately subordinated interest in the limited partnership will be allowed as a promotional interest and as an additional management fee. Such an interest shall be within the limitations expressed in either subparagraph below:

(1) An interest equal to 25% in the undistributed cash amounts remaining after payment to investors of an amount equal to 100% of capital contribution; or

(2) An interest equal to:

(aa) 10% of distributions from cash available for distribution; and

(bb) 15% of cash distributions to investors from the proceeds from the sale or refinancing of properties after payment to investors of an amount equal to 100% of capital contributions, plus an amount equal to 6% of capital contributions per annum cumulative, less the sum of prior cash distributions to investors.

(f) Real Estate Brokerage Commissions.

(1) Payment of all real estate brokerage commissions

shall not be in excess of the standard commission in the area in which the property is located.

(2) If the sponsor or an affiliate is to receive a commission on the resale of property, said commission may not exceed 50% of the standard commission in the area in which the property is located.

(3) A program shall not pay, directly or indirectly, a commission or fee to a sponsor in connection with the reinvestment of the proceeds of any resale, exchange, or refinancing of program property.

SDiv. 2062 Conflicts of Interest and Investment Restrictions

(a) Sales, leases and loans

(1) Sales and Leases to Program

A program shall not purchase or lease property in which a sponsor has an interest unless:

(aa) The transaction occurs at the formation of the program and is fully disclosed in its prospectus or offering circular, and

(bb) The property is sold upon terms no less favorable to the program than could be obtained from nonaffiliated third parties, and at a price not in excess of its appraised value, and

(cc) The cost of the property, and any improvements thereon, to the sponsor is clearly established. If the sponsor's cost was less than the price to be paid by the program, the price to be paid by the program will not be deemed fair, regardless of the appraised value, unless some material change has occurred to the property which would increase the value since the sponsor acquired the property. Material factors may include the passage of a significant amount of time (but in no event less than 2 years), the assumption by the sponsor of the risk of obtaining a re-zoning of the property and its subsequent re-zoning, or some other extraordinary event which in fact increases the value of the property.

(dd) The provisions of this subsection notwithstanding, the sponsor may purchase property in its own name (and assume loans in connection therewith) and temporarily hold title thereto for the purpose of facilitating the acquisition of such property or the borrowing of money or obtaining of financing for the program, or completion of construction of the property, or any other purpose related to the business of the program, provided that such property is purchased by the program for a price no greater than the cost of such property to the sponsor, there is no difference in interest rates of the loans secured by the property at the time acquired by the sponsor and the time acquired by the program, nor any other benefit arising out of such transaction to the sponsor apart from compensation otherwise permitted by these rules.

(2) Sales and Leases to Sponsor

The program will not ordinarily be permitted to sell or lease property to the sponsor except that the program may lease property to the sponsor under a lease-back arrangement made at the outset and on terms no less favorable to the program than those offered other persons and fully described in the prospectus.

(3) Loans

No loans may be made by the program to the sponsor or affiliate.

(4) Dealings with Related Programs

A program shall not acquire property from a program in which the sponsor has an interest.

(b) Exchange of Limited Partnership Interests

The program may not acquire property in exchange for limited partnership interests, except for property which is described in the prospectus which will be exchanged immediately upon effectiveness. In addition, such exchange shall meet the following conditions:

(1) A provision for such exchange must be set forth

in the partnership agreement, and appropriate disclosures as to tax effects of such exchange are set forth in the prospectus.

(2) The property to be acquired must come within the objectives of the program.

(3) The purchase price assigned to the property shall be no higher than the value supported by an independent, qualified appraisal.

(4) No more than one-half of the interests issued by the program shall have been issued in exchange for property, and

(5) No securities sales or underwriting commissions shall be paid in connection with such exchange.

(c) Exclusive Agreement

A program shall not give a sponsor sole right to sell or exclusive employment to sell property for the program.

(d) Services Rendered to the Program by the Sponsor

All services performed by the sponsor for the program must be reasonable in type and amount. As a minimum, self-dealing arrangements must meet the following criteria:

(1) the compensation, price or fee therefor must be comparable and competitive with the compensation, price or fee of any other person who is rendering comparable services or selling or leasing comparable goods which could reasonably be made available to the program and shall be on competitive terms, and

(2) the fees and other terms of the contract shall be fully disclosed in the prospectus, and

(3) the sponsor must be previously engaged in the business of rendering such services or selling or leasing such goods, independently of the program and as an ordinary and on-going business, and

(4) all services or goods for which the sponsor is to receive compensation shall be embodied in a written contract which precisely describes the services to be rendered and all compensation to be paid. Said contract shall contain a clause allowing termination without penalty on 60 days notice.

(e) Commingling of Funds

The funds of a program shall not be commingled with the funds of any other person.

(f) Expenses of the Program

All expenses of the program shall be billed directly to the program. Reimbursement (other than for the organization and offering expenses) shall be prohibited.

(g) Investments in Other Programs

Investments in limited partnership interests of another program shall be prohibited; however, nothing herein shall preclude the investment in partnerships or ventures which own and operate a particular property. In such event, duplicate property management or other fees shall not be permitted, and such partnership or venture shall provide for its limited partners all of the rights and obligations required to be provided by the original program in SDiv. 2064 . Further, such prohibitions shall not apply to programs under Sections 236 or 221(d)(3) of the National Housing Act or any similar programs that may be enacted.

(h) Lending Practices

(1) On financing made available to the program by the sponsor, the sponsor may not receive interest and other financing charges or fees in excess of the amounts which would be charged by unrelated banks on comparable loans for the same purpose in the locality of the property. No prepayment charge or penalty shall be required by the sponsor on a loan to the program secured by a junior or all-inclusive encumbrance on the property, except to the extent that such prepayment charge or penalty is attributable to the underlying encumbrance.

(2) An "all-inclusive" or "wrap-around" note and deed of trust (the "all-inclusive note" herein) may be used to finance the purchase of property by the program only if it appears that it would provide significant tangible benefits not available from conventional financing methods. In such cases the all-inclusive note shall provide that:

(aa) The sponsor under the all-inclusive note shall not receive interest on the underlying encumbrance in excess of that payable to the lender of that underlying encumbrance.

(bb) The program shall receive credit on its obligation under the all-inclusive note for payments made directly on the underlying encumbrance, and

(cc) A paying agent, ordinarily a bank, escrow company, or savings and loan, shall collect payments (other than any initial payment of prepaid interest or loan points not to be applied to the underlying encumbrance) on the all-inclusive note and make disbursements therefrom to the holder of the underlying encumbrance prior to making any disbursement to the holder of the all-inclusive note, subject to the requirements of subparagraph (a) above, or, in the alternative, all payments on the all-inclusive and underlying note shall be made directly by the program.

(k) Development or Construction Contracts

The sponsor will not be permited to construct or develop properties, or render any services in connection with such development or construction unless all of the following conditions are satisfied:

(1) The transactions occur at the formation of the program.

(2) The specific terms of the development and construction of identifiable properties are ascertainable and fully disclosed in the prospectus.

(3) The purchase price to be paid by the program is based upon a firm contract price which in no event can exceed the sum of the cost of the land and the sponsor's cost of construction. If the land is acquired from the sponsor, the provisions of SDiv. 2062(a) shall apply.

(4) In the case of construction, the only fee paid to the sponsor in connection with such activity shall consist

of a construction fee for acting as a general contractor, which fee must be comparable and competitive with the fee of disinterested persons rendering comparable services. This limitation does not preclude the payment of a real estate commission in connection with the acquisition of the land, if appropriate under the circumstances.

(l) Completion Bond Requirement

The completion of property acquired which is under construction should be guaranteed at the price contracted by an adequate completion bond or other satisfactory arrangements.

(m) Requirement for Real Property Appraisal

All real property acquisitions must be supported by an appraisal prepared by a competent, independent appraiser. The appraisal shall be maintained in the sponsor's records for at least five years, and shall be available for inspection and duplication by any participant. The prospectus shall contain notice of this right.

SDiv. 2063 Non-Specified Property Programs

The following special provisions shall apply to non-specified property programs:

(a) Minimum Capitalization

A non-specified property program shall provide for a minimum gross proceeds from the offering of not less than $1,000,000.00 after payment of all marketing and organization expenses before it may commence business.

(b) Experience of Sponsor

For non-specified property programs, the sponsor or at least one of its principals must establish that he has had the equivalent of not less than five years experience in the real estate business in an executive capacity and two years experience in the management and acquisition of the type of properties to be acquired or otherwise must demonstrate to the satisfaction of the Commissioner that he has sufficient knowledge and experience to

acquire and manage the type of properties proposed to be acquired by the non-specified property program.

(c) Statement of Investment Objectives

A non-specified property program shall state in detail the types of properties in which it proposes to invest, such as first-user apartment projects, subsequent-user apartment projects, shopping centers, office building, unimproved land, etc., and the size and scope of such projects shall be consistent with the objectives of the program and the experience of the sponsors. As a minimum the following restrictions on investment objectives shall be observed:

(1) Unimproved or non-income producing property shall not be acquired except in amounts and upon terms which can be financed totally from the program's proceeds or from cash flow;

(2) Investments in junior trust deeds and other similar obligations shall not exceed 10% of the gross assets of the program.

(3) The manner in which acquisitions will be financed, including the use of an all-inclusive note or wrap-around, and the leveraging to be employed shall all be fully set forth in the statement of investment objectives.

(4) The statement shall indicate whether the program will enter into joint venture arrangements and the projected extent thereof.

(d) Period of Offering and Expenditure of Proceeds

No offering of securities in a non-specified property program may extend for more than one year from the date of effectiveness. While the proceeds of an offering are awaiting investment in real property, the proceeds may be temporarily invested in short-term highly liquid investments where there is appropriate safety of principal, such as U. S. Treasury Bonds or Bills. Any proceeds of the offering of the securities not invested within two years from the date of effectiveness (except for necessary operating capital) shall be distributed pro rata to the participants as a return of capital.

(e) Special Reports

At least quarterly, a "Special Report" of real property acquisitions within the prior quarter shall be sent to all participants until the proceeds are invested or returned to the participants as set forth in paragraph (d) above. Such notice shall describe the real properties, and include a description of the geographic locale and of the market upon which the sponsor is relying in projecting successful operation of the properties. All facts which reasonably appear to the sponsor to materially influence the value of the property should be disclosed. The "Special Report" shall include, by way of illustration and not of limitation, a statement of the date and amount of the appraised value, if applicable, a statement of the actual purchase price including terms of the purchase, a statement of the total amount of cash expended by the program to acquire each property, and a statement regarding the amount of proceeds in the program which remain unexpended or uncommitted. This unexpended or uncommitted amount shall be stated in terms of both dollar amount and percentage of the total amount of the offering of the program.

(f) Assessments

Non-specified programs calling for assessments shall be prohibited.

(g) Multiple Programs

Sponsors shall not offer for sale more than one unspecified property program at any point in time unless the programs have different investment objectives. Similarly, new offerings by the same sponsor shall not be permitted if that sponsor has not substantially committed or placed the funds raised from pre-existing unspecified property programs.

SDiv. 2064 Rights and Obligations of Participants

(a) Meetings

Meetings of the limited partnership may be called by the general partner(s) or the limited partner(s) holding more than 10% of the then outstanding limited partnership interests, for any

matters for which the partners may vote as set forth in the limited partnership agreement. A list of the names and addresses of all limited partners shall be maintained as part of the books and records of the limited partnership and shall be mailed on request to any limited partner or his representative. Upon receipt of a written request either in person or by registered mail stating the purpose(s) of the meeting, the general partner shall provide all partners, within ten days after receipt of said request, written notice (either in person or by registered mail) of a meeting and the purpose of such meeting to be held on a date not less than fifteen nor more than sixty days after receipt of said request, at a time and place convenient to participants.

(b) Voting Rights of Limited Partners

The limited partnership agreement shall provide that a majority of the then outstanding limited partnership interests may, without the necessity for concurrence by the general partner, vote to (1) amend the limited partnership agreement, (2) dissolve the program, (3) remove and replace the sponsor(s) and (4) approve or disapprove the sale of all or substantially all of the assets of the program.

(c) Reports to Holders of Limited Partnership Interests

The partnership agreement shall provide that the sponsor shall cause to be prepared and distributed to the holders of program interests during each year the following reports:

(1) In the case of a program registered under Section 12(g) of the Securities Exchange Act of 1934, within sixty days after the end of each of the program quarter, a report containing

(aa) a current statement of financial condition, which may be unaudited,

(bb) an operating statement for the quarter then ended, which may be unaudited, and

(cc) a cash flow statement for the quarter then ended, which may be unaudited, and

(dd) other pertinent information regarding the program and its activities during the quarter covered by by report;

(2) In the case of all other programs in addition to the annual report required by paragraph 4 hereof, within sixty days after the end of the program's first six-month period, a semiannual report containing the same information as to the preceding six-month period as that required in quarterly reports under paragraph 1 hereof;

(3) In the case of all programs, within 75 days after the end of each program's fiscal year, all information necessary for the preparation of the limited partner's federal income tax returns;

(4) In the case of all programs, within 120 days after the end of each program's fiscal year, an annual report containing (aa) a statement of financial condition as of the year then ended, an operating statement for the year then ended, a statement of sources and applications of funds and a cash flow statement, all of which shall be audited by independent certified public accountants, with an opinion expressed therein, (bb) a report of the activities of the program during the period covered by the report, (cc) where projections have been provided to the holders of limited partnership interests, a table comparing the projections previously provided with the actual results during the period covered by the report. Such report shall set forth distributions to limited partners for the period covered thereby and shall separately identify distributions from (dd) Cash Flow from operations during the period, (ee) Cash Flow from operations during a prior period which had been held as reserves, (ff) proceeds from disposition of property and investments, (gg) lease payments on net leases with builders and sellers, and (hh) reserves from the gross proceeds of the offering originally obtained from the limited partners.

(5) Where assessments have been made during any period covered by any report required by paragraphs 1, 2 and 4 hereof, then such report shall contain a detailed statement of such assessments and the application of the proceeds derived from such assessments; and

(6) Where any sponsor receives fees for services, including acquisition fees from the program, then he shall, within 60 days of the end of each quarter wherein such fees were received, send to each limited partner a detailed statement setting forth the services rendered, or to be rendered by such sponsor and the amount of the fees received.

(d) Access to Records

The limited partners and their designated representatives shall be permitted access to all records of the program at all reasonable times. This requirement may not be circumvented by lump-sum payments to management companies or other entities who then disburse the funds.

(e) Admission of Participants

Admission of participants to the program shall be subject to the following:

(1) Admission of original participants. Upon the original sale of partnership units by the program, the purchasers should be admitted as limited partners not later than 15 days after the release from impound of the purchaser's funds to the program, and thereafter purchasers should be admitted into the program not later than the first day of the calendar month following the date their subscription was accepted by the program. Subscriptions shall be accepted or rejected by the program within 30 days of their receipt; if rejected all subscription monies should be returned to the subscriber forthwith.

(2) Admission of substituted participants and recognition of assignees. The program shall amend the certificate

of limited partnership at least once each calendar quarter to effect the substitution of substituted participants, although the sponsor may elect to do so more frequently. In the case of assignments, where the assignee does not become a substituted limited partner, the program shall recognize the assignment not later than the first day of the calendar month following receipt of notice of assignment and required documentation.

(f) Transferability of Program Interests

(1) Assignment of program interests or the economic interests therein are permitted, providing that the opinion of the partnership's counsel is given to the effect (i) that such assignment is not a violation of the limited partnership laws in effect in the jurisdiction of the program's organization, (ii) that the program shall be taxable as a partnership rather than as a corporation or an association under the policies of the Internal Revenue Service. Wherever free transferability of program interests or beneficial interests in a limited partnership interest is allowed, a favorable tax ruling from the Internal Revenue Service shall be required. Furthermore, where beneficial interests of a program's interest are to be sold, the treatment under the Investment Company Act of 1940 must be disclosed.

(2) The assignment of limited partnership interest may not be prohibited, but may be restricted only to the minimum extent required to preserve its tax status.

(g) Assessments

Limited partnership units shall be non-assessable unless otherwise specified in the prospectus or offering circular. Except as provided in SDiv. 2063(f), assessments shall be limited to not more than 50% of the initial investment of the participant. Registration fees upon assessable securities shall be based on the initial investment plus the amount of any assessments and installment payments to be paid.

(h) Defaults

In the event of a default in the payment of assessments by a limited partner, his interests shall not be subject to forfeiture, but may be subject to a reasonable penalty for failure to meet his commitment. Provided that the arrangments are fair, this may take the form of reducing his proportionate interest in the program, subordinating his interest to that of nondefaulting partners, a forced sale complying with applicable procedures for notice and sale, the lending of the amount necessary to meet his commitment by the other participants or a fixing of the value of his interest by independent appraisal or other suitable formula with provision for a delayed payment to him for his interest not beyond a reasonable period, but a debt security issued for such interest should not have a claim prior to that of the other investors in the event of liquidation.

SDiv. 2065 Disclosure and Marketing Requirements

(a) Sales Promotional Efforts

(1) Sales Literature

Sales literature, sales presentations (including prepared presentations to prospective investors at group meetings) and advertising used in the offer or sale of partnership interests shall conform in all applicable respects to requirements of filing, disclosure and adequacy currently imposed on sales literature, sales presentations and advertising used in the sale of corporate securities.

(2) Group Meetings

All advertisements of and oral or written invitations to "seminars" or other group meetings at which program interests are to be described, offered or sold shall clearly indicate that the purpose of such meeting is to offer such program interests for sale the minimum purchase price thereof, and the name of the sponsor, underwriter and selling agent. No cash, merchandise or other item of value shall be offered as an inducement to any prospective participants to attend any such meeting. In connec-

tion with the offer or sale of program interests, no general offer shall be made of "free" or "bargain price" trips to visit property in which the program or proposed program has invested or intends to invest. All written or prepared audiovisual presentations (including scripts prepared in advance for oral presentations) to be made at such meetings must be submitted in advance to the Commissioner not less than five business days prior to the first use thereof. The foregoing paragraphs 1 and 2 shall not apply to meetings consisting only of representatives of securities broker-dealers.

(b) Projections

The presentation of predicted future results of operations ("projections") of real estate programs shall be permitted but not required. Such projections shall be included in the prospectus, offering circular or sales material of the partnership only if they comply with the following requirements:

(1) General

Projections shall be realistic in their predictions and shall clearly identify the assumptions made with respect to all material features of the presentation. Projections should be prepared by a qualified person or firm and that person or firm should be identified in the prospectus or offering circular as being responsible for the preparation of the projections. No projections shall be permitted in any sales literature which do not appear in the prospectus or offering circular. If any projections are included in the sales literature, all projections must be presented.

(2) Material information.

Projections shall include all of the following information:

(aa) Annual predicted revenue by source, including the occupancy rate used in predicting rental revenue and the average occupancy rate for similar properties in the same locale.

(bb) Annual predicted expenses;

(cc) Mortgage obligation-annual payments for principal and interest, points and financing fees; shown as dollars, not percentages.

(dd) The required occupancy rate in order to meet debt service and all expenses; rental revenue shall also be predicted based on occupancy rates 10% below the break-even occupancy rate;

(ee) Predicted annual cash flow; stating assumed occupancy rate;

(ff) Predicted annual depreciation and amortization with full description of methods to be used;

(gg) Predicted annual taxable income or loss and a simplified explanation of the tax treatment of such results; assumed tax brackets may not be used;

(hh) Predicted construction costs-including disclosure regarding contracts;

(ii) Accounting policies-e.g., with respect to points, financing costs and depreciation.

(3) Additional Disclosures and Limitations

(aa) Projections shall be for a period at least equivalent to the anticipated holding period for the property, or 10 years, whichever is shorter, but they shall definitely project a resale occurrence.

(bb) Adequate disclosure shall be made of the changing economic effects upon the participants resulting principally from federal income tax consequences over the life of the partnership property, e.g., substantial tax losses in early years followed by increasing amounts of taxable income in later years.

(cc) Projections shall disclose all possible undesirable tax consequences of an early sale of the program property (such as, depreciation, recapture or

the failure to sell the property at a price which would return sufficient cash to meet resulting tax liabilities of the participants.

(dd) In computing the return to investors, no appreciation, so-called "equity buildup", or any other benefits from unrealized gains or value shall be shown or included.

(4) Projections shall not be allowed for unimproved land. Instead, a table of deferred payments specifying the various holding costs, i.e., interest, taxes, and insurance shall be inserted.

SDiv. 2066 Miscellaneous Provisions

(a) Fiduciary Duty

The program agreement shall provide that the sponsor shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the program, whether or not in his immediate possession or control, and that he shall not employ, or permit another to employ such funds or assets in any manner except for the exclusive benefit of the program.

(b) Deferred Payments

Except where prohibited by Regulation T of the Federal Reserve Board, arrangements for deferred payments on account of the purchase price of program interests may be allowed when warranted by the investment objectives of the partnership, but in any event such arrangements shall be subject to the following conditions:

(1) The period of deferred payments shall coincide with the anticipated cash needs of the program.

(2) Selling commissions paid upon deferred payments are collectible when payment is made on the note.

(3) Deferred payments shall be evidenced by a promissory note of the investor. Such notes shall be with recourse and shall not be negotiable and shall be assignable only subject to defenses of the maker. Such notes shall not contain a provision authorizing a confession of judgment.

(4) The program shall not sell or assign the deferred obligation notes at a discount to meet financing needs of the program.

(c) Reserves

Provision should be made for adequate reserves in the future by retention of a reasonable percentage of proceeds from the offering and regular receipts for normal repairs, replacements and contingencies. Normally, not less than 5% of the offering proceeds will be considered adequate.

(d) Reinvestment of Cash Flow and Proceeds on Disposition of Property

Reinvestment of Cash Flow shall be prohibited. The partnership agreement and the prospectus shall set forth that reinvestment of proceeds resulting from a disposition or refinancing will not take place unless sufficient cash will be distributed to pay any state or federal income tax (assuming investors are in a specified tax bracket) created by the disposition or refinancing of property. Such a prohibition must be contained in the prospectus.

(e) Financial Information Required on Application

In any offering of interests by a real estate program, the program shall provide as an exhibit to the application, or where indicated below shall provide as part of the prospectus, the following financial information and financial statements. All audited statements shall be prepared by an independent certified public accountant with an opinion expressed thereon.

(1) Cash Flow Statement of Program

As part of the prospectus, if the program has been

formed and owns specified assets, an audited cash flow statement for the program for each of the last three fiscal years of the program (or for life of the program, if less) and unaudited statements for any interim period between the end of the latest fiscal year and the date of the balance sheet furnished, and for the corresponding interim period of the preceding years.

(2) Balance Sheet of Program

As part of the prospectus, an audited balance sheet of the program for the most recent fiscal year and an unaudited balance sheet for a period ending not more than ninety days prior to the date of filing.

(3) Balance Sheet of Sponsor

(aa) Corporate Sponsor

An audited balance sheet of any corporate sponsors for the same periods and in the same form required for the program itself in Item 2 above. Such statement shall be included in the prospectus.

(bb) Other Sponsors

A statement for each non-corporate general partner shall be given the Commissioner (including individual partners or individual joint ventures of a sponsor) setting forth the estimated net worth of each such sponsor at a time not more than ninety days prior to the date of filing an application; such statement shall be signed and sworn to by such sponsors. A representation of the amount of such net worth must be included in the prospectus.

(4) Profit and Loss Statements for Corporate Sponsors

Audited profit and loss statements for the last fiscal year of any corporate sponsor (or for the life of the corporate sponsor, if less) and unaudited statements for any interim period ending not more than ninety days prior to the date of filing an application. The inclusion of such statement in the prospectus shall be at the discretion of the Commissioner.

(f) Impoundment of Proceeds. See SDiv. 2022(a)(1)

Subchapter 5. Oil and Gas Programs

SDiv. 2067 Definitions For purposes of this subchapter, the following terms mean:

(a) "Administrative and overhead expenses" - All costs and expenses of the sponsor made in connection with administering the program which are not directly allocable to a lease, well or prospect.

(b) "Development well" - A well drilled to a reservoir proven to be productive of oil or gas and expected to be extended to the drilling area.

(c) "Exploratory well" - Any other well, and in particular a well drilled to search for oil and gas in an unproven area.

(d) "Intangible Costs" - Any costs generally accepted as current expense items for purposes of Federal Income Tax reporting.

(e) "Net Profit Interest" - That interest in net operating income which becomes payable after recapture by the investor of all costs on a particular lease or drilling prospect.

(f) "Overriding royalty interest" - A fractional undivided interest or right of participation in an oil and gas lease in the oil or gas, or in the proceeds from the sale of oil or gas, produced from a specific oil or gas property, such interest being free from the expense of development and operation of the property.

(g) "Participant" - The purchaser of a unit in the oil and gas program.

(h) "Payout" - That point at which the participant has received or credited to his account from the proceeds of production of oil and gas an amount, in dollars, equal to the cumulative, acquisition, exploration and development costs, rentals, production taxes, administrative and overhead expenses, lifting costs, and other costs of operation incurred by the sponsor attributable to or charged against the participant's interest.

(i) "Program" - The total activities in which the proceeds of the offering and any additional proceeds generated thereby will be engaged.

(j) "Carried interest" - A working interest free or partially free of development costs.

(k) "Reversionary interest" - An interest with benefits defined by contract.

(l) "Royalty" - An interest in production which is free from the expense of developing and operating the property to the owner.

(m) "Sponsor" - See SDiv.

(n) "Tangible costs" - Those costs which are generally accepted as capital expenditures for purposes of Federal Income Tax reporting.

(o) "Working interest" - The interest in a property which carries with it the obligation to pay a proportionate share of all costs during the period of time the working interest agreement is in effect including such costs as those resulting from exploration, development and operation of such properties.

SDiv. 2068 Experience of Management

The sponsor, general partner, the chief operating officer, or an affiliate providing services to the program shall have had not less than four years relevant experience in the kind of service being rendered or otherwise must demonstrate sufficient knowledge and experience to perform the services proposed.

SDiv. 2069 Capitalization of Sponsor and Investment by Sponsor

(a) The financial condition of the sponsor must be commensurate with any financial obligations assumed in the offering in the operation of the program. At a minimum, the sponsor shall have a financial net worth of the greater of either $100,000, or an amount at least equal to 5% of all offerings sold within the prior 12 months plus 5% of the gross amount of the current offering, to a maximum net worth of the sponsor of one million dollars. In determining net worth for this purpose, promissory notes shall be excluded and evaluation will be made of contingent liabilities to determine the appropriateness of their inclusion in computation of net worth.

(b) Sponsor must have a favorable tax ruling assuring flow-through of tax benefits to the public investor or a favorable opinion of qualified tax counsel assuring flow-through tax benefits to the public investor.

(c) The sponsor must purchase a minimum of $50,000 in participation interests, net of commissions, in any entity which offers its oil and gas participation interests to the public. From this amount may be deducted 10% of the net equity of the sponsor; or the sponsor has the privilege of investing at least 10% of the amount paid, or to be paid, into the program by the participants.

SDiv. 2070 Conflict of Interest

There is presumed to be a material conflict of interest sufficient to render the proposed program incapable of accomplishing its stated objectives in the best interest of the investors when:

(a) Program funds or other assets are made available to the sponsor or any affiliate for any purpose not consistent with the stated purposes of the program, whether with or without adequate consideration therefor;

(b) The program may purchase property acquired by the sponsor or any affiliate within two years next preceding the date of transfer to the program for consideration in excess of the lower of the cost to the sponsor or its affiliate or its present fair market value; or the program may purchase property held longer than two years by the sponsor or an affiliate for consideration in excess of; (i) cost if the the present fair market value of the property is not more than ten percent above or below the cost to the sponsor or affiliate; or (ii) present fair market value, if, upon appraisal by a qualified independent appraiser it appears the fair market value is more than ten percent above or below its cost to the sponsor or an affiliate.

For purposes of this section cost to the sponsor or affiliate shall include the sales price of the property paid by the sponsor or

affiliate plus any reasonable charges attributable to mineral evaluation, title examination, delay rentals, and any reasonable sales commissions paid by the sponsor or affiliate provided that no such sales commissions, or any profit on the sale inured to the benefit of any affiliate of the program's sponsor on such a sale made within the two year period next preceding the transfer to the program;

(c) The program is obligated to acquire any of its property or services from the sponsor or an affiliate of the sponsor;

(d) The program may acquire services from the sponsor or an affiliate provided the prices are no higher than those normally charged in the same geographical areas by non-affiliated persons or companies dealing at arm's-length. Such persons must be able to demonstrate that they are acting independently and are engaging in a continuing business activity of providing drilling or other material services or supplies to the oil and gas industry. In the alternative, such contracts or arrangements must follow open competitive bidding in which such affiliated persons or companies are the lowest responsible bidders.

(e) The sponsor reserves the right to arbitrarily classify costs as either tangible or intangible, or to arbitrarily place any costs, or activities of the program in any classification which might affect the interests of the participants, unless such classifition is made in accordance with generally accepted accounting principles and industry practices, or unless there appears to be sufficient justification for allowing such discretion;

(f) Any contract or other arrangement between the sponsor or an affiliate and the program cannot be terminated upon sixty day written notice without penalty;

(g) Any other self-dealing between the program and the sponsor or any affiliate of the sponsor exists which might in any way benefit the sponsor or affiliate without a corresponding equal benefit to the program. This shall include, but not be limited to, the use of program assets for the purpose of proving-up adjacent

properties or properties in the geographical prospect area belonging to sponsors or affiliates.

SDiv. 2071 Compensation.

(a) No deduction for any purpose other than commitment of the capital to the proposed exploration and development activities, other than specified herein, shall be made from program capital.

(1) Organization and Offering Expenses - The sponsor shall be entitled to reimbursement out of program capital for the actual and necessary costs of the organization of the program, and reasonable costs attributable to the offering of the securities. Total deductions from subscription proceeds inclusive of offering expenses, management fees and sales commission cannot exceed 15%.

(2) Management Fees - The management fee, whether accruing to the sponsor or third party operating or management company, shall be reasonable in light of the nature and extent of the services required to be rendered under the program agreement and the nature and scope of the proposed activities. A management fee, which together with sales commissions payable from program capital exceeds 12 1/2% of the program capital is presumed unreasonable.

(3) Sales Commissions - A sales charge payable directly out of program capital or by the sponsor which exceeds ten percent of program capital shall be unreasonable.

(b) Administrative and overhead expenses - Administrative and overhead expenses shall not exceed 5%, of the gross proceeds of the offering, over the life of the program. Such expenses shall be actual and necessary and shall be paid only when incurred.

(c) Compensation to the sponsor (and its affiliates) of a program is limited as follows:

The participation in program revenues by the sponsor and any affiliate shall be reasonable, taking into account all relevant factors. Sponsors' retained interests may be considered reasonable if they meet one of the standards set forth in paragraphs (1) through (6) below. Any other combinations of fees, overriding royalty interests, and working or net profits interest, which are generally accepted as

reasonable in the industry and are justified, in light of the entire offering, may be considered reasonable by the Commissioner:

(1) Unless specifically provided for herein, overriding royalty interests and any other interests free of the burden of operating expenses will be looked upon with disfavor, as will be any form of compensation arrangement in which the sponsor or an affiliate engages in, or proposes to engage in, any activities which are unprofitable to the drilling program.

(2) A 33 1/3% working interest or net profits interest in a lease, after payout, if there is no overriding royalty interest reserved by the sponsor.

(3) A 1/16 overriding royalty interest, convertible after payout into not to exceed a 25% working interest or net profits interest in a lease.

(4) A 1/16 overriding royalty interest plus not to exceed a 20% working interest or net profits interest, after payout, in a lease.

(5) Under cost sharing arrangements by which the public investor bears all cost of exploration and the sponsor bears substantially all costs of development, a reversionary interest to the sponsor not in excess of 40% after payout may be deemed to be fair, and application of all revenue from development wells to accomplish payout of cost of development wells in such cases may be held to be reasonable; provided no money interest is charged to investors or to the program for the sponsor's funds committed to the program with respect to drilling costs in computing payouts.

(6) In any other program in which a portion of the program costs are borne by the sponsor, an interest based upon the estimated percentage of drilling block or well costs, including costs of lease acquisition, to be borne by the sponsor, plus any additional interest deemed equitable in light of the entire offering may be permissible. In no event

will the sponsor be allowed more than a 50% interest in program revenues.

In no case may an overriding royalty interest of a sponsor and affiliates exceed 3/32, and royalty payments in any year for any lease may not exceed the net operating profits from the lease.

SDiv. 2072 Offers and Agreements to Redeem

(a) The sponsor may not, in the prospectus or otherwise, make any mention of a possible offer to redeem or repurchase the securities issued by the program unless:

(1) under the partnership agreement he has an absolute liability to repurchase or redeem the securities on a specific date, or upon the happening of a specific event, or upon tender for redemption by the purchaser, subject to his financial ability to redeem or repurchase at the time of tender; and

(2) he appears to possess sufficient financial ability at the time of offering to redeem or repurchase 50% of all units to be outstanding; and

(3) sufficient cautionary language is contained in the prospectus respecting the possibility of his continued ability to redeem or repurchase being affected by subsequent events.

(b) The sponsor may not, in the prospectus or otherwise agree to redeem a participant's interest in the program unless:

(1) all the requirements of subdivision (a) of this rule are met; and

(2) the terms of repurchase are specifically described in offering circular including the method of valuation to be used to ascertain the repurchase price and a description of all adjustments which may result in deduction therefrom. Qualified independent petroleum engineers shall be employed to appraise properties for purposes of such valuation, and any valuation by company personnel must be based on such independent appraisals.

SDiv. 2073 Periodic Reports

The partnership or joint venture agreement shall provide that the sponsor shall cause to be prepared and distributed to the holders of program interests during each year the following reports:

(a) In the case of a program registered under Section 12(g) of the Securities Exchange Act of 1934, within sixty days after the end of each of the program quarter, a report containing

(1) a current statement of financial condition, which may be unaudited,

(2) an operating statement for the quarter then ended, which may be unaudited, and

(3) a cash flow statement for the quarter then ended, which may be unaudited, and

(4) other pertinent information regarding the program and its activities during the quarter covered by the report;

(b) In the case of all other programs in addition to the annual report required by paragraph (c) hereof, within sixty days after the end of the program's first six-month period, a semi-annual report containing the same information as to the preceding six-month period as that required in quarterly reports under paragraph (a) hereof;

(c) In the case of all programs, within 90 days after the end of each program's fiscal year, all information necessary for the preparation of the participants federal income tax returns;

(d) In the case of all programs, within 120 days after the end of each program's fiscal year, an annual report containing (1) a statement of financial condition as of the year then ended, an operating statement for the year then ended, a statement of sources and applications of funds and a cash flow statement, all of which shall be audited by independent certified public accountants with an opinion expressed thereon, (2) a report of the activities of the program during the period covered by the report, (3) where projections have been provided to the holders of program interests,

a table comparing the projections previously provided with the actual results during the period covered by the report. Such report shall set forth distributions to participants for the period covered thereby and shall separately identify distributions from (4) Cash Flow from operations during the period, (5) Cash Flow from operations during a prior period which had been held as reserves, and (6) reserves from the gross proceeds of the offering originally obtained from the participants.

(e) Where assessments have been made during any period covered by any report required by paragraphs (a), (b) and (c) hereof, then such report shall contain a detailed statement of such assessments and the application of the proceeds derived from such assessments; and

(f) Where any sponsor receives fees for services, he shall, within 120 days after the end of each program's fiscal year, send to each participant a detailed statement setting forth the services rendered, or to be rendered by such sponsor and the amount of the fees received.

SDiv. 2074 Future Exchanges and Automatic Reinvestment of Revenues

(a) Any future exchanges shall be made solely upon compliance with applicable securities regulations, both federal and state.

(b) Automatic reinvestment of revenues shall be prohibited. Optional reinvestment of revenues must follow complete information to the unit holder of the amount of revenue to which he is entitled as well as a full disclosure of the program into which his revenues will be reinvested at his election. The entity into which reinvestment is made must be registered with the appropriate minimums, as well as other standards, applicable to the entity as in a new program.

SDiv. 2075 Purchase of Producing Properties by Drilling Programs.

For drilling programs, purchase of producing properties in excess of ten percent (10%) of the subscriptions to the program shall not be allowed.

SDiv. 2076 Liability

Sponsors shall not be indemnified by the participants for acts of negligence or misconduct or for the breach of any fiduciary obligation imposed upon the sponsors by law.

SDiv. 2077 Plan of Distribution

(a) Minimum Unit

The minimum purchase of a program may not be less than $5,000 and the initial investment by a participant shall be no less than $5,000, all of which must be paid within 12 months from the date the program commences. Assignability of the unit must be limited so that no assignee (transferee) or assignor (transferor) may hold less than a $5,000 interest except by gifts or by operation of law.

(b) Assessments

(1) Offering Circular - if the securities for which application for registration is made are subject to additional assessments, the following information concerning such assessments is required:

(aa) The amount of additional assessments to which the securities may be subject, and whether the payment of such assessment will be mandatory or optional;

(bb) The penalizing effect of refusal or inability to make payment of any additional assessments.

An optional assessment in which a participant is required to forfeit any interest, except as provided below, or is subjected to any penalty for failure to participate will be deemed to be a mandatory assessment. Any interest charge occasioned by late payment of any mandatory assessment or any unpaid portion of the original subscription price must bear a reasonable relationship to costs incurred by the sponsor or program by virtue of the late payment. Any interest charge which exceeds the maximum rate allowable under Minn. Stat. 1971, Section 334.01 is presumed unreasonable. In the event that a participant fails to contribute his

portion of an optional assessment, the only penalty which may be imposed upon him shall be an 80% reduction in the amount of income from the properties developed by the assessments that he would otherwise be entitled to receive after the contributing participants have been returned the amount of their assessments.

(cc) The conditions upon which additional assessments may be made. Additional assessments may be made only for the following:

-- completion of wells already initiated

-- initiation of wells on leaseholds already owned or under contract

-- to acquire and develop leaseholds contiguous to those already owned, the acquisition of which is necessary to fully develop previously discovered reserves.

(2) Management fees payable out of and additional assessments whether optional or mandatory, shall be deducted only when payment of the assessment is made.

(3) Limitation. Program interests shall not be subject to mandatory assessments in excess of 50% of the original subscription price.

(4) Registration Fees - the Aggregate amount upon which the registration fees are computed shall include the dollar amount for which the securities being registered may be additionally assessed. If the securities for which application is made are subject to unlimited optional assessments the maximum fee must be paid.

(c) Advertising materials

(1) Sales Literature, See SDiv. 2065(a)(1)

(2) Group Meetings, See SDiv. 2064(a)(2)

(d) Commissions

(1) Compensation to broker dealers shall be a

cash commission. Indeterminate compensation to broker dealers, such as overriding interests and net profit interests, for example, is prohibited. In the absence of a firm underwriting, warrants or options to broker dealers are prohibited.

(2) Compensation to wholesale dealers must be a cash commission, and such commission must be reasonable and fully disclosed.

(3) Sales commissions based on assessment of units are prohibited.

(e) Suitability of the Participant

Standards to be Imposed - Given the limited transferability, the relative lack of liquidity, and the specific tax orientation of many oil and gas programs, the sponsor and its selling representatives should be cautious concerning the persons to whom such securities are marketed. Suitability standards for investors will, therefore, be imposed which are reasonable in view of the foregoing and of the type of program to be offered. Sponsors will be required to set forth in the prospectus the investment objectives of the program, a description of the type of person who could benefit from the program and the suitability standards to be applied in marketing it. The suitability standards proposed by the sponsor will be reviewed for fairness by the Commissioner in processing the application. In determining how restrictive the standards must be, special attention will be given to the existence of such factors as high leverage, and uncertain or no cash flow from certain program properties. Programs which involve more than ordinary investor risk should emphasize suitability standards involving substantial net worth of the investor.

SDiv. 2078 Application of Proceeds

The prospectus or offering circular shall contain a full and clear disclosure of the use to which the proceeds of the offering will be applied. A full and clear disclosure requires, at a minimum, the following information:

(a) A statement of the minimum amount of capital necessary to activate the program, which minimum amount shall be determined by, and subject to, the following considerations:

(1) The amount designated as the minimum required capitalization or "go-point" should adequately reflect the amount necessary to pursue bona fide exploration activities. The adequacy of the minimum capital requirement shall be determined in light of the nature and scope of proposed activities. A minimum capital requirement which is less than $250,000 shall be prohibited.

(2) All funds received prior to activation of the program must be deposited with an independent custodian, trustee, or escrow agent whose name and address shall be disclosed in the prospectus.

(3) No portion of any funds derived from the sale of these securities shall be expended for any purpose prior to realization of the required minimum capital. In the event the proceeds of the offering do not equal or exceed the amount designated as the go-point, all funds previously collected must be returned in full to the subscribers.

(b) A statement of the proposed application of proceeds of the offering containing at a minimum:

(1) A disclosure of the net amount of proceeds, after front end deductions authorized by SDiv. 2071, which will be available for exploration and development activities, both if the minimum and maximum capitalization is achieved.

(2) A statement of the amount of proceeds, expressed as a percentage, to be applied to all proposed expenditures including, but not limited to: acquisition of leaseholds, exploration and developmental activities, sales commissions, management fees, and the costs of organizing the program and offering these securities.

(c) A statement of the date by which the amount designated as the minimum capital must be subscribed, such date being not later than 120 days after commencement of sales in this state.

SDiv. 2079 Rights and Obligations of Participants

(a) Meetings

Meetings of the limited partnership may be called by the general partner(s) or the limited partner(s) holding more than 10% of the then outstanding limited partnership interests, for any matters for which the partners may vote as set forth in the limited partnership agreement. A list of the names and addresses of all limited partners shall be maintained as part of the books and records of the limited partnership and shall be mailed on request to any limited partner or his representative. Upon receipt of a written request either in person or by registered mail stating the purpose(s) of the meeting, the general partner shall provide all partners, within ten days after receipt of said request, written notice (either in person or by registered mail) of a meeting and the purpose of such meeting to be held on a date not less than fifteen nor more than sixty days after receipt of said request, at a time and place convenient to participants.

(b) Voting Rights of Limited Partners

The limited partnership agreement shall provide that a majority of the then outstanding limited partnership interests may, without the necessity for concurrence by the general partner, vote to (1) amend the limited partnership agreement, (2) dissolve the program, (3) remove and replace the sponsor(s) and (4) approve or disapprove the sale of all or substantially all of the assets of the program.

SDiv. 2080 Miscellaneous Provisions

(a) Fiduciary Duty

The program's organization documents shall provide that the sponsor shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the program, whether or not in his immediate possession or control, and that he shall not employ,

or permit another to employ such funds or assets in any manner except for the exclusive benefit of the program. The sponsor shall be liable for his gross negligence or willful misconduct.

(b) Financial Information Required on Application

In any offering of interests, the program shall provide as an exhibit to the application, or where indicated below shall provide as part of the prospectus, the following financial information and financial statements. Such audited statements shall be prepared by an independent certified public accountant with an opinion expressed thereon.

(1) Cash Flow Statement of Program

As part of the prospectus, if the program has been formed and owns specified assets, an audited cash flow statement for the program for each of the last three fiscal years of the program (or for life of the program, if less) and unaudited statements for any interim period between the end of the latest fiscal year and the date of the balance sheet furnished, and for the corresponding interim period of the preceding years.

(2) Balance Sheet of Program

As part of the prospectus, an audited balance sheet of the program for the most recent fiscal year and an unaudited balance sheet for a period ending not more than ninety days prior to the date of filing.

(3) Balance Sheet of Sponsor

(aa) Corporate Sponsor

An audited balance sheet of any corporate sponsors for the same periods and in the same form required for the program itself in Item 2. Such statement shall be included in the prospectus.

(bb) Other Sponsors

A statement for each non-corporate sponsor shall be given the Commissioner (including individual

partners or individual joint ventures of a sponsor) setting forth the estimated net worth of each such sponsor at a time not more than ninety days prior to the date of filing an application; such statement shall be signed and sworn to by such sponsors. A representation of the amount of such net worth must be included in the prospectus.

(4) Profit and Loss Statements for Corporate Sponsors

Audited profit and loss statements for the last fiscal year of any corporate sponsor (or for the life of the corporate sponsor, if less) and unaudited statements for any interim period ending not more than ninety days prior to the date of filing an application. The inclusion of such statement in the prospectus shall be at the discretion of the Commissioner.

Subchapter 6 - Cattle Feeding Programs

SDiv. 2081 Definitions

(a) Pay-out: That point at which public investors have received a 100 percent return of their investment, before taxes, and without considering any tax deductions.

(b) Sponsor: Any corporation, partnership or individual which issues, promotes and/or manages a cattle-feeding venture; for example, a general partner in a limited partnership set up for that purpose. "Sponsor" does not include wholly independent third parties such as attorneys, accountants, investment advisors and underwriters whose only compensation is for professional services rendered in connection with the offering of venture interests.

(c) Net Assets: Total assets less total liabilities.

(d) Affiliate Dealings: Dealings in which feed is purchased, directly or indirectly, from the sponsor or an affiliate, or cattle are fed in feed lots owned by the sponsor or an affiliate; provided, however, the sale of proprietary feed supplements by an affiliate to independent feed lots shall not be deemed "affiliate

dealings" if such sales are at prices not greater than those in completely unrelated sales.

(e) Custom Feeding: Includes the feeding of all cattle other than those fed for publicly offered ventures and those fed for the account of the sponsor and/or any affiliate of the sponsor.

(f) Hedging: The sale of futures against a purchase of spots (cattle or other commodities) or the purchase of futures against commitments for spot purchases. Hedging is a medium through which offsetting commitments are employed to eliminate or minimize the impact of an adverse price movement on inventories or other previous commitments.

(g) Speculation: Frequent movement in and out of the commodity futures market, holding either long or short positions, or both, without corresponding sales or purchases of commodities on the cash market.

(h) Basic Feed Cost: Costs of the ration ingredients, plus the milling charge. This excludes the mark-up charge for yardage and management.

SDiv. 2082 The Plan of Business

The form of the business entity (herein sometimes referred to as the "venture") should be structured, insofar as possible, to attempt to limit the liability of public investors to the amounts of their respective investments and attempt to assure the flow-through, insofar as possible, of tax deferral benefits to such public investors. In addition, adequate capitalization and investment (as specified in SDiv. 2083) must be provided for the venture by the sponsors of the venture.

SDiv. 2083 Requirements of Sponsor

(a) Experience of Management

At least one principal of the sponsor must have adequate experience in the cattle feeding business, including buying, selling, feeding and maintenance of beef cattle. Such experience must be of at least five years duration, with three of such years in feed lot

operations exceeding 1,000 head capacity, and recently preceding the commencement of the publicly financed venture.

(b) Capitalization of Sponsor and Investment by Sponsor

(1) The prospectus shall contain audited financial statements of all sponsors which are corporations or partnerships indicating an ability to perform any commitment which is made in regard to the venture. The prospectus shall contain a representation of the net worth of any individual who is a sponsor.

(2) The corporation or partnership, acting as a sponsor, must have a net worth sufficient to meet the requirements of the Ruling Branch of the Internal Revenue Service. This Rule shall be deemed to be satisfied if the sponsor has received either a favorable tax ruling, or an opinion of qualified tax counsel (acceptable to the Commissioner), assuring flow-through of tax benefits to the public investor. The Commissioner may, in his discretion, require further evidence of net worth sufficient to perform its obligations under the proposed plan of business.

(3) The sponsor must purchase for cash at the public offering price less underwriting discounts and commissions, a minimum of $100,000 in participation interests (which will be treated equally with investments by public investors) in any entity which offers its cattle feeding interest to the public. If the aggregate offering of the entity (less underwriting discounts and commissions) is less than $1,000,000, the sponsor may, in lieu of this requirement, purchase 10% of the offering, less underwriting discounts and commissions. In either case, the sponsor's required investment in participation interests may be reduced by 10% for each $35,000 in tangible net equity possessed by the sponsor. In lieu of the sponsor making the above-described investment

(if any is required), such investment may be made by any person or company owning 50% or more of the voting control of the sponsor. In unusual circumstances, the Commissioner may waive this Rule if the sponsor guarantees a favorable cost per pound of weight gain or favorable stop-loss.

SDiv. 2084 Compensation to Sponsor and Affiliates

Compensation to the sponsor (and its affiliates) of a venture is to be limited as follows:

(a) All expenses of organizing the venture and selling interests therein to the public, including underwriting discounts and commissions, if any, must be borne solely by the sponsor if the sponsor is to receive up to the full 12 1/2% first year management fee described in Paragraphs 2 and 3 below, but such management fee shall not exceed the actual expenses of organizing the venture and selling interests therein to the public. If the publicly-owned venture (limited partnership, etc.) is to pay such expenses, the total of such expenses it shall pay, together with the first year management fee, shall not exceed 12 1/2% of the gross receipts of the public offering.

(b) Ventures Which Do Not Engage in Affiliate Dealings

A maximum of 12 1/2% of the dollar amount of gross cash receipts from a public offering is allowable to the sponsor as a "management fee" for the first year of operation. For each year thereafter, 5/8% per month of the venture's net assets is allowable to the sponsor as a management fee. Following pay-out to public investors, the sponsor may participate in the venture's profits in the following ratio: 25% to the sponsor and 75% to the public investors. The sponsor must pay all its administrative and overhead expenses. Other expenses of the limited partnership, including, but not limited to, buying services, transportation, interest on borrowed funds, legal, accounting and reporting expenses, branding and feed cost, where required to be paid by the venture, shall be billed to

and paid directly by the venture to facilitate auditing. Veterinary services and medicines may be allocated, where direct billing is impractical.

(c) Ventures Which Engage in Affiliate Dealings

A maximum of 12 1/2% of the dollar amount of gross cash receipts from a public offering is allowable to the sponsor as a management fee for the first year of operation. Reasonable and competitive feed mark-ups on feed sold to the partnership will be allowable. Basic feed costs shall not exceed those charged to other non-affiliated customers of the feed lot for the same types and grades of feed generally prevailing in the locale, at the time of purchase. The mark-up on feed sold to the partnership shall in no event exceed 20% of the basic feed cost. If any "yardage," "per head" or other handling charges of a general nature are to be made, the total of such charges together with the mark-up on feed shall not exceed 20% of the basic feed cost for any feeding cycle. If the sponsor deems it necessary to raise the foregoing limitations as to feed mark-up and handling charges, it may do so only annually and only upon written notice to investors in the venture at least 60 days prior to the "beginning redemption date" mentioned in SDiv 2088(f) of these rules. Following pay-out to public investors, the sponsor may participate in the venture's profits in the following ratio: 25% to the sponsor and 75% to the public investors. The sponsor must pay all its administrative and overhead expenses. Other expenses of the limited partnership, including, but not limited to, buying services, transportation, interest on borrowed funds, legal, accounting, and reporting expenses, branding and feed cost, where required to be paid by the venture, shall be billed to and paid directly by the venture to facilitate auditing. Veterinary services and medicines may be allocated, where direct billing is impractical.

(d) Other Fees and Compensation in Ventures which Engage in Affiliate Dealings

The prospectus must clearly describe all dealings which the venture will have with the sponsor or its affiliates. Such description must contain a detailed disclosure of the fees to be paid to such parties. In addition, the prospectus must contain a schedule setting out, in summary, all fees and compensation to be paid directly to the sponsor as well as indirect fees to be paid to the sponsor or its affiliates.

SDiv. 2085 Requirements of the Venture

(a) Periodic Reports

(1) The sponsor shall provide periodically, at least quarterly, each public investor with a report which states the current value of his interest (on a cost basis or otherwise) and progress of the venture, in clear and concise terms in accordance with practices in general usage in the industry. Annual audited financial reports and tax information shall be furnished to the investor in a form which may be used in the preparation of the investor's individual income tax return.

(2) The information to be provided in such report should comply with SDiv 2088(b) of these rules, and should include any other pertinent information regarding fixed and variable costs.

(b) Future Exchanges

Any future exchanges of interests in the venture for common stock or other securities of any other entity shall be made solely upon compliance with this Act and the Rules and Regulations hereunder and must be in compliance with financial and other requirements generally applicable to initial public offerings by such entities. The public investors must be advised, in the prospectus, that any future exchange offers may not be available to them if the exchange offer fails to meet the registration requirements of this state. The sponsor must undertake to continue management, on the same terms, of the interest of investors who do not exchange their interests for interests in the new entity, until orderly liquidation

of all cattle in the venture is completed.

(c) Exculpatory Clause

The sponsor of a venture shall be deemed to be in a fiduciary relationship to the public investors, and the prospectus shall so state. Sponsors and affiliates shall not be exonerated by any provision of any agreement from liability to investors for any losses caused by gross negligence or willful misconduct.

(d) Insurance and Death Loss

(1) Casualty insurance or full mortality insurance may be maintained on all cattle belonging to the venture, in the discretion of the sponsor, and if in the best judgment of the sponsor the costs of such insurance are economically feasible.

(2) The sponsor, at no additional cost to the venture, must guarantee against death loss above 4% occurring during the term of the venture or upon earlier termination of the management agreement. Such guarantee must include a specified indemnity which will be made at the earlier of termination of the venture or termination of the management agreement. Proof of loss must be produced in order for the sponsor to receive credit toward the 4% (in some manner subject to audit). The sponsor must provide for indemnification for any death loss whatever brought about due to negligence or misconduct on the part of the sponsor and/or its employees. In circumstances where an unusually favorable stop loss provision exists, the Commissioner may waive the requirement of a guarantee against death loss.

(e) Leverage

A venture may not engage in leveraging in excess of four to one and a limitation of the leveraging to be used must be set out in the prospectus, along with a clear explanation of the risk involved in leveraging.

(f) Hedging and Speculation

If the plan of business of the venture includes the purchase or sale of commodities futures contracts, such purchases and

sales must be limited in extent and frequency to those instances deemed reasonably necessary to protect the venture against price fluctuations in the cattle or grain market. The purchase or sale of commodities futures contracts may be for the purposes of hedging only and such transactions may not be for purposes of speculation. The public investors must be notified, in writing, at the earliest practicable time (at least monthly) of the terms of any commodity futures contract transactions for the ventures.

(g) Facilities

Feed lots in which the venture's cattle are to be fed must have a capacity of 5,000 head or more. The sponsor must have reasonable assurance that it will have access to feed lots with combined total capacity of 20,000 head or more for feeding of the venture's cattle prior to the public offering. All such feed lots must have available the services of a veterinarian and nutritionist and must keep detailed records of all cattle processed, including the venture's cattle, and all services and goods provided for all cattle in the feed lot, and must agree to make all such records available to the venture's auditors and to the sponsor. In geographic areas where feed lots of 5,000-head capacity or more are unusual, the numbers mentioned in this paragraph may be reduced by the Commissioner.

(h) Branding & Accountability of Property

Cattle belonging to the venture must be clearly distinguishable, (e.g. branded with the venture's brand) at the earliest practicable time, and not more than 24 hours after placement in the feed lot under normal circumstances.

All cattle, feed and funds belonging to the venture must be strictly accounted for, and identified to the extent practicable, throughout the life of the venture. The cost of feed and services to the venture shall not be in any way artificially increased (other than customary mark-ups mentioned elsewhere herein).

The weighing of all feed and cattle to be sold to the venture and all cattle to be sold by the venture shall be done on

sealed certified scales, certified by the governmental authority (if any) having jurisdiction thereof in the particular locality. The weighing of feed ration upon delivery to the venture's cattle shall be done on certified scales when practicable, and otherwise on truck scales which are daily compared for accuracy with certified scales.

SDiv. 2086 Conflicts of Interest

(a) The prospectus must fully describe all conflicts of interest between the public investors and the sponsor and its affiliates.

(b) No fees, commissions, or other remuneration of any kind may be received by the sponsor or its affiliates, directly or indirectly, in connection with the venture which are not set out and fully disclosed in the prospectus.

(c) No fee may be charged the venture upon the sale of venture cattle.

(d) (1) The venture's cattle may not be sold to the sponsor or its affiliates, directly or indirectly, except that finished cattle may be sold to an affiliated packer on a dressed carcass basis with payment on the basis of U.S.D.A. quality and yield grades, provided the packer reports to the public investors prices paid for other cattle on the same date and reports the nearest U.S.D.A. Market News Quotations of comparable grade and yield.

(2) The venture's cattle may not be purchased from the sponsor or its affiliates unless purchased at the lesser of fair market value in the locality or the sponsor's cost (animals plus feed). When an affiliate acts as a commission buyer, he may be paid commissions on the purchase of cattle for the venture at rates not exceeding those customary in the industry, and may take title to the cattle on behalf of the registered ventures during any necessary interim while pen-size lots are being formed.

(e) All transactions between the venture and the sponsor, or an affiliate, shall be represented by a written contract and shall

be terminable upon 60 days written notice without penalty.

SDiv. 2087 Plan of Distribution and Suitability

(a) Minimum Investment

The minimum investment by a public investor shall be $5,000 and the initial investment by a public investor shall be no less than $5,000, all of which must have been paid at the date the venture commences. Assignability of a public investor's interest must be limited so that no assignee (transferee) or assignor (transferor) may hold less than a $5,000 interest, except by gift, inheritance, or Court decree.

(b) Public investors' interests in a cattle feeding venture may not be assessed (the public investors may not be compelled in any way to make additional capital contributions to the venture).

(c) Advertising Materials

Sales of the venture interests must be made by and through a prospectus. Supplementary material must be submitted to the Commissioner in advance of use, and its use must either be preceded by or accompanied with an effective prospectus. Informational material may, and should be, distributed on a periodic basis to public investors already in the venture.

(d) Investor Suitability

(1) The broker-dealer, or the sponsor in the case of direct sales, shall take all action reasonably required to assure that venture interests are sold only to purchasers for whom such interests are suitable.

(2) Judgment of suitability of any particular venture interest for an individual investor shall be based on the financial capacity of the purchaser, including the purchaser's net worth and income tax bracket, after as reasonable inquiry into the purchaser's financial condition and other related and relevant factors as may be appropriate.

(3) The broker-dealer or sponsor shall retain all records necessary to substantiate the fact that interests were

sold only to purchasers for whom such securities were suitable. The Commissioner shall require broker-dealers or sponsors to obtain from the purchaser a letter justifying the suitability of such investment.

SDiv. 2088 Prospectus and its Contents

(a) Term of the Venture

The prospectus must clearly state the period of time for which the venture will operate. Such term may not initially exceed ten years in duration. If the sponsor retains the right to extend the period of the venture beyond the initial term, such right of continuance must be disclosed in the prospectus. No venture shall be formed with a contemplated term of less than three years, except in unusual circumstances where a favorable stop loss provision is present.

(b) History of Operations and Reporting Requirements

The sponsor's history of operation shall be fully disclosed, and all fees and remunerations, direct and indirect, received by the sponsor or an affiliate in each publicly-owned venture shall be scheduled. The prospectus must contain a schedule setting out, on an annual or other accounting period basis, information for the preceding three-year period or for such shorter period as the sponsor has been engaged in cattle feeding operations. Information for the year preceding the program should be presented in a fashion to show the economic results if cattle were placed on feed at least on a quarterly basis. The information required by this Rule shall include:

(1) Average purchase weight of feeder cattle, by sex.

(2) Average weight into the feed lot, by sex.

(3) Average cost per head.

(4) Buying commissions paid.

(5) Average freight costs into the yard.

(6) Average length of time on feed, by sex.

(7) Average total cost of gain (per pound);

specifying basis of computation of weight gain (pay weight to

pay weight or in-weight to pay weight).

(8) Average feed cost of gain (per pound); specifying basis of computation of weight gain (pay weight to pay weight or in-weight to pay weight).

(9) Average interest rate on borrowed operating capital.

(10) Other management or selling charges, if any.

(11) Death loss (per cent).

(12) Average sales weight, by sex (after 4% shrink at feed lot).

(13) Average sales price per cwt, by sex.

(14) Average profit or loss per head, by sex (estimated if not known).

(15) Average equity investment per head, by sex (estimated if not known).

(c) For ventures which engage in affiliate dealings, the prospectus must set out the above information, for each feed lot, for the following categories:

(1) Custom feeding, to the extent such information is known.

(2) Cattle fed for the account of the sponsor and/or all affiliates.

The above information shall also be furnished to the public investors in the venture on at least an annual basis.

(d) Area of Operations

A general description of the areas in which it is anticipated that the venture's activities will be conducted shall be set out.

(e) Maximum and Minimum

The prospectus shall indicate the maximum amount of subscriptions to be sought from the public and the minimum amount of subscriptions necessary to activate the venture. The minimum amount of funds to activate the venture shall be sufficient to accomplish the objectives of the venture, including "spreading the risk" and shall be

set out in the prospectus. Any minimum less than $250,000 will be presumed to be inadequate to spread the risk of the public investors. Provision must be made for the return to public investors of 100% of paid subscriptions in the event that the established minimum to activate the venture is not reached. The minimum amount shall be placed in an impoundment account. The impoundment agent shall be named in the prospectus.

(f) Repurchase of Venture Interests

No representations shall be made that venture interests are readily marketable. Public investors must be allowed to withdraw from the venture on at least an annual basis, following the first full year of operation of the venture. The beginning redemption date for each year shall be specified in the prospectus, and public investors desiring to withdraw shall give written notice to the sponsor at least 30 days prior to such beginning redemption date. As to all cattle owned by the venture on the beginning redemption date, the withdrawing investor shall have a liquidating interest, and his account will be credited with his pro rata share of the proceeds of sales of all such cattle. As soon as practicable after the liquidation of all such cattle, the withdrawing investor shall be paid his pro rata share of such proceeds. A penalty, not to exceed ten per cent of the proceeds credited to his account, may be charged the investor who chooses to withdraw prior to the end of the venture. No penalty may be charged at the termination date of the venture, nor at any time thereafter if the termination date is extended, nor after the venture has been in existence for five years, whichever time is earlier. The ten percent penalty for early withdrawal must be credited to the venture.

(g) Tax Considerations

(1) The sponsor of the venture must obtain an Internal Revenue Service ruling, or an opinion of qualified tax counsel (acceptable to the Commissioner) stating that the desired income tax treatment will be accorded the venture.

(2) The prospectus must fully disclose all tax

benefits and liabilities associated with investment in the venture. It shall be clearly disclosed in the prospectus that the venture is not a tax-shelter.

(h) Use of Proceeds

The prospectus must clearly account for the use of the proceeds of the offering. Proposed use should be set out in dollar amounts as well as percentages of the total offering proceeds. Funds to be obtained through leveraging are also subject to these requirements.

(i) The prospectus shall contain, in summary form, a schedule setting forth examples of an investment in a cattle feeding venture. Such schedule must contain three examples: (1) Showing a loss on investment, (2) Showing a break-even on investment, and (3) Showing a profit on investment, commensurate with the loss shown in the first schedule.

SDiv. 2089. Reserved for Future Use.

Subchapter 7 Real Estate Investment Trusts

SDiv. 2090 Definitions

(a) Real Estate Investment Trust (REIT) - an unincorporated trust or association which intends to comply with Sections 856, 857 and 858 of the Internal Revenue Code of 1954, as amended;

(b) Net Assets - total assets at cost less total liabilities.

(c) Net Income - income as reported on the income statement of the trust, after taxes but before deduction of advisory and servicing fees and expenses, provisions for depreciation and consideration of extraordinary, non-recurring items.

(d) Operating Expenses - Operating expenses shall include aggregate expenses of every character paid or incurred by the trust except the following:

(1) interest;

(2) taxes;

(3) legal, audit, accounting, underwriting, brokerage, listing, registration and other fees, printing, engraving and other expenses and taxes incurred in connection with the issuance, distribution, transfer, registration and stock exchange listing of the trust's securities;

(4) cost of preparation and distribution of reports and other communications to shareholders;

(5) expenses, other than expenses of employees of the trust and the investment adviser, connected with the acquisition, disposition and ownership of real estate interests, mortgage loans or other property, including the costs of foreclosure, insurance premiums, legal services, brokerage and sales commis-

sions, maintenance, repair and improvement of property;

(6) expenses connected with payments of dividends or interest or distributions in cash or otherwise made or caused to be made by the trustees to holders of securities of the trust;

(7) additions to reserves for depreciation, depletion and losses.

SDiv. 2091 Trustees

(a) A REIT shall have a minimum of three trustees, all of whom are elected annually by vote of a majority of the outstanding shares of beneficial interest. A majority of the trustees shall not be affiliated with the manager or adviser or any other affiliate, or an affiliate of an affiliate of the trust.

(b) Liability of the Trustees

The declaration of trust, or other instrument forming the REIT shall not contain any provision relieving any trustee from liability to the REIT or its securities holders to which it or he might otherwise be subjected by reason of acts constituting bad faith, willful misfeasance, gross negligence or reckless disregard of its or his duties.

(c) Management of REIT

The trustees shall have absolute and exclusive control over the management of the REIT and its property and the disposition thereof, provided that the trustees may delegate the administration of the day to day investment operations and administrative functions of the REIT to another person subject to guidelines and policies established by the trustees and set forth in the contract entered into by the REIT and such other person.

(d) Removal of Trustees

A trustee of a REIT shall be subject to removal by the vote or written consent of the holders of a majority of the outstanding securities of the trust.

SDiv. 2092 Transactions with the Trust

No affiliate, or affiliate of an affiliate of a REIT, shall sell, transfer or lend any assets or property to the trust or purchaser, borrow

or otherwise acquire any assets of property from the trust, directly or indirectly, unless the transaction comes within one or more of the following exceptions:

(a) the transaction consists of the acquisition of property or assets at the formation of the trust or shortly thereafter, and is fully disclosed in the prospectus; or

(b) the transaction is a borrowing of money by the trust on terms not less favorable than those then prevailing for comparable arms-length borrowings; or

(c) the transaction consists of the acquisitions by the trust of federally insured or guaranteed mortgages at prices not exceeding the currently quoted prices at which the Federal National Mortgage Association is purchasing comparable mortgages; or

(d) the transaction consists of the acquisition of other mortgages on terms not less favorable to the trust than similar transactions involving unaffiliated parties; or

(e) the transaction consists of the acquisition by the trust of other property at prices not exceeding the fair value thereof as determined by independent appraisal.

All such transactions and all other transactions in which any such persons have any direct or indirect interest shall be permitted only if (1) such transaction has been approved by the affirmative vote of a majority of the trustees who are not affiliated with the trust or the adviser, and (2) if the property is a mortgage, the purchase or acquisition of such mortgage from any such person is on terms not less favorable to the trust than those then prevailing for arms-length transactions in comparable mortgages, and (3) each such transaction is in all respects on such terms as at the time of the transaction and under the circumstances then prevailing, fair and reasonable to the shareholders of the trust.

SDiv. 2093 Commissions

Any commission or other remuneration received by an affiliate, or affiliate of an affiliate, of a REIT in connection with the acquisi-

tion or disposal of trust assets shall be included in the advisory fee and subject to the limitations thereon.

SDiv. 2094 Advisory or Management Contract

Any advisory contract entered into by the trustees initially may not be for a period longer than three years, and any such contract entered into thereafter shall be for a period not longer than one year. Any such advisory or management contract shall provide that it may be terminated at any time without penalty by the trustees or a majority of the holders of outstanding securities of the trust upon not more than sixty days written notice to the adviser or manager. It shall be approved annually by a majority of the unaffiliated trustees.

SDiv. 2095 Fees and Expenses

(a) Total operating expenses of a REIT, including advisory fees and mortgage servicing fees and all other expenses, shall not exceed 1 1/2% of the average net assets of the trust or 25% of net income of the trust, whichever is greater, calculated at least quarterly. In no event shall aggregate annual expenses exceed 1 1/2% of the total invested assets of the trust.

(b) The adviser shall reimburse the trust at least annually for the amount by which operating expenses of the trust exceed the above limitations.

(c) All figures used in the foregoing computations shall be determined in accordance with generally accepted accounting principles applied on a consistent basis. The compensation of the investment adviser shall be computed by an independent certified public accountant at the end of each year and any necessary adjustments made between the compensation so computed and that already paid.

(d) The limitations on selling expenses pursuant to SDiv. of these rules shall apply to real estate investment trusts.

SDiv. 2096 Investment Policy

The investment policies to be followed by the trustees shall be stated with reasonable particularity.

SDiv. 2097 Liability of Shareholders

The holders of the shares of beneficial interest shall not be personally liable on account of any obligations of the REIT. All written contracts to which the REIT is a party shall include a provision that the shareholders shall not be personally liable on such obligations. The trustees must be required to maintain adequate insurance against possible liability on the part of the trust.

SDiv. 2098 Reports

The trust shall prepare an annual report concerning its operations for each fiscal year ending after the public offering of its securities, including financial statements prepared in accordance with generally accepted accounting principles applied on a consistent basis and certified by independent certified public accountants. The annual report shall be delivered to each public shareholder and debenture holder within 120 days after the end of such fiscal year. A copy of the annual report shall be filed with the Commissioner.

SDiv. 2099 Meetings

There shall be an annual meeting of shareholders of the trust upon reasonable notice following delivery of the annual report required in SDiv. 2098 above. Special Meetings may be called upon written request of shareholders holding together not less than 20% of the outstanding shares of the REIT entitled to vote at such meeting. The call shall state the nature of the business to be transacted, and no other business shall be considered.

SDiv. 2100 Distributions

Any distribution to shareholders shall be accompanied by a statement in writing advising the source of the funds so distributed, or if the source thereof has not been determined, the communication shall so state; and in such event the statement as to such source shall be sent to the shareholders not later than 60 days after the close of the fiscal year in which the distribution was made.

SDiv. 2101 Amendment of Declaration of Trust

The declaration of trust of a REIT shall provide that no amendment

thereto may be made unless approved by the vote or written consent of the holders of a majority of the voting securities of the trust; and that no amendment which would change any rights with respect to any outstanding securities of the trust, or by diminishing or eliminating any voting rights pertaining thereto, may be made unless also approved by the vote or written consent of the holders of two-thirds (2/3) of the outstanding securities so affected.

SDiv. 2102 Termination of the Trust

All real estate investment trusts shall be subject to termination at any time by the vote or written consent of a majority of the persons holding shares of beneficial interest in the trust.

SDiv. 2103 Prohibited Activities

The REIT shall not engage in any of the following activities:

(a) invest more than 10% of its total assets in unimproved real property or mortgages on unimproved real property, excluding property being developed or property where development will be completed within a reasonable period;

(b) invest more than 10% of its total assets in junior mortgages, excluding wrap-around type junior mortgage loans;

(c) issue debt securities to the public unless the cash flow of the trust for the last fiscal year excluding extraordinary, non-recurring items, is sufficient to cover the interest on all debt securities to be outstanding;

(d) issue options or warrants to purchase its securities to any affiliate of the trust, or at exercise prices less than the fair market value of such securities on the date of grant;

(e) engage in trading as compared with investment activities;

(f) issue redeemable equity securities or equity securities of more than one class;

(g) invest in commodities;

(h) engage in any short sale;

(i) engage in underwriting or agency distribution of securities issued by others;

(j) knowingly hold securities in any company holding

investments or engaging in activities prohibited by this section.

SDiv. 2104 Terms and Conditions of Securities

The declaration of trust of a REIT shall not permit the issuance by the trust of:

(a) Securities which are assessable

(b) Redeemable securities

(c) Warrants, options or similar evidences of a right to buy its securities, unless issued to all of its security holders ratably or as part of a financing arrangement.

SDiv. 2105 Leverage

The aggregate borrowings of the trust, secured and unsecured, shall not be unreasonable in relation to the net assets of the trust. The maximum amount of such borrowings in relation to net assets shall be stated in the prospectus. Leveraging in excess of 500% of net assets shall be prohibited.

SDiv. 2106 Savings Clause

The provisions of the declaration of trust giving the shareholders the right to elect and remove trustees and the right to amend and terminate the declaration of trust shall be subject to the requirements of the Internal Revenue Code of 1954, as amended, and the rules and regulations promulgated thereunder. If any provisions granting or limiting such shareholder right shall conflict with the requirements of the Internal Revenue Code of 1954 and the rules and regulations promulgated thereunder, such provisions shall be deemed to be without force and effect. In the event that the provision relating to the election of trustees by the beneficiaries of the trust shall be deemed to be without force and effect, the trustees in office shall be deemed to be the qualified and acting trustees until such time as a successor trustee or (trustees) has been named and qualified; provided, however, that on or before the next meeting of the shareholders, after the trustees shall have notified the shareholders that any or all shareholders' rights create such a conflict and, therefore, shall be without force and effect, there shall be submitted to the shareholders for their approval

or disapproval, by a majority of those voting, the question whether such shareholder right or rights should be continued.

SDiv. 2107 Minimum Net Capital

The net assets of the trust prior to registration, as defined in SDiv. 2090 (b), shall be $200,000, represented by the outstanding securities of the trust.

SDiv. 2108 Recording

The declaration of trust and any amendments, or a memorandum of the declaration of trust and any amendments, shall be filed for record in the registry in the county where the principal place of business of the REIT is located or in any other place required by local law.

SDiv. 2109 Minimum Capitalization

The minimum capitalization of an REIT excluding the minimum net capital set forth in SDiv. 2107 and after payment of organization and offering expenses shall be $2,000,000.

SDiv. 2110 Reserved for Future Use.

SDiv. 2111. The exemption contained in Section 80A.15, Subdivision 1(f) for a warrant or right to purchase any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, or the Pacific Stock Exchange, shall only apply to a warrant or right issued by the issuer of the securities so listed or approved for listing.

SDiv. 2112. "Commercial paper which arises out of a current transaction" for the purpose of Section 80A.15, Subdivision 1(g) means any note or other evidence of indebtedness, which has been issued, or the proceeds of which are to be used, for producing, purchasing, carrying or marketing goods, liquid inventories or other assets easily convertible into cash, or in meeting current operating expenses of a commercial, agricultural, or industrial business, and which is not to be used for permanent or fixed investment, such as land, buildings or machinery, or for speculative transaction or transactions in securities (except direct obligations of the United States government).

SDiv. 2113. Reserved for Future Use.

SDiv. 2114. Reserved for Future Use.

SDiv. 2115. Reserved for Future Use.

SDiv. 2116. Reserved for Future Use.

SDiv. 2117. Rserved for Future Use.

SDiv. 2118(a). For the purpose of computing the number of persons to whom sales have been made, or will have been made upon completion of a proposed offering pursuant to Section 80A.15, Subdivision 2(h),

(1) The following purchasers shall be excluded:

(aa) Any relative or spouse of a purchaser and any relative of such spouse, who has the same home as such purchaser; and

(bb) Any trust or estate in which a purchaser

or any of the persons related to him as specified in subparagraphs (1)(aa) or (cc) of this rule collectively have 100 percent of the beneficial interest (excluding contingent interests); and

(cc) Any corporation or other organization of which a purchaser or any of the persons related to him as specified in subparagraphs (1)(aa) or (bb) of this rule collectively are the beneficial owners of all the equity securities (excluding directors' qualifying shares) or equity interests; and

(2) There shall be counted as one purchaser any corporation, partnership, association, joint stock company, trust or unincorporated organization except that if such entity was organized for the specific purpose of acquiring the securities offered, each beneficial owner of equity interests or equity securities in such entity shall count as a separate purchaser; and

(3) Clients of an investment adviser, customers of a broker-dealer, trusts administered by a bank trust department or persons with similar relationships shall be considered to be separate purchasers regardless of the amount of discretion given to the investment adviser, broker-dealer, bank trust department or other person to act on behalf of the client, customer or trust.

(b) The limitation of 25 purchasers contained in Section 80A.15, Subdivision 2(h) is waived in connection with any limited distribution resulting in sales to not more than 35 persons in this state in connection with any offering being made in compliance with Rule 146 promulgated by the Securities and Exchange Commission, if such offering complies in all respects with that Rule.

(c) The exemption contained in Section 80A.15, Subdivision 2(h) is withdrawn for any security representing an interest in or formed for the purpose of investing in any oil and gas venture, or any partnership, joint venture, group or association formed principally for the purpose of exploring for oil and gas or developing oil and gas reserves unless said security is sold in compliance with Rule 146

promulgated by the Securities and Exchange Commission.

(d) The exemption contained in Section 80A.15, Subdivision 2(h) is withdrawn for any security representing an interest in, or formed for the purpose of investing in, any animal breeding, animal feeding, animal leasing or similar venture, unless said security is sold in compliance with Rule 146 promulgated by the Securities and Exchange Commission.

(e) For the purpose of Section 80A.15, Subdivision 2(h), "reasonable and customary commissions" means commissions which do not exceed the amounts which may permissibly be paid for the sale of particular types of securites in connection with registered offerings, as prescribed in SDiv. 2034.

(f) The exemption contained in Section 80A.15, Subdivision 2(h) is not available for any security which is advertised for sale to the general public in newspapers or other publications of general circulation or otherwise, or by radio, television or other method of mass communication. Mass communication includes a direct mailing where the issuer or other person making the offering does not have reasonable grounds to believe that the securities being offered would be a suitable investment for each person to whom such mailing is made, or does not have some other justifiable basis for selecting the persons to whom such mailing is made (such as existing security-holders of the issuer).

(g)(1). The exemption contained in Section 80A.15, Subdivision 2(h) is withdrawn for any security sold in a public distribution.

(2) For purposes of this Rule, "public distribution" means a public offering registered under the Securities Act of 1933 or exempted by Section 3(b) of that act, provided, however, that this Rule shall not apply to exchange offers or offers of options pursuant to a plan approved, or proposed to be approved by shareholders.

(h) The exemption contained in Section 80A.15, Subdivision 2(h) is withdrawn for any security representing an interest in an association whose operations, or proposed plan of operations, would require a broker-dealer's license pursuant to Minnesota Statutes 80A.04, Subdivision 1, unless the association has been licensed under

that section for a period not less than two consecutive years.

SDiv. 2119. Reserved for Future Use.

SDiv. 2120. The words "consolidation or merger" as used in Section 80A.15, Subdivision 2(1) shall mean a statutory consolidation or a statutory merger as defined by the laws of the governing state or other entity. A reorganization described in Section 368 (a)(1)(B) of the Internal Revenue Code of 1954, as amended, is not ordinarily a "consolidation or merger".

SDiv. 2121. Reserved for Future Use.

SDiv. 2122. Reserved for Future Use.

SDiv. 2123. Advertising Material

(a) Definition. "Advertisement" means any written or printed communication or any communication by means of recorded telephone messages or transmitted on radio, television, or similar communications media, including film strips or motion pictures, published in connection with the offer or sale of a security.

(b) Certain advertisements to be filed. All sales and advertising literature and promotional material, other than that exempted by this rule, shall be governed by the following:

(1) The applicant shall file with the Commissioner, at least five days before its intended dissemination, one copy of each item of literature or material.

(2) If not disallowed by the Commissioner by written notice or otherwise within three business days from the date filed, the literature or material may be disseminated.

(3) No formal approval of the literature or material shall be issued by the Commissioner.

(4) The disseminator of the literature or material shall be responsible for the accuracy and reliability of the literature and material, and its compliance with the Act and this rule.

(c) Specific Prohibitions

The following devices or sales presentations, and the use thereof, will be deemed deceptive or misleading practices:

(1) Comparison charts or graphs showing a distorted, unfair or unrealistic relationship between the issuer's past performance, progress or success and that of another company, business, industry or investment media;

(2) Lay-out, format, size, kind and color of type used so as to attract attention to favorable or incomplete portions of the advertising matter, or to minimize less favorable, modified or modifying portions necessary to make the entire advertisement a fair and truthful representation;

(3) Statements or representations, which by themselves predict future profit, success, appreciation, performance or otherwise relate to the merit or potential of the securities which are positive or imperative in form; such statement or representations should clearly indicate that they represent solely the opinion of the publisher thereof.

(4) Generalizations, generalized conclusions, opinions, representations and general statements based upon a particular set of facts and circumstances unless those facts and circumstances are stated and modified or explained by such additional facts or circumstances as are necessary to make the entire advertisement a full, fair, and truthful representation.

(5) Sales kits or film clips, displays or exposures, which, alone or by sequence and progressive compilation, tend to present an accumulative or composite picture or impression of certain, or exaggerated potential, profit, safety, return or assured or extraordinary investment opportunity or similar

benefit to the prospective purchaser.

(6) Distribution of any non-factual or inaccurate data or material by words, pictures, charts, graphs, or otherwise, based on conjectural, unfounded, extravagant, or flamboyant claims, assertions, predictions or excessive optimism.

(7) Any package or bonus deal, prize, gift, gimmick or similar inducement, combined with or dependent upon the sale of some other product, contract or service, unless such unit or combination has been fully disclosed and specifically described and identified in the application as the security being offered.

(d) Exceptions

The following forms and types of advertising are permitted without the necessity for filing or prior authorization by the Commissioner, unless specifically prohibited.

(1) So-called "tombstone" advertising, containing no more than the following information:

(aa) Name and address of issuer.

(bb) Identity or title of security.

(cc) Per unit offering price, number of shares and amount of offering.

(dd) Brief, general description of business.

(ee) Name and address of underwriter, or address where offering circular or prospectus can be obtained.

(ff) Date of issuance.

(2) Dividend notices, proxy statements and reports to shareholders, including investment company quarterly and semi-annual reports.

(3) Sales literature, advertising or market letters prepared in conformity with the applicable regulations, in compliance with the filing requirements of and approved by, the SEC, the NASD, or securities exchanges enumerated in Minn. Statutes, Section 15, Subdivision 1(f).

(4) Factual or informative letters, bulletins or

releases, similar to "news letters", relating to issuer's progress or activities, status of the offering or current financial condition, provided however, that during the course of a public offering, this exemption shall not be available to an issuer.

(5) Advertising or sales literature used in connection with a security or transaction exempted by Section 80A.15, and which meets all of the Rules promulgated pursuant to the applicable exemptive paragraph of Section 80A.15.

(e) Violations

Any person who knowingly prepares, distributes or causes to be issued or published any sales literature which is knowingly inaccurate, false, misleading or tending to mislead in any material respect or otherwise in violation of the provisions herein may be held responsible and accountable therefor in any administrative or civil proceeding arising under the act or these rules.

SDiv. 2124. Every registration statement and prospectus for a security which is not registered under the Securities Act of 1933 or exempted by section 3 thereof shall bear, on the front page of such registraiton statement or prospectus, the following language in capital letters and bold-face type:

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE MINNESOTA SECURITIES DIVISION NOR HAS THE DIVISION PASSED UPON THE ACCURACY OR ADEQUACY OF THIS PROSPECTUS. ANY REPRESENTATION TO THE CONTRARY IS A CRIMINAL OFFENSE.

SDiv. 2125 (a). Every broker-dealer and agent shall observe high standards of commercial honor and just and equitable principles of trade in the conduct of his business.

(b) (1) In recommending to a customer the purchase, sale or exchange of any security, a broker-dealer shall have reasonable grounds for believing that the recommendation is suitable for such customer upon the basis of the facts, if any, disclosed by such customer as to his financial situation and needs.

(2) A broker-dealer may not recommend speculative low-priced securities to customers without knowledge or an attempt to obtain infor-

mation concerning the customers' other securities holdings, their financial situation and other necessary data.

(c) (1) Every broker-dealer shall establish, maintain and enforce written procedures which will enable it to supervise properly the activities of each agent to assure compliance with applicable securities laws and regulations.

(2) Final responsibility for proper supervision shall rest with the broker-dealer. The broker-dealer shall designate a partner, officer or manager in each office of supervisory jurisdiction, including the main office, to carry out the written supervisory procedures.

(3) Every broker-dealer shall be responsible for keeping and preserving appropriate records for carrying out the broker-dealer's supervisory procedures. Every broker-dealer shall review and endorse in writing, on an internal record, all transactions and all correspondence of its agents pertaining to the solicitation or execution of any securities transaction.

(4) Every broker-dealer shall review the activities of each office, which shall include the periodic examination of customer accounts to detect and prevent irregularities or abuses and at least an annual inspection o f each office of supervisory jurisdiction.

(5) Every broker-dealer shall have the responsibility and duty to ascertain by investigation the good character, business repute, qualifications and experience of any person prior to licensing as an agent for that broker-dealer.

(6) "Office of supervisory jurisdiciton" means any office designated as directly responsible for the review of the activities of agents in such office and/or in other offices of the broker-dealer.

(d) (1). No broker-dealer shall effect with or for any customer's account in respect to which such broker-dealer or his agent or employee is vested with any discretionary power any transactions of purchase or sale which are excessive in size or frequency in view of the financial resources and character of such account.

(2) No broker-dealer or agent shall exercise any discre-

tionary power in a customer's account unless such customer has given prior written authorization to a stated individual or individuals and the account has been accepted by the broker-dealer, as evidenced in writing by the broker-dealer or the partner, officer or manager, duly designated by the broker-dealer.

(3) The broker-dealer or the person duly designated shall approve promptly in writing each discretionary order entered and shall review all discretionary accounts at frequent intervals in order to detect and prevent transactions which are excessive in size or frequency in view of the financial resources and character of the account.

(4) This Subdivision shall not apply to discretion as to the price at which or the time when an order given by a customer for the purchase or sale of a definite amount of a specified security shall be executed.

SDiv. 2126 - 2129. Reserved for Future Use.

SDiv. 2130. No broker-dealer or agent participating in any distribution of securities, other than a firm commitment distribution of securities, shall accept any part of the sale price of any security being distributed unless:

(a) the money or other consideration received is promptly transmitted to the persons entitled thereto; or

(b) if the distribution is being made on an "all-or-none" basis, or on any other basis which contemplates that payment is not to be made to the person on whose behalf the distribution is being made until some further event or contingency occurs, (i) the money or other consideration received is promptly deposited in a separate bank account, as agent or trustee for the persons who have the beneficial interest therein, until the appropriate event or contingency has occured, and then the funds are promptly transmitted or returned to the persons entitled thereto, or (ii) all such funds are promptly transmitted to a bank which has agreed in writing to hold all such funds in escrow for the persons who have the beneficial interests therein and to transmit or return such funds directly to the persons entitled thereto when the appropriate

event or contingency has occured.

(c) For the purpose of this Rule, "promptly" shall mean not later than two business days following receipt.

SDiv. 2131. (a). No broker-dealer shall offer or sell any security to, or to attempt to induce the purchase of any security by, any person, in connection with which such broker-dealer, directly or indirectly, offers to extend any credit to or to arrange any loan for such person, or extends any credit to or participates in arranging any loan for such person, unless such broker-dealer, before any purchase, loan or other related element of the transaction is entered into:

(1) delivers to such person a written statement setting forth the exact nature of (aa) such person's obligations under the particular loan arrangement, including, among other things, the specific charges which such person will incur under such loan in each period during which the loan may continue or be extended, (bb) the risks and disadvantages which such person will incur in the entire transaction, including the loan arrangement, and (cc) all commissions, discounts and other remuneration received and to be received, in connection with the entire transaction including the loan arrangement, by the broker-dealer, by any person controlling, controlled by, or under common control with the broker-dealer, and by any other person participating in the transaction; and

(2) obtains from such person information concerning his financial situation and needs, reasonably determines that the entire transaction, including the loan arrangement, is suitable for such person, and delivers to such person a written statement setting forth the basis upon which the broker-dealer made such determination.

(b) This rule shall not apply to any credit extended or any loan arranged by any broker-dealer subject to the provisions of Regulation T (issued by the Board of Governors of the Federal Reserve System) if such credit is extended or such loan is arranged, in compliance with the requirements of such regulation, only for the

purpose of purchasing or carrying the security offered or sold.

SDiv. 2132. (a) All financial statements required by these rules or by any official form of the Commissioner shall be prepared in accordance with generally accepted accounting principles unless otherwise permitted by order. Financial statements shall be audited by independent certified public accountants who shall express an opinion thereon, except where the particular form or these Rules permits the use of unaudited statements for interim periods or generally. Any financial statements prepared in accordance with the rules and requirements of the Securities and Exchange Commission shall satisfy the requirements of this Section, provided, however, that the statements are audited by an independent certified public accountant who expresses an opinion thereon.

(b) Whenever in these rules financial statements of an issuer or other person are required by a particular rule or form without further description, such requirement refers to a balance sheet as of a date within 90 days prior to the date of the application , and profit and loss statements for each of the three fiscal years preceding the date of the balance sheet and for the period, if any, between the close of the last of such fiscal years and the date of the balance sheet. The balance sheet as of a date within 90 days prior to the date of the application need not be audited. However, if the balance sheet is not audited and the application is for a registration, there shall be filed in addition an audited balance sheet as of the end of the person's last fiscal year unless such last fiscal year ended within 90 days of the date of the application in which case there shall be filed an audited balance sheet as of the end of the person's next preceding fiscal year. The income statements and statement of changes in financial position shall be audited up to the date of the last audited balance sheet filed, if any.

(c) If amendments or other delays cause the above-described financial statements to become more than four (4) months old as of the effective date of the registration statement, then updated financial statements as of a date within four (4) months of the effective date

shall be filed if the company has no established record of earnings or is currently showing losses or a weak financial condition. If the company has an established record of earnings and is in sound financial condition, a paragraph containing later information as to sales, net income and financial condition may be added in lieu of updating the financial statements, in the discretion of the Commissioner. However, in no case shall the financial statements be more than six (6) months old as of the effective date of the registration statement. If a delay carries beyond the end of the fiscal year, and by applying due diligence the registrant and accountant can have the audit completed prior to the effective date, certified statements should be filed as of the end of the fiscal year.

SDiv. 2133 (a). The auditors' report required herein shall comply with the following requirements:

(1) The report shall be dated, manually signed, and shall identify the financial statements covered by the report.

(2) The report shall state whether the audit was made in accordance with generally accepted auditing standards and shall disclose any auditing procedures generally recognized as normal or deemed necessary under the circumstances of the particular case, which have been omitted, and the reasons for such omission.

(3) The report shall state clearly (aa) the opinion of the accountant with respect to the financial statements covered by the report and the accounting principles and practices reflected therein; (bb) the opinion of the accountant as to any changes in accounting principles or practices or method of applying the accounting principles or practices which have a material effect on the financial statements, or material adjustments of the accounts;

(4) Any matters to which the accountant takes exception shall be clearly identified, the exception thereto specifically and clearly stated and, to the extent practicable, the effect of each such exception on the related financial statements given.

(b)(1). All registration statements filed with the Commissioner shall include a manually signed and dated consent of the accountant to the use of his name and his report in the prospectus and registration statement, unless such consent has been filed with the Securities and Exchange Commission.

(2) If an independent accountant has been engaged as the principal accountant to audit the registrant's financial statements who was not the principal accountant for the registrant's most recently filed certified financial statement, the registrant shall furnish the Commissioner with a statement of the date when such independent accountant was engaged and whether, in the eighteen months preceding such engagements, there were any disagreements with the former principal accountant on any manner of accounting principles or practices, financial statement disclosure, or auditing procedure, which disagreements if not resolved to the satisfaction of the former accountant would have caused him to make reference in connection with his opinion to the subject matter of the disagreement. The registrant shall also request the former accountant to furnish the registrant with a letter stating whether he agrees with the statements contained in the letter of the registrant, and, if not, stating the respects in which he does not agree; and the registrant shall furnish such letter to the Commissioner together with its own.

SDiv. 2134. Notwithstanding any of the provisions of Minn. Reg. SDiv. 2132 or 2133, the Commissioner may by order or otherwise, waive such provisions as he considers to be appropriate under the circumstances of a particular case.

SDiv. 2135. Incorporation by Reference.

Whenever a reference is made in SDiv. 2000 to SDiv. 2134 to a federal or state statute, rule, decision or opinion, such reference shall be deemed to refer to the version of the statute, rule, decision or opinion as of April 15, 1974. Copies of such source documents may be examined at the Commissioner's office during regular business hours.

SDiv. 2136. Effective Date.

These rules shall be effective upon their filing with the Secretary of State , except that SDiv. 2024 shall not take effect until September 1, 1975.

APPROVED AS TO FORM AND LEGALITY

MAY 21 1975 19

WARREN SPANNAUS, ATTORNEY GENERAL

BY /s/ Michael B. Miller

SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED — 1:45 pm
MAY 21 1975
Joan Anderson Growe
Secretary of State

FILED
RICHARD L. BRUBACHER
Commissioner of Administration
MAY 21 1975 1:55 pm
BY Eda Steudemann
AUTH. SIGNATURE

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE EDWARD J. DRISCOLL
COMMISSIONER OF SECURITIES

In the matter of the Proposed Adoption of Rules of the State Securities Division of the Department of Commerce Governing Securities; under Minnesota Laws, 1973, Chapter 451.

ORDER ADOPTING RULES

The above-entitled matter came on for hearing before the Securities Commissioner of the State of Minnesota on the 19th day of February, 1974 and the 26th day of March, 1975 at 9:00 a.m. and 9:45 a.m., respectively, in the Commerce Department Hearings Room after proper notice required by M.S. 1971, Section 15.0412 was served upon all persons, associations and other interested groups registered with the Secretary of State for that purpose.

After affording interested persons an opportunity to present written and oral data, statements and arguments, having heard all of the testimony, having considered all of the evidence adduced and upon the records, files and proceedings herein, and applicable statutory standards or criteria, and having confirmed the need for the above captioned rules.

NOW, THEREFORE, IT IS ORDERED that these rules identified as Rules of the State Securities Division of the Department of Commerce Governing Securities; under Minnesota Laws, 1973, Chapter 451 are adopted this 25th day of April, 1975, pursuant to authority vested in me by Laws of Minnesota, 1973, Chapter 451.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
SECURITIES DIVISION

Edward J. Driscoll

STATE SECURITIES COMMISSIONER

STATE OF MINNESOTA

COUNTY OF RAMSEY

BEFORE EDWARD J. DRISCOLL
COMMISSIONER OF SECURITIES

In the matter of the Proposed Adoption of Rules of the State Securities Division of the Department of Commerce Governing Securities pursuant to Laws of Minnesota, 1973, Chapter 451.

ORDER AMENDING
ORDER ADOPTING RULES

WHEREAS, Edward J. Driscoll, Commissioner of Securities (hereinafter the "Commissioner") issued his Order Adopting Rules dated April 25, 1975; and,

WHEREAS, the Commissioner has now determined that the Rule identified as Minn. Reg. SDiv. 2116 be withdrawn from the Rules which should be adopted;

NOW, THEREFORE, IT IS ORDERED, that the Rule identified as Minn. Reg. SDiv. 2116 is not to be included in the Order Adopting Rules dated April 25, 1975.

ORDERED FURTHER, that the text accompanying Minn. Reg. SDiv. 2116 be striken, and that the following be inserted in lieu thereof:

Reserved For Future Use.

ORDERED FURTHER, that all the rest and remainder of the Order Adopting Rules dated April 25, 1975 not inconsistent herewith shall remain in full force and effect.

STATE OF MINNESOTA
SECURITIES DIVISION

Edward J. Driscoll

EDWARD J. DRISCOLL
STATE SECURITIES COMMISSIONER

Dated this 12th day
of May, 1975.

ADMIN. 1000

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL -Securities **Office Memorandum**

TO : MICHAEL B. MILLER
Special Assistant

DATE: April 25, 1975

FROM : ROBERT W. HERR
Assistant Attorney General

SUBJECT: SECURITIES DIVISION RULES AND REGULATIONS

Enclosed you will find, with reference to the Proposed Rules relating to the Securities Division under Minnesota Laws, 1973, the following:

A. Five copies of the Rules as Adopted
B. Three copies of the Rules as Proposed
C. One transcript of the public hearing on the proposed Rules**
D. Three sets of the following:
    1. Order for Hearing
    2. Notice of Hearing
    3. Affidavit of Acquisition of Mailing List
    4. Secretary of State's Certificate
    5. Mailing List
    6. Affidavit of Mailing
    7. Statement of Need
    8. Findings of Fact
    9. Order Adopting Rules

I will provide you with my Statement of Compliance with the Manual of Rulemaking Procedures shortly.

RWH:lb
Enc.

**Written comments and exhibits are attached thereto.

ADMIN. 1000
3

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Securities

Office Memorandum

TO : MICHAEL B. MILLER
Special Assistant
Attorney General

DATE: May 20, 1975

FROM : ROBERT W. HERR
Assistant Attorney General

SUBJECT: Securities Rules S.Div. 2000-2136

This memo is to transmit to you the above-referenced rules as modified in accordance with your memo of May 15, 1975. The Rules have been modified in all respects suggested by you in your memo with the following exceptions:

1. The date April 15, 1974, in S.Div. 2135 should be left April 15, 1974.

2. S.Div. 2125 has been the subject of substantial interpretation as it is a verbatim re-statement of language promulgated by the National Association of Securities Dealers (N.A.S.D.) and consists of phrases known to the securities industry even prior to the date of the first federal legislation in the securities area. Also, the constitution of nearly every stock exchange contains such language.

In addition, disciplinary actions by the National Association of Securities Dealers and the Securities and Exchange Commission have involved this Rule. Accordingly, it is my view that the rule is enforceable and valid in its present form.

RWH:lb

ADMIN. 1000
3

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Securities **Office Memorandum**

TO : MICHAEL B. MILLER
Special Assistant
Attorney General

DATE: May 1, 1975

FROM : ROBERT W. HERR RWH
Assistant Attorney General

SUBJECT: SECURITIES DIVISION RULES AND REGULATIONS

I am hereby transmitting to you my Statement of Compliance with the Manual of Rulemaking Procedures with respect to the above-referenced rules.

I am transmitting by separate memo a list of several changes which should be made in the Findings of Fact and one change that should be made in the rules themselves.

RWH:lb
Attachment

ADMIN. 1000
3

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Securities **Office Memorandum**

TO : MICHAEL B. MILLER
Special Assistant
Attorney General

DATE: May 1, 1975

FROM : ROBERT W. HERR
Assistant Attorney General

SUBJECT: SECURITIES DIVISION RULES AND REGULATIONS

The following changes should be made in the Findings of Fact previously submitted to you with reference to the above Rules:

1. The reference to SDiv. 2021 and 2022 in Finding No. 23 (page 26) should be 2020 and 2021.

2. The reference to SDiv. 2057 in Finding No. 47 (page 72) should be 2056.

3. The Finding relative to SDiv. 2068 (page 89) was not numbered and should be numbered 58a in order to keep the numbers in sequence.

4. Finding No. 89 on page 141 should be renumbered 89a. Finding No. 89 appears on page 130.

5. The two references to SDiv. 2129 on page 155 at the bottom of the page should be 2125.

6. The reference in Finding No. 101 to SDiv. 2131 should be 2132.

7. The reference in Finding No. 102 to SDiv. 2132 should be 2133.

8. The reference in Finding No. 103 to SDiv. 2133 should be 2134.

9. The reference in Finding No. 104 to SDiv. 2134 should be 2135.

10. The reference in Finding No. 105 to SDiv. 2135 should be 2136.

11. A blank appears in the second line of Rule SDiv. 2005 (page 9). The number 2034 should be inserted therein.

12. Finding No. 14 should be amended by deleting the period (.) after "license" and adding "and Subdivision 6."

RWH:lb
Att.

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the Matter of the Proposed Adoption of Rules of the State Securities Division of the Department of Commerce Governing Securities Under Minnesota Laws, 1973, Chapter 451.

STATEMENT OF COMPLIANCE WITH MANUAL OF RULE-MAKING PROCEDURES

I, Assistant Attorney General Robert W. Herr, do hereby declare that I have examined the above-referenced Rules and all related documents and that, based on them and my personal familiarity with the applicable procedures specified in the Attorney General's Manual of Rulemaking Procedures, the Manual of Rulemaking Procedures has been followed. Exceptions noted below, are specified by reference to particular Rules and the Findings of Fact issued with reference thereto:

1. SDiv. 2014 as originally proposed required surety bonds for securities agents and investment advisers in the amount of $2,000 and $15,000 respectively. These figures have been changed to $5,000 and $30,000 respectively. The original proposal provided an alternative blanket bond for all agents of a broker-dealer in an amount up to $30,000. This sum has been changed to $50,000. See Finding Number 17, page 19.

2. SDiv. 2089 was not included in the Proposed Rules in the context in which it is used in this Rule. See Finding Number 79, page 117.

3. SDiv. 2110(a) and (b) were not included in the Proposed Rules. See Finding Number 81, pages 120-122, for further comment.

4. SDiv. 2113(b) was not among the Proposed Rules. See Finding Number 81, page 120 and 123, for further comment.

5. SDiv. 2114 was not included in the Proposed Rules. See Finding Number 86, pages 126-127, for further comment.

6. SDiv. 2115(a) was not among the Proposed Rules in the context in which it is used in this Rule. See Finding Number 87, pages 127-129.

7. SDiv. 2115(b) and (c) were not among the Proposed Rules. See Finding Number 88, page 129, for further comment.

8. SDiv. 2116 was not among the Proposed Rules. See Finding Number 89, pages 130-141, for further comment.

9. SDiv. 2117 was not among the Proposed Rules. See Finding Number 89a, pages 141-143, for further comment.

10. SDiv. 2118(i) was not among the Proposed Rules. See Finding Number 90, page 149, for further comment.

11. SDiv. 2119 was not among the Proposed Rules. See Finding Number 91, page 150, for further comment.

12. SDiv. 2121 was not among the Proposed Rules. See Finding Number 93, pages 151-152, for further comment.

13. SDiv. 2122 was not among the Proposed Rules. See Finding Number 94, pages 152-153, for further comment.

Dated: May 2, 1975.

ROBERT W. HERR
Assistant Attorney General

Rule Prob.

~~2000(a)(2), (3)~~ - ~~too restrictive or legislative?~~

~~2002~~ - ~~legislative?~~

~~2005 (a)~~ - ~~vague?~~ please rec stat.

2006 (6) ~~too restrictive or legislative~~ → - put in "not" in (b) * Sugg.

~~2012~~ - ~~vague? (1st sentence)~~ all stats. open or expand stat. power

2013 (7) p. 28, 9 → colon, w/ semicolon before enumeration ~~need "and" or "or" before (g)~~

2013 (2)(3) - "req'd" misspelled typo

~~2016 (a)(6) p. 34 top~~ ~~trust balances req'd~~ - ~~any auth. for this?~~ precedent

✓ 2014(c) exceeds stat 80.A05 subds as to investment advisors

~~2017(a)~~ (p. 44) ~~vague?~~

~~+(c)~~

~~+(d)~~ → ~~too discretionary?~~

p. 47 two no. 2's under 2017 (c)

~~2021 (c)(4)~~ = vague or discretionary

~~last sent. (p. 51)~~

~~2032 (a)~~ ~~vague + discretionary?~~

~~p. 57~~

2030 (a) p. 62 ✓ Missing a rule # in 1st sentence

2032 (d) p. 65 ✓ "therefore" should be "therefor"

2035 (c) p. 70 ✓ typo - should be "prospectus"

→ 2055 (f) p. 82 vague? ✓ "reasonable" need long. change -

~~2056 (a)(7) p. 83~~

~~2061 (b) p. 97~~ ~~vague?~~

~~2061 (f)(1), (2) p. 99~~ ~~Vague~~

2061 (k)(3) p. 98 ✓ needs reference to another rule no.

2063 (d) p. 100 ✓ Title "proceed" should be "proceeds"

→ 2063 (g) p. 101 what does this mean? ✓ "discouraged" "w/ looked upon w/ favor" - change

2064 (a) p. 102 "written" is misspelled

-2-

2064 (g) p.105 ✓ missing reference to another rule

2066 (f) p.112 ✓ " " " " "

2076 (c) p.122 ✓ " " " 2 rules

2078 (b)(1) p.124 ✓ " " " "

(b)(2) needs colon, n/semicolon

→ ~~Subch. 5+6 - auth.? Oil + Cattle~~

2081 p.127-8 ✓ - underline defns as w/others

2082 p.128 ✓ missing ref. to another rule

2084(c) p.131 ✓ " " " "

2085 (a)(2) p.132 ✓ " " " "

→ 2085 (c) p.133 - legislative? suggs exoneration put in leg. "in agg."

~~2085(d)(e) p.133 vague? ("conn. for. stop loss")~~

~~2085(h) p.134 - wish to do by examples? ("e.g.")~~

→ 2086 (b) p.135 appears incomplete suggs → correct, or drop "and"

~~p.136 vague - auth.?~~

2099 p.145 ✓ needs reference to 2098

→ 2100 p.145 - title unrelated to content suggs correct

→ 2102 p.146 ✓ vague - # or $ amt.? "maj. of securities" correct

2110 p.148 - defn. of stat. by rule

2114 p.149 →

2117 p.151 stat. defn problem → (by contrast 2118(a) is OK)

2118 (b) how waive stat.?

(c) p.152 → how do draw stat. exception?

(d) p.153

(e) defn post.

(f) waives stat. exemption

(g) " " " "

(h) " " " "

(i) waives stat. req't.

~~2120 p.154 stat defn~~

~~2121~~

2123 p.155 ✓ Misspells "Adv."

~~2123(c) p.158 - why here?~~

~~2124 p.158 auth. for com. off.?~~

→ 2125 (a) p.158 meaningless suggs Shitcan this

~~2131 (a)(2) p.164 how do? what auth.?~~

~~2134 p.164 - arbitrary?~~ suggs

→ 2135 p.164 - what if stat. inc. by ref. has changed 1975

→ 2136 p.165 - wrong suggs s/s/state

[redacted] Con. w/ Adm

Distinction between rec. con. + suggs.

Add - return to me + file w/in 10 da. forthwith

STATE OF MINNESOTA
COUNTY OF RAMSEY

BEFORE EDWARD J. DRISCOLL
COMMISSIONER OF SECURITIES

In the matter of the Proposed Adoption of Rules of the State Securities Division, Governing Securities under Minnesota Laws 1973, Chapter 451.

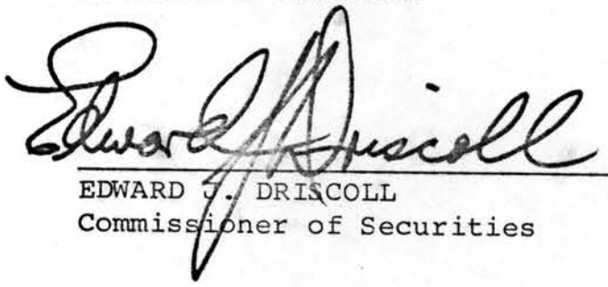
ORDER FOR HEARING

To effectively implement Minnesota Laws 1973, Chapter 451, the Minnesota Commissioner of Securities deems it necessary to consider adoption of the proposed rules captioned above pursuant to the authority vested in me by Minn. Laws 1973, Chapter 451, Sec. 25.

NOW, THEREFORE, IT IS ORDERED this 4th day of January, 1974, that a public hearing on the proposed rules captioned above be held in the Hearings Room of the Department of Commerce, Fifth Floor, Metro Square Building, Seventh and Robert Streets, St. Paul, Minnesota, on February 19, 1974, commencing at 9:00 A.M. and continuing until all representatives have had an opportunity to be heard.

IT IS FURTHER ORDERED that notice of said hearing be given to all representatives of associations or other interested groups or persons who have registered their names with the Secretary of State for that purpose and all persons who are presently members of the Minnesota Legislature.

STATE OF MINNESOTA
SECURITIES DIVISION



EDWARD J. DRISCOLL
Commissioner of Securities

STATE OF MINNESOTA
COUNTY OF RAMSEY

BEFORE EDWARD J. DRISCOLL
COMMISSIONER OF SECURITIES

In the matter of Proposed Rules
Relating to Securities under
Minnesota Laws 1973, Chapter 451.

NOTICE OF HEARING

Notice is hereby given that a public hearing will be held pursuant to Minnesota Statutes 1973, Section 15.0412, Subd. 4, in the above entitled matter in the Hearings Room of the Department of Commerce, Fifth Floor, Metro Square Building, Seventh and Robert Streets, St. Paul, Minnesota, on Tuesday, February 19, 1974, commencing at 9:00 A.M. and continuing until all representatives or other interested groups of persons have had an opportunity to be heard concerning adoption of the proposed rules captioned above by submitting either oral or written data, statements or arguments. Statements or briefs may be submitted without appearing at the hearing.

The Commissioner proposes to adopt rules relating to the following matters: advisory activities, investment advisers, brokers and dealers, agents, licensing, registration statements, exemptions, advertising material, applications, reports and financial statements.

Copies of the proposed rules are now available and may be obtained by writing to John R. Larson, Securities Division, Department of Commerce, 5th Floor, Metro Square Building, Seventh and Robert Streets, St. Paul, Minnesota 55101.

STATE OF MINNESOTA
SECURITIES DIVISION

Edward J. Driscoll

EDWARD J. DRISCOLL
Commissioner of Securities

AFFIDAVIT

John R. Larson, being duly sworn on oath deposes and says:

1) That he is an employee of the Securities Division of the State of Minnesota.

2) That on the 7th day of January, 1974, he went to the Secretary of State's office for the State of Minnesota and requested a current list of all representatives of associations or other interested groups or persons who had registered their names with the Secretary of State for the purpose of obtaining notices of public hearings relating to the promulgation of rules pursuant to M.S. 15.0412.

3) That on the 9th day of January, 1974, in response to the above request, the Secretary of State provided him with such a list, a copy of which is attached hereto and incorporated by reference.

Further affiant sayeth not.

John R Larson

Subscribed and sworn to before me
this 10th day of January, 1974.

Samuel F Johnson

SAMUEL F. JOHNSON
Notary Public, Hennepin County, Mn.
My Commission Expires,
September 29, 1978

Notary Public,
Ramsey County, Minnesota
My Commission expires 9/28/78.

STATE OF MINNESOTA

COUNTY OF RAMSEY

In the matter of Proposed Rules
Relating to Securities under
Minnesota Laws 1973, Chapter 451.

AFFIDAVIT
OF MAILING

Donna Meza, being first duly sworn, deposes and says:

That on the 10th day of January, 1974, at the City of St. Paul, County of Ramsey, State of Minnesota, she served the attached Notice of Hearing by depositing in the United States mail at said City of St. Paul, a true and correct copy thereof, properly enveloped, with postage prepaid, to all persons and associations at the addresses listed on the attached Certificate of the Secretary of State as well as to all persons listed on the attached sheet as presently being members of the Minnesota Legislature.

Donna Meza

Subscribed and sworn to before me
this 10th day of January, 1974.

Samuel F. Johnson

SAMUEL F. JOHNSON
Notary Public, Hennepin County, Minn.
My Commission Expires
September 29, 1978

STATE OF MINNESOTA

COUNTY OF RAMSEY

C E R T I F I C A T E

In the matter of Proposed Rules
Relating to Securities under
Minnesota Laws 1973, Chapter 451.

I hereby certify that the attached twenty (20) sheets constitute the complete list of persons, associations and other interested groups who as of 10:00 o'clock A. M., this 9th day of January, 1974, have requested, pursuant to M. S. 1971, Section 15.0412, Subd. 4, that their names be placed on file with the Secretary of State for the purpose of receiving notice of public hearing on proposed rules on the subject captioned above.

Secretary of State

Arlen I. Erdahl

By Gail Dion

STATE OF MINNESOTA
COUNTY OF RAMSEY

BEFORE EDWARD J. DRISCOLL
COMMISSIONER OF SECURITIES

In the matter of Proposed Rules
Relating to Securities under
Minnesota Laws 1973, Chapter 451.

STATEMENT OF NEED

The Securities Division of the Department of Commerce, State of Minnesota, proposes to adopt rules to implement Chapter 451 of the Laws of Minnesota 1973 (codified as Minn. Stat. 1973 Supp., Ch. 80A, and hereinafter referred to as "the Act"). These rules are not amendments of existing rules, but de novo proposals to implement the subject legislation.

The need to adopt the proposed rules arises by way of legislative mandate. Rules are proposed to be adopted in accordance with Section 2 pertaining to investment advisers and advisory activities; Section 3 pertaining to unlawful activities; Section 4 pertaining to the licensing requirements of broker-dealers, agents and investment advisers; Section 5 pertaining to the licensing procedure of broker-dealers, agents and investment advisers; Section 6 pertaining to the books and records to be retained by broker-dealers and investment advisers, and annual reports of broker-dealers, Section 10 pertaining to required information to be filed with an application for registration by coordination; Section 11 pertaining to required information to be filed with an application for registration by qualification; Section 12 pertaining to the requirement of escrow of securities or cheap stock, impoundment of proceeds from the sale of registered securities, quarterly reports, reports of sales and annual reports of issuers; Section 13 pertaining to the standards of qualification for registration of equity securities, senior securities, investment companies, real estate limited partnerships, oil and gas programs,

cattle feeding programs, and real estate investment trusts; Section 15, subdivision 1(f) pertaining to warrants or rights to purchase listed securities, subdivision 1(g) pertaining to commercial paper, and subdivision 1(h) pertaining to employee stock purchase plans; Section 15, subdivision 2(h) pertaining to the limited distribution exemption, and subdivision 2(i) pertaining to consolidations and mergers; Section 16 pertaining to advertising material; Section 18 pertaining to unlawful representations concerning a registration or exemption; Section 25, subdivision 3 pertaining to the form and content of financial statements; and generally pursuant to Section 25, subdivision 1 which provides:

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

In addition the need for said rules arises by means of complaints and violations under the Act. The Securities Division takes administrative notice of the violations that have occured under this Act and its predecessors.

The above captioned rules are necessary to implement and make effective the provisions and purposes of the Act and to establish objective standards for the purpose of advision those subject to the Act of their rights and obligations thereunder.

Dated: February 19, 1974

State of Minnesota
Securities Division

Edward J. Driscoll

EDWARD J. DRISCOLL
Commissioner of Securities

Mike - for your information. These are all typos.
Allan
6425

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
ST. PAUL, MINNESOTA 55101

July 23, 1975

Eda Staudenmaier
Chief, Documents Section
Department of Administration
140 Centennial Office Building
St. Paul, Minnesota 55155

Re: Securities Division, Department of Commerce, Securities Rules

Dear Ms. Staudenmaier:

We have discovered a number of typographical errors and omissions and wanted to bring them to your attention prior to your setting any type in connection with reprinting the rules which became effective on May 21, 1975.

With reference to the booklet entitled "Minnesota Securities Regulations" reprinted from Blue Sky Law Reports, two copies of which were supplied to you by Deputy Commissioner Lynch:

1. SDiv. 2029(b)(2), which appears on page 22, 524, is incomplete in that "2132" was omitted from the third line of the subparagraph.

2. SDiv. 2030(b)(2)(bb), which appears on page 22, 525, is incomplete in that the words "were issued more than one year but less than two years prior to registration;" should be substituted for the presently existing last line of that subparagraph.

3. SDiv. 2037(c), which appears on page 22, 529, is incomplete in that the number "2043." was omitted from the last line of the subparagraph.

4. SDiv. 2095(d), which appears on page 22, 558, is incomplete in that the number "2034" should be inserted in the second line of that subparagraph.

We regret these errors and omissions, but trust that this will be satisfactory authorization for you to modify the materials which you have available prior to printing, so that at the time of printing, persons will be able to get a complete set of the rules.

In connection with this matter, please be advised that this Division held a public hearing on July 16, 1975, as part of a rule making proceeding to amend approximately six existing rules and to add approximately six new rules. In addition, many forms were proposed for adoption at that hearing. While we have not yet completed our review of the issues raised at that hearing, it is anticipated that the rules under discussion at that time will become effective sometime in August or September. Perhaps it would be desirable for you to hold off printing copies of the rules until those amendments, new rules and forms can be incorporated in the rules which became effective on May 21, 1975. At such time, we wonder if it would be possible for you to print a booklet containing the statute (Minnesota Statutes 1974, Chapter 80A., as amended by Minnesota Session Laws 1975, Chapter 371), the rules (as amended sometime in August and September) and the forms. To have such a booklet would be of great value to attorneys and others throughout the state.

If I can be of any further assistance to you in this matter, please do not hesitate to call upon me. My telephone is extension 6425.

Very truly yours,

JOHN R. LARSON
Commissioner of Securities

By:

Allan W. Klein
Staff Attorney

AWK:jml