

Minnesota Attorney General: Administrative Rules Proceedings

Copyright Notice:

This material may be protected by copyright law (U.S. Code, Title 17). Researchers are liable for any infringement. For more information, visit www.mnhs.org/copyright.

Version 3
August 20, 2018

SF-00006-02

STATE OF [redacted]NESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : MARY ALICE BROPHY
Commissioner of Securities and Real Estate
Attn: Allen Gilbert
Special Assistant
Attorney General

DATE: February 2, 1981

FROM : JERRY S. ANDERSON
Special Assistant
Attorney General

PHONE: 6-4692

SUBJECT: Rules as Approved

Enclosed herewith are the rules you have submitted for approval. These rules have been approved by this office and filed with the Secretary of State. Note that they have NOT been filed with the State Register; this must be done promptly by your agency.

Upon receipt and before transmittal to your agency, however, it is important that you recheck these rules as to:

1. Affixation of the stamps of the Attorney General and Secretary of State to the last page of the rules;

2. Coverage by these stamps of all rules submitted; and

3. Inclusion of all pages of the rules in the approved set.

If you have any questions in this regard, please contact me.

JSA:et
cc: Duane Harves
Susan Robertson

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
SECURITIES AND REAL ESTATE DIVISION

In the Matter of the Proposed Adoption, Repeal and Amendment of Rules and Forms of the State Department of Commerce, Securities and Real Estate Division Governing Minnesota Statutes, Chapter 80A (Regulation of Securities)

ORDER ADOPTING RULES

Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on December 8, 1980 and was sent by the United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes section 15.0412, subdivision 4 on December 5, 1980. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving no written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that the rules as published in 5 State Register 915 - 934, and as modified by the Findings of Fact and Conclusions filed herewith, and hereby adopted this 30th day of January, 1981 pursuant to authority vested in me by Minnesota Statutes section 80A.25.

STATE OF MINNESOTA

Mary Alice Brophy
MARY ALICE BROPHY
COMMISSIONER OF SECURITIES AND REAL ESTATE

Dated: January 30, 1981

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : MARY ALICE BROPHY
Commissioner of Securities and Real Estate

DATE: January 29, 1981

Attn: Allen Gilbert
Special Assistant
Attorney General

FROM : JERRY S. ANDERSON
Special Assistant
Attorney General

PHONE: 6-4692

SUBJECT: In the matter of the Proposed Adoption, Repeal and Amendment of Rules and Forms Relating to Minnesota Statutes, Chapter 80A (Regulation of Securities)

The rules in the above-reference matter have not been approved by this office for the following reasons:

1. In four instances, the rules grant to the commissioner unbridled discretion in decision-making. This has been done through the use of the term "may." These attempts to provide the commissioner with discretion or flexibility in her decision-making are violative of Minn. Stat. § 15.0411, subd. 3, which requires an agency to establish by rule "every agency statement of general applicability and future effect . . . made to implement or make specific the law enforced or administered by [the agency]." Thus, agency flexibility and discretion must be achieved by careful, complete selection of criteria that are not impermissibly vague but are sufficiently broad to provide agency flexibility. Predictability and nondiscriminatory application of the rules must be achieved and made available to all applicants who meet the stated criteria. Upon compliance with the stated criteria, the commissioner's action must be certain. The following is a list of the improper rules:

   a) Section 2014(d). As written this rule could be interpreted to permit the commissioner to make a decision not to allow an irrevocable letter of credit in lieu of the bond. To avoid any ambiguity in the interpretation of this rule, the "may" should be changed to "shall."

   b) Section 1.2142 C. Here, no reason is stated for the exercise of the commissioner's discretion to require the letter. A reason or some criteria for the commissioner's action must be set forth in the rule.

   c) Section 1.2143 B.3. This rule sets forth no criteria for when, why, or how often the periodic reports may be required.

   d) Section 1.2145 C.9.b(8). The commissioner's discretion to permit or require additional or different disclosures is unfettered. Criteria must be established for the requirement or use of such disclosures to provide consistent application to all programs.

2. SDiv 2025(b) (that is, new (b)) refers to "the final report required by paragraph (a) of this section." Paragraph (a), however, was deleted and new material was put in its place. That new material does not refer to a final report. Thus section 2025(b) is vague and must be rewritten for consistency with the prior section.

3. 4 MCAR § 1.2145 appears to contain two incorrect cross-reference citations. First in § 1.2145 B., the reference to SDiv 2125 apparently should be to SDiv 2123. Second § 1.2145 C.15 contains a reference to 4 MCAR § 1.2143 B. The correct cite apparently should be 4 MCAR § 1.2144 B.

4. A number of typographical errors were also found in the rules as adopted.

   a) Section 2014(c) - "Ary" should be "Any"

   b) Section 2030(c)(2) - The parenthesis around "(issuer)" should be deleted.

   c) Section 2031 (b) - "therefore" should be "therefor"

   d) Section 1.2141,E.3. - "sussessful" should be "successful"

   e) Section 1.2143 B.1. - "reimbrusement" should be "reimbursement"

After consideration of the above comments and agency action, if any, these rules may be resubmitted for our review. This office has retained copies of all pertinent documents in this matter, and therefore on resubmission you need only include a new or supplemental Order Adopting and the original and two copies of the new Rules as Adopted. At the time of resubmission, please include a memorandum specifying that the rules are being resubmitted so that we may obtain our initial file in this matter.

If you have any questions concerning the issues raised in this memorandum, please do not hesitate to contact me.

JSA:jb

cc: Duane Harves
Susan Robertson

Our File No. 666

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 1/16
DATE FOR REVIEW _____
DATE DUE ~~1/30~~ 1/30

Adopted w/a hearing _____
Adopted w/o a hearing X
Temporary rule _____

Approved _____ Disapproved _____ Returned to Agency _____

Resubmitted _____ Due _____
Approved _____ Disapproved _____ Returned to Agency _____

Date filed w/Secretary of State _____

✓ Rule as Adopted

✓ Rule as Proposed see red inked copy of "adopted" rules

✓ Order Adopting 1.14.80

✓ Notice of Intent to Solicit Outside Opinion + Comments

___ Order for rulemaking not submitted
_____ Date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
? Sufficiency See my comment

✓ Affidavit of Mailing Notice of rulemaking
12.5.80 At least 30 days prior to ~~hearing~~/adoption

✓ Mailing list Certificate

✓ Publication in State Register
12.8.80 At least 30/~~20~~ days prior to ~~hearing~~/adoption

N/A Hearing Examiner's Report

N/A Chief Hearing Examiner's Report(s)
_____ Approving H.E.'s Report
_____ Approving agency action

✓ Agency's Findings of Fact

N/A LCRAR Report or agency Affidavit

N/A Certificate of Board's Resolution Adopting Rules

N/A Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness

N/A Petition for Adoption of a Rule

✓ Record (~~includes transcript or tape, exhibits~~, comments received by agency, ~~requests for a hearing,~~ and other relevant materials)

✓ Certificate of Compliance w/Rulemaking Procedures

✓ Affidavit of Mailing Notice of Submission to Attorney General

✓ Notice of Submission to the Attorney General

Note: Documents submitted appear to be originals; Dan Hardy told me that, nevertheless, we should retain these for our file, except as noted by attached yellow slip

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
SECURITIES AND REAL ESTATE DIVISION

In the Matter of the Proposed Adoption Repeal and Amendment pursuant to Minnesota Statutes section 15.0412, subdivision 4(h) (1980), of Rules and Forms of the State Department of Commerce, Securities and Real Estate Division Governing Minnesota Statutes chapter 80A (Regulation of Securities)

AMENDED FINDINGS OF FACT AND CONCLUSIONS

The FINDINGS OF FACT AND CONCLUSIONS in the above-captioned matter, dated January 14, 1981, (a copy of which is attached hereto) are re-affirmed and incorporated herein by reference.

In addition, I find that the proposed rules, as published in 5 State Register 915 (1980), should be further modified in the following manner (changes are to the rules as printed in the State Register (5 S.R. 915 - 934)):

(1) SDiv 2014(d), delete "may" in the last line and insert "shall".

(2) 4 MCAR § 1.2142 C., delete the following language in lines 2 and 3: "The commissioner may require a sponsor to obtain from the purchaser a letter justifying the suitability of such investment."

(3) 4 MCAR § 1.2143 B.3., delete the following language in the last line: "The commissioner may require the program to file periodic reports concerning all brokerage transactions."

(4) Delete 4 MCAR § 1.2145 C.9.b.(8), which reads as follows: "(8) Such additional or different disclosures of the success or failure of the programs as may be permitted or required by the commissioner."

(5) 4 MCAR § 1.2150 B., delete "based" in line 1 and insert "granted".

(The changes set forth in (1) - (5) above are made pursuant to recommendations by the Attorney General's Office.)

(6) The following corrections of typographical errors and deletions and additions of language have been made for purposes of clarity and are not material or substantive modifications:

(a) SDiv 2025(a), delete the "(a)" following "SDiv 2025" in line 1.

(b) Strike SDiv 2025(b) (old SDiv 2025(c)). This language is being eliminated in order to reflect the changes made elsewhere in SDiv 2025.

(c) 4 MCAR § 1.2145 B., the reference in line 3 should be to "SDiv 2123" instead of "SDiv 2125".

(d) 4 MCAR § 1.2145 C. 15., the reference in the last line should be to "4 MCAR § 1.2144 B" instead of "4 MCAR § 1.2143 B".

(e) 4 MCAR § 1.2145 C.19.b.(2), delete "amount of such" in line 3 and insert "individual's".

STATE OF MINNESOTA

Mary Alice Brophy

MARY ALICE BROPHY
COMMISSIONER OF SECURITIES AND REAL ESTATE

Dated: January 30, 1981

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
SECURITIES AND REAL ESTATE DIVISION

In the Matter of the Proposed Adoption Repeal and Amendment pursuant to Minnesota Statutes section 15.0412, subdivision 4(h) (1980), of Rules and Forms of the State Department of Commerce, Securities and Real Estate Division Governing Minnesota Statutes chapter 80A (Regulation of Securities)

FINDINGS OF FACT AND CONCLUSIONS

After proper notice required by Minnesota Statutes section 15.0412 was served upon all persons, associations and other interested groups registered with the State Department of Commerce for that purpose and after affording interested persons an opportunity to present comments and having considered all of the evidence herein, I find as follows:

That the proposed rules, as published in 5 State Register 915 (1980), should be modified in the following manner:

(1) SDiv 2031 should be amended as set forth below:

(a) to allow employees and directors to exercise options at a price not less than 85% of the fair market value on the date of the grant (currently 100%);

(b) to allow the issuance of shares to employees and directors at a purchase price of at least 85% of fair market value (currently, any such purchase must be for fair market value and in cash); and

(c) to allow all of the terms of issuance of options granted and shares issued to employees and directors to vary from the requirements of SDiv 2031 if approved or ratified by a majority of disinterested shareholders. These changes are, in the opinion of the Commissioner, supported by the views referenced in the letter of John P. Flaten, dated January 5, 1981 (a copy of which is attached hereto, marked Exhibit A). As noted therein, such changes will assist companies (especially smaller companies) in designing compensation plans, available elsewhere, which will assist such companies in attracting and retaining key employees. Flexibility is necessary in order to accommodate changing Internal Revenue Code provisions in the area of employee stock purchase plans, and the possibility of abuse is unlikely due to market influences, the requirements of

underwriters and lenders and the application of rules relating to minimum investment and cheap stock limitations (proposed SDiv 2029 and 2030).

The deletion of the requirement in SDiv 2031(b) that shares purchased by employees or directors must be paid for in cash reflects the provision in Minnesota Statutes section 301.15, subdivision 1 (1980), regarding the form of consideration for the allotment of shares. Rule SDiv 2031, as revised, reads as follows:

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

(a) Outstanding options to all employees and directors shall not exceed 20 percent of the to be outstanding common shares of the issuer, provided further that:

(1) the exercise price shall not be less than 85 percent of the fair market value on the date of the grant; and

(2) no such options in excess of 10 percent of the to be outstanding shares are granted to any individual who, immediately before such option is granted, owns stock possessing more than 10 percent of the total combined voting power or value of all classes of stock of the issuer.

(b) No shares shall be issued to employees or directors unless they shall have paid at least 85 percent of fair market value therefore, other than pursuant to the provisions of paragraph (a) of this section, 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 issuer.

(c) The terms of issuance of options granted and shares issued to employees and directors may vary in any manner and to any extent from the requirements and limitations of paragraphs (a) and (b) of this section, if ratified or approved by a majority of the shareholders, excluding officers, directors, employees, and their spouses.

(2) SDiv 2118(k) should be deleted in its entirety. This change is, in the opinion of the Commissioner, supported by the views referenced in the letter of Roger H. Frommelt, dated January 7, 1981 (a copy of which is attached hereto, marked Exhibit B).

As noted therein the proposed rule could potentially be unduly burdensome, especially to small companies attempting to attract venture capital. In addition, the proposal as originally stated required full disclosure, thereby diminishing the benefits of the exemption. If promulgated as originally proposed issuers would be required to prepare offering documents similar to those of a full registration. Such a practice would result in unnecessary and unintentioned burdens not contemplated by the statute. Moreover, again as recognized by Mr. Frommelt, under Minnesota Statutes section 80A.15, subd. 2(h) (1980), the Commissioner presently has the authority to require, when it is deemed necessary, the disclosure of the information which is the subject matter of SDiv 2118(k). Thus, notwithstanding the deletion of SDiv 2118(k), the investor is provided with reasonable protection. As a result of the deletion of SDiv 2118(k), SDiv 2118(l) is re-lettered and becomes SDiv 2118(k).

(3) That several typographical errors in the proposed rules as they appeared in the State Register (5 State Register 915 (1980)) should be corrected, which errors are not, in the opinion of the Commissioner, material to the interpretation of the rules. The changes necessary to correct these typographical errors are as follows (changes are to the rules as printed in the State Register (5. S.R. 915 - 934)):

(1) SDiv 2006(b), delete the period after the second "or" in line 3;

(2) SDiv 2014(d), delete the comma after "cash" in line 6;

(3) SDiv 2028, delete the number "5" and add the number "6" in line 14;

(4) SDiv 2031(b), delete the colon after "unless" in line 2;

(5) SDiv 2057(b)(1)(dd), delete the colon and add a semi-colon;

(6) SDiv 2118(j), delete "employer" after "any" and add "employee's" in line 2;

(7) SDiv 2122(a)(1)(cc), delete the comma after "annual" in line 1;

(8) SDiv 2123(e), "advisor" corrected to read "adviser" in line 1;

(9) SDiv 2125(e), underscore the "e" in "2125(e)", line 1;

(10) 4 MCAR § 1.2127, make "Requiring" read "requiring" in line 1;

(11) Subchapter 8 (p. 926), change the reference from "4 MCAR §§ 1.2140 - 1.2145" to "4 MCAR §§ 1.2140 - 1.2146";

(12) 4 MCAR § 1.2145 B., delete "of" after "offer" and add "or" in line 2; delete the period after "SDiv" in line 3.

STATE OF MINNESOTA

Mary Alice Brophy

MARY ALICE BROPHY
Commissioner of Securities and Real Estat

Dated: January 14, 1981

RIDER, BENNETT, EGAN & ARUNDEL
ATTORNEYS AT LAW
900 FIRST NATIONAL BANK BUILDING
MINNEAPOLIS, MINNESOTA 55402
(612) 340-7951

STUART W. RIDER, JR.
GENE F. BENNETT
WILLIAM T. EGAN
EDWARD M. ARUNDEL
DONALD R. BACKSTROM
DAVID F. FITZGERALD
LARRY R. HENNEMAN
JOHN P. FLATEN
DAYTON E. SOBY
DAVID J. BYRON
RICHARD J. NYGAARD
JOHN C. UNTHANK
ALFRED SEDGWICK
KENNETH R. JOHNSON
RITA E. LUKES
STEVEN J. KLUZ
RICHARD H. KROCHOCK
GENE C. OLSON

ROGER R. ROE, JR.
TIMOTHY R. THORNTON
SCOTT K. GOLDSMITH
EDGAR H. REX, JR.
GREGORY M. WEYANDT
ERIC J. MAGNUSON
NEVIN R. HARWOOD
JOHN B. LUNSETH II
JOAN S. MORROW
GENE H. HENNIG
LEWIS A. REMELE, JR.
DEBORAH Z. McNALLY
WILLIAM D. FOSTER
KEVIN C. DOOLEY
STEPHEN J. SMITH
MICHAEL D. TEWKSBURY
JANICE K. COOK

CHESTER D. JOHNSON
(1915-1977)

January 5, 1981

Received 1/5/81 Dan Mr. Healy

WRITER'S DIRECT DIAL NUMBER
340-7908

Hon. Mary Alice Brophy
Commissioner of Securities
and Real Estate
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

Dear Ms. Brophy:

In connection with your meeting today with me and several other members of the Executive Committee of the Securities Law Section of the Hennepin County Bar Association relative to certain of the Rules under Minn. Stat. Chapter 80A proposed by you on November 20, 1980, I would like to propose for your consideration the following revision of proposed Rule SDiv 2031 Employee and Director Options and Other Forms of Compensation through Receipt of Securities:

(a) Outstanding options to all employees and directors shall not exceed 20 percent of the to be outstanding common shares of the issuer, provided further that:

(1) the exercise price shall not be less than 85 percent of the fair market value on the date of grant; and

(2) no such options in excess of 10 percent of the to be outstanding shares are granted to any individual who, immediately before such option is granted, owns stock possessing more than 10 percent of the total combined voting power or value of all classes of stock of the issuer.

(b) No shares shall be issued to employees or directors unless they shall have paid at least 85 percent of fair market value therefor, other than pursuant to the provisions of paragraph (a) of this section, 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 issuer.

(c) The terms of issuance of options granted and shares issued to employees and directors may vary in any manner and to any extent from the requirements and limitations of paragraphs (a) and (b) of this section, if ratified or approved by a majority of the shareholders, excluding officers, directors, employees, and their spouses.

As a corporate lawyer representing a number of small to medium sized publicly held companies over the past twelve years, I believe that substantial flexibility in the area of employee options and stock purchases is required in order to facilitate or make possible compensation incentives common to corporations located in other states. Without flexibility to design individual options, option plans and stock purchase arrangements, publicly held corporations are at a distinct disadvantage in attracting and retaining key personnel who are able to receive similar benefits elsewhere.

My own experience does not suggest that there is any significant abuse in the areas of option exercise or employee stock purchase price, cash or other consideration paid, quantity of outstanding options or quantity issued to individual employees. I believe this is substantially because of the influence of and concern for the quality of the resulting trading market and the requirements or influence of the underwriters, banks and venture capital lenders dealing with the issuers. In any event, I feel that the opportunity for any significant abuse is already substantially restrained by application of the Minimum Investment requirement and Cheap stock limitation of SDiv 2029 and 2030 as proposed.

The revision which I propose above would allow options to be granted and stock sold at prices of not less than 85 percent of fair market value, a price level which ordinarily would not be expected to have a substantial dilutive effect on shareholders' equity or market price. There are, however, circumstances in which competitive requirements should permit greater discounts from market and these I feel should be permitted, if ratified or approved by a disinterested majority of the shareholders. The same flexibility should pertain to the quantity limitation.

While I do not think it appropriate as a general matter that a Rule of this nature be concerned with or influenced by Internal Revenue Code provisions, in the employee stock purchase plan area many public corporations have adopted qualified option plans under Sections 421 and 423 of the Code which expressly permit options to be granted at prices as low as 85 percent of fair market value at the time of grant. In the non-statutory option area during the past several years options at various discounts from fair market value at the time of grant have become commonplace, presumably to offset somewhat the loss of employee benefit resulting from the elimination of qualified stock options. It is my observation in both areas that shareholders have generally approved plans of this nature.

Changing tax provisions will give rise to new forms of employee compensation plans utilizing stock. A substantial degree of flexibility should be retained in the proposed Rule to accommodate these changing requirements.

Thank you for the opportunity to present these views. I would be pleased to discuss these or other provisions of the proposed Rules further at any time.

Best regards.

Very truly yours,

John P. Flaten

JPF/sh

LAW OFFICES

FROMMELT, EIDE & REITE, LTD.

4430 IDS CENTER - 80 SOUTH EIGHTH STREET
MINNEAPOLIS, MINNESOTA 55402

ROGER H. FROMMELT
DAVID B. EIDE
CHARLES D. REITE
JO GRUIDL MOORE
DAVID G. REINHART

AREA CODE 612
336-0343

January 7, 1981

JAN 7 3 22 PM '80
SECURITIES DIV

Mary Alice Brophy
Commissioner of Securities
State of Minnesota
500 Metro Square Building
St. Paul, MN 55101

Dear Ms. Brophy:

Thank you for the opportunity to speak with you, Dan Hardy and Charles Wikelius on January 5, 1981, relating to our review of the proposed rules and regulations of the Securities Division.

As you are aware, the concerns voiced by myself, John Flaten and George Frisch at our meeting, were expressed by a large number of the members of the Hennepin County Securities Law Section Executive Committee. I should point out, however, that while these concerns were voiced by those members verbally and through correspondence with your office, our comments do not represent any official position of the Hennepin County Bar Association.

First, it is our understanding that the phrase "adjusted by retained earnings" under SDiv 2029(b)(1) relates to an adjustment only if the corporation has earnings, and does not operate to reduce the minimum equity in the case of a deficit in retained earnings. This is consistent with the policy that an investor should get credit for his capital contribution, notwithstanding the fact that the issuer may have had losses in its operation, which is typical of start-up situations.

The most widely criticized proposal was that of SDiv 2118(k), which "conditions" the 80A.15(2)(h) exemption " . . . on the use of an offering circular or other documents offering full disclosure in connection with each offer or sale."

The issue of whether this type of requirement should be a part of 80A.15(2)(h) was debated at length when the 1973 Minnesota Securities Laws were originally drafted. I was a member of the committee involved in such drafting, and recall that it was then determined that this type of requirement would be contrary to the purpose of the exemption, and may have the effect of making the exemption nearly as burdensome as registration.

An offering circular or other documents offering "full disclosure" would, in the opinion of a number of securities practitioners who have reviewed this proposed rule, require the preparation of a document or documents containing disclosure substantially the same as that required in a registration under the Securities Act of 1933, defeating the purpose of the statutory exemption. It has been suggested by several practitioners that the rule may have the effect of causing compliance with the exemption to be so expensive, as to significantly inhibit capital formation for young struggling enterprises, encourage such enterprises to act without complying with the securities laws, or create unfair liabilities for issuer and counsel who might not be aware of the significance of the phrase "full disclosure."

If the rule is not complied with as written, the exemption would be lost, even if the purchaser was a sophisticated investor or one who in fact was aware of all material facts concerning the issuer. There are many instances when the number of prospective purchasers or the sophistication of those purchasers would dictate a method of providing disclosure which would not include the use of an offering circular or other documents. Such might be the case with a small corporation which was granting stock options to its employees. A corporation may have used up its "five or less" exemption under 80A.15(2)(a), and may want to make one sale to its president, a sophisticated investor or few investors or to family members. The issuer may also desire to raise a small amount of money, such as $10,000 or $15,000, among a small number of investors, which would not economically warrant the preparation of an offering circular. While not exhaustive, the foregoing illustrates a number of situations in which, I am sure you will agree, the requirement of the preparation of any document offering full disclosure is not warranted.

We understand your concerns. While experienced securities practitioners will understand and be able to make a determination as to when offering documents may be required, depending upon the nature of the offering and the prospective purchasers, unsophisticated practitioners and issuers may not appreciate this problem. However, I do not believe that the passage of the rule will remedy that situation. The preparation of an offering circular or other documents offering full disclosure as suggested under the rule will still probably require the expertise of an experienced securities practitioner.

There are a number of other reasons why we do not believe this rule will provide the investor with any added protection, or the Securities Division with any added ability to protect any investor. The Division is not and has not in the past been in a position to give offering circulars filed under the 80A.15(2)(h) exemption the type of review normally associated with a registered offering, in order to make any determination as to whether "full disclosure" has been made.

The Commissioner now has the authority to withdraw or condition the exemption by Order, and could do so in situations where a cursory review of the materials filed demonstrate that the use of an offering circular is warranted, or that the disclosure of additional information should be required. We believe that Form 170 (Statement of the Issuer) contains sufficient information to make this determination, as it requires the filing of any documents intended to be used in connection with an offering under the exemption, as well as other information which would indicate the nature of the offering. Finally, investors still have remedies available under Section 80A.01. Failure to provide material information to a purchaser in connection with his purchase of a security under these so called anti-fraud provisions has been consistently held as a basis for recovery by such purchaser.

As we have expressed to you on a number of occasions, most of the practitioners who have reviewed the new rules feel that they are a significant improvement over the rules as they now exist, and appreciate the amount of effort and thought which had to accompany their drafting.

Very truly yours,

FROMMELT, EIDE & REITE, LTD.

Roger H. Frommelt

RHF/jes

cc: John Flaten
George Frisch

SDiv 2006 (b) It shall constitute a "manipulative, deceptive or other fraudulent device or contrivance" within the meaning of Section Minn. Stat. § 80A.03 (1978), as amended, 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: O's / delete period and comma

(1) The issuer has filed a registration statement under Sections Minn. Stat. §§ 80A.09, 80A.10 or 80A.11 (1978), as amended, 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

SDiv 2009 Upon termination of the activities of a licensed person, the broker-dealer or issuer shall, within five ten 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 Minn. Stat. § 80A.05, subd. 2 (1978), as amended, 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. , or in the case of the acquisition of substantially all of the assets of a licensee, unless the transactions are entered into for the purpose of evading the operation of the licensing requirement.

SDiv 2012 (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 any examination more than three times except as the Commissioner may in his discretion permit for good cause shown.

(c) (d) Any broker-dealer, agent or investment adviser whose most recent license has been terminated for a period of one year two years 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 (c) [The existing rule is proposed for repeal and the following language is proposed as a substitute.]

SDiv 2013 (c) The net capital requirements for broker-dealers, as set forth in this Rule, shall be calculated in conformance with 17 C.F.R. section 240-15c3-1, as amended.

SDiv 2014 (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. Any investment adviser who has custody of, or discretionary authority over, any assets of any client shall have first posted with the commissioner a surety bond in the amount of $25,000, on such form as the commissioner may prescribe.

SDiv 2014 (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 Minn. Stat. § 80A.15, subd. 1, Clauses (a), (b), (c), (d) or (e) (1978), as amended. At no time shall the market value of the securities on deposit be less than 105 percent 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. The commissioner may allow an irrevocable letter of credit in lieu thereof. O delete comma

SDiv 2014 (e) The provisions of SDiv 2014 (a) and (b) do not apply to any agent employed by a broker-dealer who continuously

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. Strike outs indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. Strike outs indicate deletions from proposed rule language.

maintains net capital of not less than $100,000. SDiv. 2014 (c) does not apply to any investment adviser who continuously maintains net capital of not less than $100,000.

SDiv 2015 (d) (1) Every broker-dealer shall keep and preserve any written, printed or other advertisement which is published in connection with the offer or sale of a security or which is reasonably intended to encourage individuals or others to engage the services of the broker-dealer or any of its agents.

(2) The practices deemed deceptive or misleading pursuant to SDiv 2123 (c) shall likewise be deemed deceptive or misleading when employed by or on behalf of a broker-dealer.

SDiv 2015 (e) ~~(d)~~ Every broker-dealer shall preserve all records, files, communications and other information 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 (j) (1) Every investment adviser shall keep and preserve any written, printed or other advertisement which is published in connection with the offer or sale of a security or which is reasonably intended to encourage individuals or others to engage the services of the investment adviser.

(2) The practices deemed deceptive or misleading pursuant to SDiv. 2123 (c) shall likewise be deemed deceptive or misleading when employed by or on behalf of an investment adviser.

SDiv 2016 (k) Every investment adviser shall preserve all records, files, communications and other information required by this rule 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 2017 (a) Every broker-dealer shall, within 90 days following the close of either its fiscal or accounting 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.

SDiv 2018 [Proposed for repeal; number reserved for future use.]

SDiv 2019 (b) (1) "Offering circular" means an offering circular ~~complying~~ in compliance with the requirements of ~~Rule 256 and Form 1 A under~~ the Securities Act of 1933 and the rules and forms promulgated thereunder.

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 require as a condition of registration, unless reason for exception can be demonstrated, 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.~~

SDiv 2024 [The existing rule is proposed for repeal and the following language is proposed as a substitute.]

SDiv 2024 So long as a registration is effective, the issuer shall, if possible, notify the commissioner in writing prior to or simultaneously with the occurrence of any of the following events, but in no event later than 10 days following the occurrence thereof:

(a) A decision to file for bankruptcy, enter receivership or any other similar proceeding;

(b) The cessation of business activities;

(c) A default on any payment of principal, interest, sinking fund installment or other similar payment, for a period of over 30 days, with respect to any indebtedness of the registrant or any of its subsidiaries exceeding five percent of the total assets of the registrant and its consolidated subsidiaries; or

(d) Any other event, occurrence or transaction which may or will have a material adverse effect upon the financial stability of the issuer.

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.14, 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.~~ Every issuer or its agent shall immediately notify the commissioner in the event of a sale of securities in excess of the amount registered. Under no circumstances shall the notice be more than 30 days after the date on which the oversale occurred.

SDiv 2025 (b) ~~(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 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;

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

(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. 2132 of these regulations.

(b) (1) 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.

(2) Any issuer filing reports under the Investment Company Act of 1940 may file, in lieu of the report required by paragraph (a) of this section, a current updated prospectus as filed with the Securities and Exchange Commission or a copy of the annual report required to be filed with the Securities and Exchange Commission.

(c) The annual report or prospectus 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~~ SDiv 2027(a) (19) is not reasonably available at such time, such information may be filed on or before the 150th 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.~~ SDiv 2028 to 2109 shall not apply to securities or transactions exempted by ~~Minnesota Statutes, 1973 Supplement, Section~~ Minn. Stat. § 80A.15, subds. 1 or 2 (1978), as amended, 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 Programs SDiv 2081-2089

Subchapter 7 Real Estate Investment Trusts SDiv 2090-2109

Subchapter 8 Commodity Pool Guidelines 4 MCAR §§ 1.2140 to 1.2148 6 ✓

SDiv 2029 [The existing rule is proposed for repeal and the following language is proposed as a substitute.]

SDiv 2029 Minimum investment required.

(a) Unless an issuer or its predecessors have demonstrated profitable operations for two of the three fiscal years prior to registration, determined in accordance with generally accepted accounting principles, after taxes and excluding extraordinary items, the "fair value of the equity investment" of such issuer shall be at least 10 percent of the first $1 million and 5 percent thereafter of the "equity investment" which would result from the sale of all 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 irrevocably conveyed to the issuer, and together with an evaluation by a qualified independent appraiser of intangible assets including, but not limited to, patents, licenses, technologies, trademarks, and technical or professional services contributed by the promoters, as adjusted by the retained earnings of the issuer subsequent to the dates of such conveyances, payments or contributions, or

(2) the total shareholders' equity as set forth in a certified balance sheet prepared in accordance with SDiv 2132, less the value assigned to any intangible assets which have not been independently evaluated.

(c) "Equity investment" shall mean the sum of:

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

(2) an amount equal to the net proceeds which would be received by the issuer upon completion of the offering, assuming the maximum aggregate amount of securities registered are sold.

(d) An appraisal or other evaluation used for the purposes of complying with the minimum equity investment may not be reflected in any form, either in the prospectus or in the issuer's financial statements or any footnotes thereto, unless it conforms with generally accepted accounting principles.

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 investments" as defined in SDiv 2029(b):~~

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

~~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.~~ The amount of "cheap stock" allowable, based upon the "fair value of the equity investment" as defined in SDiv 2029(b), shall not exceed three times the first 10 percent of equity investment and two times any further equity investment to a maximum number of shares of cheap stock allowable of 90 percent of the total number of shares to be outstanding after the proposed offering.

SDiv 2030 (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.~~ Cheap stock does not include:

(1) securities which have been outstanding more than three years at the time of the proposed registration, provided that the issuer of its predecessors have been in active, continuous business operation for more than three years immediately prior to the proposed registration;

(2) securities of an issuer which (a) had earnings during the fiscal year prior to registration or (b) had earnings during two of the three fiscal years prior to registration, as determined in accordance with generally accepted accounting principles, after taxes and excluding extraordinary income, if such earnings are in an amount equal to 4 percent of the proposed public offering price on all outstanding shares of the same class at the date of application for registration; or

(3) securities previously issued pursuant to a registration under Minn. Stat. ch. 80A.

SDiv 2031 [The existing rule is proposed for repeal and the following language is proposed as a substitute.]

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

(a) Outstanding options to all employees and directors shall not exceed 20 percent of the to be outstanding common shares of the issuer ~~unless a majority of the shareholders, excluding officers, directors, employees, and their spouses have approved a larger percentage~~, provided further that:

(1) the exercise price shall ~~be no~~ not less than ~~100~~ 85 percent of the fair market value on the date of the grant; and

(2) no such options in excess of 10 percent of the to be outstanding shares are granted to any individual who, immediately

P. 14

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

before such option is granted, owns stock possessing more than 10 percent of the total combined voting power or value of all classes of stock of the issuer.

(b) No shares shall be issued to employees or directors unless they shall have paid at least 85 percent of fair market value therefor, ~~in cash,~~ other than pursuant to the provisions of paragraph (a) of this section, 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 issuer. ~~or unless a majority of shareholders, excluding officers, directors, employees and their spouses, have approved the issuance.~~

delete semicolon

p. 14

(c) The terms of issuance of options granted and shares issued to employees and directors may vary in any manner and to any extent from the requirements and limitations of paragraphs (a) and (b) of this section, if ratified or approved by a majority of the shareholders, excluding officers, directors, employees, and their spouses.

add (c)

p. 15

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 or rules promulgated by the United States Securities and Exchange Commission ~~pursuant to Form S-1~~ will be deemed to apply to this regulation.

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 or the following two printed pages 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 or the following two printed pages 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;

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 or the following two printed pages 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 but excluding money market funds or other investment companies whose portfolio holdings consist substantially of debt instruments.

(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 [Proposed for repeal; number reserved for future use; relating to the maximum annual expenses paid or incurred by an investment company.]

SDiv 2052 Minimum capitalization.

An investment company having net assets of less than $1,000,000 or an affiliated investment adviser with less than an aggregate of $100,000,000 under management 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 2057 Closed end investment companies.

(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 percent annually (see page ____).

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

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

(6) in relation to ~~85~~ 75 percent of its total assets, to invest more than 5 percent of such assets in any one issuer."

SDiv 2113 [Proposed for repeal; number reserved for future use.]

SDiv 2115 (c) For the purpose of determining the number of sales which have been made, or will have been made upon completion of a proposed distribution under Section 80A.15 Subdivision 2(a), only those sales which would be ~~included within the scope~~ subject to the registration provisions of Chapter 80A, as determined by ~~Section~~ Minn. Stat. § 80A.27, shall be included.

(d) For purposes of this rule, time shall be computed pursuant to Minn. Stat. § 645.15 (1978), as amended.

SDiv 2117 The terms "financial institution or institutional buyer" contained in ~~Section~~ Minn. Stat. § 80A.15, subd. 2(g) (1978), as amended, ~~do not ordinarily include a Small Business Investment Company unless it can be demonstrated that it possesses adequate sophistication with respect to the specific offer and sale~~ include but are not limited to: (1) any corporation with a class of equity securities registered under Section 12(g) of the Securities Exchange Act of 1934, as amended, (2) any single investor who purchases $100,000 or more of an issue with respect to such sale, provided the purchase is for cash and payment is made at the time of the sale, and (3) a Small Business Investment Company.

SDiv 2118 (b) The limitation of 25 purchasers contained in § 80A.15, subd. 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

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

with Rule 146 promulgated by the Securities and Exchange Commission [17 C.F.R. Section 230.146 ~~(1975)~~] ~~if such offering complies in all respects with that Rule~~ or rules promulgated under section 3(b) of the Securities Act of 1933, if such offering is in compliance with any such rules.

SDiv 2118 (c) The exemption contained in § 80A.15, subd. 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 principaliy 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. [17 C.F.R. Section 230.146 ~~(1975)~~].

SDiv 2118 (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. [17 C.F.R. Section 230.146 ~~(1975)~~].

SDiv 2118 (g) (2) For purposes of this rule, "public distribution" means ~~a public~~ an offering registered under the Securities Act of 1933 or exempted by Regulation A of Section 3(b) of that act, provided, however, that ~~this rule shall not apply to~~ a public distribution does not include exchange offers or ~~offers~~ the exercise of options pursuant to a plan approved, or proposed to be approved by shareholders.

SDiv 2118 (j) The requirement of Minn. Stat. § 80A.15, subd. 2(h)(1) is hereby waived in connection with any distribution of securities pursuant to any employer savings, stock purchase, pension, profit sharing or similar benefit plan, or self-employed person's retirement plan. employee's

~~SDiv 2118 (k) The exemption contained in § 80A.15, subd. 2(h) is conditioned on the use of an offering circular or other documents offering full disclosure in connection with each offer or sale.~~ p. 21

SDiv 2118 (k) ~~(l)~~ For the purpose of this rule, time shall be computed pursuant to Minn. Stat. § 645.15 (1978), as amended.

SDiv 2119 Offers, but not sales ~~of any industrial revenue bond~~ for which a registration statement has been filed under ~~Sections 80A.01 to 80A.31~~ Minn. Stat. ch. 80A, are hereby exempted from registration pursuant to ~~Section~~ Minn. Stat. § 80A.15, subd. 2(i) (1978), as amended, provided, however, that any such written offer may be made only by, or only if accompanied by, the most recent preliminary or the final prospectus on file with the commissioner.

SDiv 2122 (a) Any offer or sale by an affiliate of the issuer thereof is hereby exempted from registration pursuant to ~~Section~~ Minn. Stat. § 80A.15, subd. 2(o) (1978), as amended, if the following conditions are met prior to any such offer or sale:

(1) if the sale is subject to Rule 144 of the Securities and Exchange Commission:

(aa) a registration statement is in effect with respect to securities of the same class of such issuer and

(bb) the sale is made pursuant to Rule 144 promulgated by the Securities and Exchange Commission and

~~(cc) a copy of Form 144 is transmitted to the Commissioner contemporaneous with its transmittal to the Securities and Exchange Commission and.~~ delete comma

(cc) ~~(dd)~~ all annual ~~,quarterly~~ or other reports required by ~~Section~~ Minn. Stat. § 80A.12 (1978), as amended, or any rule thereunder have been filed or distributed during the twelve months preceding such sale (or for such shorter period for which the issuer was required to file such reports), or

(2) if the sale is not subject to Rule 144:

(aa) a registration statement is in effect with respect to securities of the same class of such issuer and

(bb) a statement of the facts called for by Form 144 has been furnished to the commissioner concurrent with the placing with a broker-dealer of an order to execute a sale (if a broker-dealer is used) or at the time of the offer (if a broker-dealer is not used) and,

(cc) all annual ~~,quarterly,~~ or other reports required by § 80A.12 or any rule thereunder have been filed or distributed during the twelve months preceding such sale (or for such shorter period for which the issuer was required to file such reports).

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 including that material required to be preserved pursuant to SDiv 2015 (d) (1), 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~~ Any such material shall, upon the written request of the commissioner, be filed with the commissioner prior to being disseminated.

SDiv 2123 Advertising material.

(e) Violations. Any person, including any broker-dealer or agent thereof, investment adviser or issuer 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 as required under chapter 80A, and is exempt from registration by § 3 (a) (11) of the Securities Act of 1933 as amended ~~or exempted by section 3 thereof~~ shall bear, on the front page of such registration statement or prospectus, the following language in capital letters and boldface type:

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE MINNESOTA SECURITIES AND REAL ESTATE 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 (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.

SDiv 2125 (d) (1) No broker-dealer, investment adviser, agent or employee of any of the above 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, amount or frequency in view of the financial resources and character of such account.

SDiv 2125 (e) If a broker-dealer buys for his own account from his customer, or sells for his own account to his customer, he shall buy or sell at a price which is fair, taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense involved, and the fact that he is entitled to a profit.

SDiv 2126 Any rescission offer described in ~~Section~~ Minn. Stat. § 80A.23, subd. ~~3~~ 8 (1978), as amended, shall normally be accompanied by a document meeting the requirements of a prospectus for a registration by qualification. Said document shall, in addition, clearly disclose any material facts concerning the alternatives available to the offeree.

SDiv 2135 Incorporation by reference.

Whenever a reference is made in SDiv 2000 to ~~SDiv. 2137~~ 4 MCAR § 2151 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 except that any such reference contained in SDivs. 2077, 2079, 2089, 2099, 2110, 2113-2119, 2122, 2126 and 2137 shall be to the version as of July 15, 1975~~ December 1, 1980.

Adopted

Amendments to the Minnesota Securites Act Forms as ~~Proposed~~

Form 101, "APPLICATION FOR INVESTMENT ADVISER'S LICENSE." [Proposed for repeal.] The following form is proposed as a substitute:

Form ADV, "APPLICATION FOR REGISTRATION AS AN INVESTMENT ADVISER OR TO AMEND SUCH AN APPLICATION UNDER THE INVESTMENT ADVISERS ACT OF 1940", as referred to at 17 C.F.R. § 279.1 (1980), as amended.

Form, "Quarterly Report." [Proposed for repeal.]

Form BD, "APPLICATION FOR BROKER/DEALER'S LICENSE." [Proposed for repeal.] The following form is proposed as a substitute:

Form BD, "UNIFORM APPLICATION FOR REGISTRATION, LICENSE OR MEMBERSHIP AS A BROKER-DEALER OR TO AMEND SUCH AN APPLICATION UNDER THE SECURITIES EXCHANGE ACT OF 1934, OR UNDER THE

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

LAWS OF THE JURISDICTIONS OR UNDER THE CONSTITUTIONS AND RULES OF THE SELF-REGULATORY ORGANIZATIONS ACCEPTING THIS FORM", as referred to at 17 C.F.R. § 249.501 (1980), as amended.

Adopted

Rules as ~~Proposed~~ (all new material)

4 MCAR § 1.2127 Amendments "requiring an order of the commissioner," pursuant to Minn. Stat. § 80A.28, subd. 3, (1978), as amended, shall mean any change in the language of the currently effective "order" of registration or licensing, including, by way of example:

A. A change in the name of the registrant, whether an issuer, broker-dealer or investment adviser;

B. A change in price, if equity securities are involved;

C. A change in interest rate, if debt securities are involved;

D. A change in type or class of security registered.

Subchapter 8: Commodity Pool Guidelines (4 MCAR §§ 1.2140-1.2148)

4 MCAR § 1.2140 Definitions. As used in these rules, the following terms shall mean:

A. Commissioner. The Commissioner of Securities and Real Estate.

B. Adviser. A person who for any consideration engages in the business of advising others, either directly or indirectly, as to the value, purchase, or sale of commodity futures contracts or commodity options.

C. Capital contributions. The total investment in a program by a participant or by all participants, as the case may be.

D. Clearing broker. Any person who engages in the business of effecting transactions in commodities futures contracts for the account of others or for his own account.

E. Commodity futures contract. A contract providing for the delivery or receipt at a future date of a specified amount and grade of a traded commodity at a specified price and delivery point.

F. Net assets. The total assets, less total liabilities, of the program determined on the basis of generally accepted accounting principles. Net assets shall include any unrealized profits or losses on open positions, and any other credit or debit accruing to the program but unpaid or not received by the program.

G. Net asset value per unit. The net assets divided by the number of units outstanding.

H. Net profits. The sum of:

1. The net of any profits and losses realized on all trades closed out during the period,
2. The net of any unrealized profits and losses on open positions as of the end of the period, minus,
3. The net of any unrealized profits or losses on open positions as of the end of the preceding period,
4. All expenses incurred or accrued during the period and
5. Cumulative net realized losses, if any, carried forward from preceding periods.

I. Organization and offering expenses. All expenses incurred by the program in connection with and in preparing a program for registration and subsequently offering and distributing it to the public, including, but not limited to, total underwriting and brokerage discounts and commissions (including fees of the underwriter's attorneys), expenses for printing, engraving and mailing, salaries of employees while engaged in sales activity, charges of transfer agents, registrars, trustees, escrow holders, depositories and experts; and expenses of qualification of the sale of securities under federal and state law, including taxes and fees and accountants' and attorneys' fees.

J. Participant. The holder of a program interest.

K. Person. A natural person, partnership, corporation, association or other legal entity.

L. Program. The limited partnership, joint venture or incorporated organization formed and operated for the purpose of investing in commodity futures contracts.

M. Program interest. A limited partnership or other form of ownership in a program.

N. Pyramiding. A method of using all or a part of an unrealized profit in a commodity futures contract position to provide margin for additional commodity futures contracts of the same or related commodities.

O. Sponsor. Any person directly or indirectly instrumental in organizing a program or any person who will be responsible for the management of a program. Sponsor shall include an adviser or a clearing broker who pays any portion of the organizational expenses of the program, a general partner, and any other person who regularly performs or selects the persons who perform

services for the program. Sponsor does not include wholly independent third parties such as attorneys, accountants, and underwriters whose only compensation is for professional services rendered in connection with the offering of the units. The term "sponsor" shall be deemed to include affiliates of any sponsor otherwise coming within this definition.

P. Valuation date. The date as of which the net assets of the fund are determined.

R. Valuation period. A regular period of time between valuation dates.

4 MCAR § 1.2141 Requirements of sponsors, advisers, and clearing brokers.

A. Experience. Any person providing management, advisory, or clearing services to the program shall have at least three years of relevant experience in the area of trading commodity futures contracts. Such experience must include the trading of commodity futures contracts for others or must otherwise demonstrate sufficient knowledge of such person to perform the services proposed and to carry out the program policies and objectives.

B. Financial condition. The financial condition of a sponsor must be commensurate with any financial obligations assumed in the offering and in the management and operation of the program. At a minimum, the net worth shall be the greater of:

1. An amount equal to 5 percent of the participants' capital in all existing programs in which a sponsor or an affiliate has potential liability, plus 5 percent of the total subscriptions in the program being offered, or

2. Fifteen percent of the gross amount of the current offering with respect to offerings of less than $2,500,000. If the offering exceeds $2,500,000, the net worth must be at least 10 percent of the gross amount of the offering, up to $1 million of net worth, but in no case less than $50,000. Net worth of individual sponsors shall be determined exclusive of home, furnishings and automobiles. Audited balance sheets of sponsors shall be furnished except that in the event a sponsor is an individual, an unaudited balance sheet prepared by a certified public accountant and signed and sworn to by such individual sponsor may be accepted for the purpose of determining required net worth. Also, evaluation will be made of contingent liabilities to determine the appropriateness of their inclusion in the computation of net worth.

C. Investment in the program. A sponsor must make a permanent investment in the program equal to the lesser of 3 percent of the public investors' interest or $50,000.

D. Tax ruling or opinion. A program organized in the form of a limited partnership must obtain a favorable tax ruling from the Internal Revenue Service or favorable opinion of qualified tax counsel in a form acceptable to the commissioner concerning the tax status as a limited partnership. A favorable tax ruling or opinion is one which concludes that the program will be treated as a partnership for tax purposes.

E. Liability and indemnification. The sponsor(s) shall not attempt to pass on to participants the liability imposed upon a sponsor by law except that the program agreement may provide for indemnification of the sponsor(s) under the following circumstances and in the manner and to the extent indicated:

1. In any threatened, pending or completed action, suit, or proceeding to which a sponsor was or is a party or is threatened to be made a party by reason of the fact that he is or was a sponsor of the program (other than an action by or in the right of the program), the program may indemnify such sponsor against expenses, including attorneys' fees, judgments and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if the sponsor acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the program, and provided that his conduct does not constitute gross negligence, wilful or wanton misconduct, or a breach of his fiduciary obligations to the participants. The termination of any action, suit or proceeding by judgment, order or settlement shall not, of itself, create a presumption that the sponsor did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the program;

2. In any threatened, pending or completed action or suit by or in the right of the program, to which a sponsor was or is a party or is threatened to be made a party, involving an alleged cause of action by a participant or participants for damages arising from the activities of a sponsor in the performance of management of the internal affairs of the program as prescribed by the program agreement or by the law of the state of organization, or both, the program may indemnify such sponsor against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the program as specified in this clause, except that no indemnification shall be made in respect of any claim, issue or matter as to which the sponsor shall have been adjudged to be liable for negligence, misconduct, or breach of fiduciary obligation in the

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

performance of his duty to the program as specified in this clause, unless and only to the extent that the court in which such action or suit was brought shall determine upon application, that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper;

3. To the extent that a sponsor has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in E.1. or E.2., or in defense of any claim, issue or matter therein, the program shall indemnify him against the expenses, including attorneys' fees, actually and reasonably incurred by him in connection therewith; and

4. Any indemnification under E.1. or E.2., unless ordered by a court, shall be made by the program only as authorized in the specific case and only upon a determination by independent legal counsel in a written opinion that indemnification of the sponsor is proper in the circumstances because he has met the applicable standard of conduct set forth in E.1. and E.2.

F. Additional requirements. Any sponsor, adviser, or clearing broker must present evidence that it is or will be in compliance with applicable licensing or registration requirements under the Commodity Exchange Act, as amended.

4 MCAR § 1.2142 Standards.

A. Disclosures. In view of the limited transferability, the relative lack of liquidity, and the high risk of loss of many commodity pool programs, suitability standards related to the risks to be undertaken will be required for the participants, and must be set forth in both the prospectus and a written instrument to be executed by each participant. The prospectus shall set forth the investment objectives of the program, a description of the type of participant who could benefit from the program and the suitability standards to be applied in marketing the program.

B. Sales to appropriate persons. A sponsor and each person selling program interests on behalf of a sponsor shall make every reasonable effort to assure that those persons being offered or sold the interests meet the suitability standards set forth in this section. The following shall be evidence thereof:

1. That the participant has the capacity of understanding the fundamental aspects of the program, which capacity may be evidenced by the following:

   a. The nature of employment experience;

   b. The education level achieved;

   c. Access to advice from qualified sources, such as an attorney, accountant or tax adviser; and

   d. Prior experience with investments of a similar nature;

2. That the participant has an apparent understanding:

   a. Of the fundamental risks and possible financial hazards of the investment;

   b. Of the lack of liquidity of the investment;

   c. That the investment will be directed and managed by the sponsor; and

   d. Of the tax consequences of the investment;

3. That the participant can bear the financial risks involved.

C. Maintenance of suitability records. A sponsor shall retain for at least three years all records necessary to substantiate the facts that program interests were sold only to participants for whom such securities were suitable. The commissioner may require a sponsor to obtain from the purchaser a letter justifying the suitability of such investment.

D. Minimum Investment. The minimum subscription shall not be less than $2,500 and shall be paid in cash at the time of purchase. Assessments of any kind shall be prohibited.

4 MCAR § 1.2143 Fees, compensation and expenses.

A. Organizational 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 percent of the gross proceeds of the offering.

B. Compensation.

1. Maximum expenses. The aggregate annual expenses of every character paid or incurred by a program, including management and advisory fees based on the net assets of the program but excluding commodity brokerage commissions, incentive fees, legal, audit and extraordinary expenses, calculated at least quarterly on a basis consistently applied, shall be reasonable but in no event shall exceed one-half of 1 percent of the program's net assets per month; provided a sponsor shall not receive a management fee if he receives any portion of the brokerage commissions under B.3.

The sponsor(s) shall reimburse the program quarterly for the amount by which such aggregate monthly 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 program's quarterly report and shall promptly notify the commissioner if the aggregate expense limitation is exceeded by reason of any extraordinary expenses.

2. Incentive fees. A sponsor or adviser will be entitled to an incentive fee. The total of the incentive fee shall not exceed 15 percent of the net profits of the program, calculated not more often than quarterly on the valuation date, over the highest previous valuation date. For purposes of this calculation, program losses shall be carried forward but shall not be carried back.

3. Brokerage commissions. The program shall seek the best price and services available in its commodity futures brokerage transactions. The program shall not effect any transactions in commodities futures contracts with any clearing broker affiliated directly or indirectly with a sponsor or with any adviser providing the sponsor with research information, recommendations, or other services which might be of value to any sponsor, unless such transactions are effected at competitive brokerage rates. In no event will the program be allowed to enter into any exclusive brokerage contract. If any person receives any portion of the brokerage commissions from program operations, the adviser may not be affiliated with such person. The commissioner may require the program to file periodic reports concerning all brokerage transactions.

4. Other income. Any interest or other income earned by any portion of the program assets shall accrue solely to the benefit of the program or the management fee shall be reduced by any amount which does not so accrue.

5. Expenses of the program. All expenses of the program shall be billed directly to and paid by the program. Reimbursements (other than for organizational and offering expenses) to any person or affiliate shall not be allowed, except for reimbursement of the actual direct costs to the sponsor or affiliate of legal and audit services used for or by the program. Expenses incurred in connection with administration of the program, including but not limited to salaries, rent, travel expenses and such other items generally falling under the category of overhead, shall not be charged to the program.

4 MCAR § 1.2144 Rights and obligations of participants.

A. Meetings. Meetings of the participants may be called by a sponsor or by participants holding more than 10 percent of the then outstanding units for any matters for which the participants may vote as set forth in a program agreement. Such call for a meeting shall be deemed to have been made upon receipt by a sponsor of a written request from holders of the requisite percentage of units stating the purpose of the meeting. The sponsor shall deposit in the United States Mails within 15 days after receipt of said request, written notice to all participants of the meeting and the purpose of such meeting, which shall be held on a date not less than 30 nor more than 60 days after the date of mailing of said notice at a reasonable time and place.

B. Voting rights of participants. The program agreement must provide that holders of a majority of the then outstanding units may, without the necessity for concurrence by the sponsor(s), vote to:

1. Amend the program agreement,

2. Dissolve the program,

3. Remove a general partner and elect a new general partner,

4. Elect a new general partner if a general partner elects to withdraw from the program, and

5. Cancel any contract for services with any sponsor or an affiliate without penalty upon 60 days written notice. A general partner shall not withdraw from a partnership without 90 days prior written notice thereof to the participants.

C. Access to program records.

1. The program agreement shall require the maintenance of a list of the names and addresses and interests owned of all participants at the principal office of the program. Such list shall be made available for the review of any participant or his representative at reasonable times, and upon request, either in person or by mail. A participant or his representative shall be furnished a copy of such list upon payment of the cost of reproduction and mailing.

2. The participants and their representatives shall be permitted access to all records of the program, after adequate notice, at any reasonable time. Records shall be maintained and preserved for a period of not less than six years.

D. Annual and periodic reports.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

1. The program agreement shall provide for the transmittal to each participant of an annual report, within 120 days after the close of the fiscal year, containing at least the following information:

a. A balance sheet as of the end of its fiscal year and statements of income, participants' equity, and changes in financial position for the year then ended, all of which shall be prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an opinion (without material qualification) of an independent certified public accountant or independent public accountant.

b. A statement showing the total fees, compensation, brokerage commissions and expenses paid by the program, segregated as to type, and stated both in aggregate dollar terms and as a percentage of net assets.

2. Participants shall be furnished with quarterly reports, which may be unaudited, containing the same information required in D.1.a. and D.1.b. within 60 days after the end of the quarter.

3. All participants shall be provided all information necessary for the preparation of the participants' income tax returns by not later than March 15 of each year.

4. The net assets of the program shall be calculated daily and the net asset value per unit shall be made available upon the request of a participant.

4 MCAR § 1.2145 Disclosure and marketing requirements.

A. Minimum program capital. The minimum amount of funds required to activate a program shall be sufficient to accomplish the objectives of the program, including diversification. Any minimum less than $500,000, after deduction of any organizational and offering expenses, including commissions, will be presumed to be inadequate to diversify. Provision must be made for the return to participants of 100 percent of paid subscriptions in the event that the established minimum to activate the program is not reached. 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.

B. Sales literature. Sales literature, sales presentations (including prepared presentations to prospective participants at group meetings) and advertising used in the offer or sale of program interests shall conform in all applicable respects to the requirements of filing, disclosure and adequacy currently imposed by SDiv. 2125 on sales literature, sales presentations and advertising used in the sale of corporate securities. delete period

C. Contents of the prospectus.

1. Information on the cover page. There should be set forth briefly on the cover page, or the following two printed pages of the prospectus, a summary which should include the following: the title and general nature of the program interests being offered; the minimum and maximum aggregate amount of the offering; the minimum and maximum amount of net proceeds; the subscription price; the period of the offering; the maximum amount of any sales or underwriting commissions to be paid (or if none, whether such commissions are to be paid by the sponsor(s).

2. Sales to appropriate persons. There shall be set forth a description of the type of person who could benefit from the program and the suitability standards to be applied in marketing it.

3. Definitions. Technical terms used in the prospectus should be defined in a glossary.

4. Risk factors. A participant should be advised in a carefully organized series of short, concise paragraphs, under subcaptions where appropriate, of the risks to be considered before making an investment in a program. The paragraphs should include a cross reference to further information in the prospectus.

5. Business experience. The business experience of the principal officers of all sponsors shall be prominently disclosed in the prospectus. Such disclosure shall indicate their business experience for the past 5 years. Disclosure shall also be made regarding the experience of any commodity trading adviser and any clearing broker who is utilized by the program. The terms of any material contracts entered into by the program shall be summarized in the prospectus.

6. Compensation. All direct and indirect fees and compensation of every type and from every source which may be paid by the program to any person shall be summarized in tabular form in one location in the forepart of the prospectus. A sponsor shall not receive any compensation, direct or indirect, other than that disclosed in the compensation section.

7. Use of proceeds. The prospectus shall state the purposes for which the proceeds of the program are intended to be used and the approximate amount intended to be used for each such purpose.

8. Investment objectives and policies.

a. Describe the investment objectives and policies of the program, indicating which policies may be changed by the sponsor(s) without a vote of the participants.

b. Describe the plan for distribution of income of the program.

9. Prior performance.

a. The previous relevant program experience of any sponsor or adviser shall be disclosed in the prospectus for all programs during the past three years which:

(1) Involved a public offering registered under state or federal securities laws;

(2) Involved a private or limited offering.

b. Information on previous programs shall include, but not be limited to, the following:

(1) Identification of the program, including the name and location;

(2) The effective date of the offering, the date it commenced operations and the date of dissolution or termination or, if it is continuing, that fact;

(3) The total amount of units, the gross amount of capital raised by the program, the number of participants, and the dollar amount of investment of the sponsor, if applicable;

(4) Income credited and cash distributed to participants and to any sponsor, adviser, or clearing broker;

(5) Compensation and fees to any sponsor, segregated as to type;

(6) Compensation and fees paid to other relevant parties such as advisers and clearing brokers;

(7) The net asset value per unit as of the end of each valuation period previously used;

(8) Such additional or different disclosures of the success or failure of the programs as may be permitted or required by the commissioner.

c. All of the foregoing information shall be set forth on a cumulative basis for each program in tabular form wherever possible and include a brief description of any material differences between a prior program and the program to be offered.

d. The following caveat should be prominently featured in the presentation of the foregoing information: "It should not be assumed that participants in the offering covered by this prospectus will experience returns, if any, comparable to those experienced by participants in prior programs."

e. The foregoing information shall be supported in the application for registration by an affidavit that the performance summary is a fair presentation of the information contained in the audited financial statement or the federal income tax returns of the program or in other reports or data.

10. Conflicts of interest and transactions with affiliates.

a. Any conflicts of interest between the program and any sponsor, adviser, clearing broker or any affiliate thereof, must be fully disclosed. This would include, at a minimum the following:

(1) Any conflicts arising out of involvement with previous programs;

(2) Any conflicts arising out of involvement in the area of activities not related to the management, advising or other services performed for commodity pools;

(3) Any other agreements, arrangement or transactions, proposed or contemplated, that may be a potential conflict of interest;

(4) The sponsor shall also be required to disclose the steps that will be taken to alleviate any real or potential conflict of interest;

(5) If the program pays higher than the minimum commission rates for commodity brokerage transactions, such fact shall be set forth along with a justification.

b. Certain material conflicts of interest are presumed to be sufficient to render the proposed program incapable of accomplishing its stated objectives in the best interest of the participants and shall be controlled as follows:

(1) No loans may be made by the program to any sponsor or any other person;

(2) The funds of a program shall not be commingled with the funds of any other person. Funds used to satisfy margin requirements will not be considered commingling;

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

(3) No rebates or give ups may be received by any person nor may any person participate in any reciprocal business arrangements which could circumvent these guidelines. Furthermore, the prospectus and program agreement shall contain language prohibiting the above as well as language prohibiting reciprocal business arrangements which would circumvent the restrictions against dealing with affiliates or other interested parties;

(4) The program agreement shall prohibit the commodity trading adviser or any other person acting in such capacity from receiving an advisory fee if they share or participate, directly or indirectly, in any commodity brokerage commissions generated by the program;

(5) The maximum period covered by any contract of the program with any adviser, clearing broker, sponsor or affiliate thereof shall not exceed one year. Any contract must be terminable without penalty upon 60 days written notice by the program, which provisions shall be set forth in the program agreement;

(6) Any other agreement, arrangement or transactions, proposed or contemplated, may be restricted in the discretion of the commissioner if it would be considered unfair to the participants in the program.

11. Federal tax consequences. The prospectus shall disclose the following tax aspects:

a. Tax treatment of the program;

b. Tax treatment of the participants;

c. Method of allocation of losses or profits and cash distributions;

d. Any other pertinent information applicable to the tax aspects of the investment; and

e. The possibility that the filing of state tax returns will be required in the states in which interests are held.

12. Commodities futures markets. At a minimum, the prospectus should disclose the following characteristics of the commodities markets:

a. That the commodities markets are extremely volatile and the risk of loss is great;

b. The procedures used in trading commodities futures contracts including, but not limited to, the margin requirements on the commodities to be invested in by the program, the exchanges or board of trade on which the program anticipates trading, and a description of the applicable exchange requirements.

13. Licensing and regulation. The prospectus shall disclose any licensing or registration requirements of the program, including those imposed by the Commodity Futures Trading Commission.

14. Prohibitions. The prospectus shall disclose that the program agreement specifically prohibits the following activities:

a. A program shall not engage in pyramiding;

b. A program shall not utilize borrowing;

c. A program shall not enter into an open position during a delivery month;

d. A program shall not permit the investment of its funds deemed "customer's funds" under the Commodity Exchange Act, as amended, in any securities other than as permitted by the Commodity Futures Trading Commission;

e. A program shall not commit more than 15 percent of its equity in the trading account at any time for margin in any one commodity irrespective of the delivery month. For this purpose gold and silver bullion, coins and futures contracts shall be considered one commodity;

f. A program's trading policy shall specifically exclude the purchasing, selling, writing or trading in commodity options or purchasing or selling securities, other than those mentioned in C.14.d.;

g. A program shall not engage in cash commodity transactions unless the cash commodity is fully hedged;

h. A sponsor shall not commit more than two-thirds of the net assets of a program as margin for commodity futures contracts and the balance of such assets shall be retained in cash or cash equivalent to apply as needed for additional margin or for redemption;

i. A sponsor shall not permit the churning of the program's account so as to generate a commission for itself or for the benefit of any other person.

15. Notification. Each participant shall be notified within seven business days from the date of any decline in the net value per unit to less than 50 percent of the amount on the last valuation date. Included in the notification shall be a description of the participants' voting rights pursuant to 4 MCAR § 1.2143B.

16. Material changes. Any material changes in the program's basic investment or trading policies or structure shall require prior written approval by a majority of program interests held by participants. This shall include, specifically, any transfer or withdrawal of any sponsor's required interest in the program.

17. Summary of any limited partnership agreement or other program agreement.

18. Legal proceedings. Briefly describe any legal proceedings to which the program or any person is or was a party which is material to the program and any material legal proceedings between any sponsor and participants in any prior program of the sponsor.

19. Financial information required on application. A sponsor and the program shall provide as an exhibit to the application for registration or where indicated below shall provide as part of the prospectus, the following financial information and financial statements:

a. Balance sheet of the program. As part of the prospectus, a balance sheet of the program as of the end of its most recent fiscal year, prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report without material qualification by an independent certified public accountant or an independent public accountant, and an unaudited balance sheet as of a date not more than 90 days prior to the date of filing;

b. Balance sheet of a sponsor.

(1) Corporate Sponsor. A balance sheet of a corporate sponsor as of the end of its most recent fiscal year, prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report without material qualification by an independent certified public accountant or an independent public accountant and an unaudited balance sheet as of a date not more than 90 days prior to the date of filing. Such statements shall be included in a prospectus.

(2) Individual Sponsor. A balance sheet for each individual sponsor as of a time not more than 90 days prior to the date of filing an application; such balance sheet may be audited and should conform to generally accepted accounting principles and shall be signed and sworn to by such sponsor. A representation of the amount of such net worth must be included in the prospectus;

c. Statement of income for corporate sponsor. A statement of income for the last fiscal year of a corporate sponsor (or for the life of a corporate sponsor, if less) prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report without material qualification by an independent certified public accountant or independent public accountant, and an unaudited statement for any interim period ending not more than 90 days prior to the date of filing an application.

4 MCAR § 1.2146 Miscellaneous provisions.

A. Fiduciary duty. The program agreement shall provide that the sponsor(s) shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the program, whether or not in its immediate possession or control, and that it shall not employ, or permit another to employ, such funds or assets in any manner except for the exclusive benefit of the program.

B. Redemptions. The program shall provide an opportunity at least quarterly for the redemption of program interests at the net asset value as of the valuation dates upon the written request of any participant. The participant must notify a sponsor of his intent to redeem at least 30 days prior to the redemption date. The prospectus and program agreement must indicate the valuation dates for redemption. Such requests must be honored within 30 days following the valuation date, unless the quantity of redemptions would be detrimental to the tax status of the program. In that case, redemptions may be selected by lot, and participants notified within 30 days whether or not their program interests were redeemed. The program agreement may provide for the suspension of redemptions if the effect of substantial redemptions would impair the ability of the program to operate in pursuit of its objectives.

4 MCAR §§ 1.2147-1.2149 Reserved for future use.

4 MCAR § 1.2150 Waiver.

A. The requirements of subchapters 4, 5, 6, 7, and 8 may be waived by the commissioner upon proof of substantial compliance with rules, statements of policy or guidelines of national or regional securities regulatory organizations composed of securities administrators of this and other states.

B. Any such waiver shall be based upon a determination by the commissioner that compliance with such rules, statements of policy or guidelines is:

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

1. consistent with the purposes fairly intended by the policy and provisions of Minn. Stat. §§ 80A.01 to 80A.31 (1978), as amended,

2. appropriate for the protection of investors, and

3. promotive of uniformity of regulation.

4 MCAR § 1.2151 A diamond, ruby, emerald, or sapphire constitutes an "investment gem" pursuant to Minn. Stat. § 80A.14(j) (1978), as amended.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
SECURITIES AND REAL ESTATE DIVISION

In the Matter of the Proposed Adoption, Repeal and Amendment of Rules and Forms Relating to Minnesota Statutes, Chapter 80A (Regulation of Securities)

STATEMENT OF NEED AND REASONABLENESS

Notice is hereby given that, pursuant to her authority under Minn. Stat. Section 80A.25 (1978), the Commissioner of Securities and Real Estate intends to adopt, repeal and amend rules and forms relating to the Minnesota Securities Act (Minn. Stat. ch. 80A). The Commissioner desires that the proposed rules and forms be adopted, repealed and amended without a public hearing in accordance with Minn. Stat. Section 15.0412 (1978), as amended by Laws 1980, ch. 615, Section 7. On December 10, 1979 the Division caused to be published in 4 State Register 966, a notice of intent to solicit outside opinions concerning the adoption, amendment, suspension or repeal of said rules. The general statutory authority to adopt, amend, suspend or repeal these rules and forms is set forth at Minn. Stat. Section 80A.25 (1978). Where specific statutory authority is relied upon its reference will be set forth in the margin next to the justification for the proposed rule or amendment. The Commissioner has determined that the proposed adoption, repeal or amendment of these rules is either necessary or appropriate in the public interest or for the protection of investors. Furthermore, the Commissioner has determined that such proposals are consistent with the policy and provisions of Chapter 80A. The need for and reasonableness of each of the proposed rules and amendments is as follows: [Note: Throughout these rules changes have been made to citation form to promote uniformity of citation.]

SDiv 2006(b)(1)
[80A.25
80A.31]

To correct a misprint. The intent is to require a current registration statement to be on file. The change would conform the rule, as originally intended, to Rule 15c 2-11 under the Securities and Exchange Act of 1934 (Commerce Clearing House Federal Securities Law Reporter, paragraph 25,116).

SDiv 2009
[80A.04, Subd. 2
80A.25]

Experience indicates that five days is often insufficient time for a broker-dealer or issuer to notify the Commissioner of the termination of an agent's employment, especially if the termination must be processed by the broker-dealer through an office different from that in which the agent is located. The requirement that upon termination the broker-dealer return the license of the agent to the Commissioner is being deleted in anticipation that Minnesota will in the near future participate in a nationwide computerized licensing system (the Central Registration Depository). This system does not involve the actual issuance of a physical license. The Commissioner has determined that the proposed increased period of time will allow a broker-dealer a sufficient and reasonable period in which to process a termination, while not endangering investors or working to the disadvantage of licensees. By analogy, the statutory period of time for notification of termination of a real estate salesperson is ten days. (Minn. Stat. Section 82.20, Subd. 9 (1978)). This period has proven to be sufficient for both the agency and the industry.

SDiv 2010(e)
[80A.05, Subd. 2
80A.25]

The new language is added to reflect the common understanding that one who acquires the assets of another is its "successor". Language is also added to prevent a "shell" broker-dealer or investment adviser from being acquired for the sole purpose of its license.

SDiv 2012(c)
[80A.05, Subd. 3
80A.25]

Deletion of the restriction which limits the number of times (3) a broker-dealer, investment adviser or agent may take a securities examination.

The Division has recently adopted a uniform state law examination which utilizes a new computerized system, using a different series of questions on each examination. Formerly the same questions were employed each time the examination was given. The need to limit the number of times an applicant could take the examination

was primarily to preserve the integrity of the examination. In its new format there is no longer a need for such a limit.

SDiv 2012(c) [80A.05, Subd. 3 80A.25]

The proposed change would permit a broker-dealer, investment adviser or agent, whose license has been terminated for less than two years (currently one year) to apply for a new license without having to re-examine.

This provision would conform with the "rules" of the NASD (National Association of Securities Dealers) for prinicpals and representatives, (Commerce Clearing House NASD Manual, Schedule C, paragraph 1102 A). The existing rule was patterned after the NASD rule, which was subsequently changed from one year to two years. The Commissioner has determined that this proposed change will not work to the detriment of consumers who seek the services of such individuals.

(e)

Deleted. In the opinion of the Commissioner it is no longer necessary or useful to control the time or the place of the examination, which is a uniform examination, administered nationally by an outside entity.

SDiv 2013(c) [80A.05, Subd. 4 80A.31]

The policy of Chapter 80A is, where practicable, "to coordinate the interpretation of [Chapter 80A]... with the related federal regulation" (80A.31). It is the opinion of the Commissioner that, with respect to broker-dealer net capital requirements, this coordination is desirable and reasonable due to the difficulty of the computation and the expense involved if varying calculations are required, and can best be achieved by calculating the requirements of SDiv 2013 in conformance with related federal regulations. Also, the existing rule was originally consistent with the federal rule, which was later modified.

SDiv 2014(c) [80A.05, Subd. 5 80A.25]

The proposed change would require a surety bond only for those investment advisers who have custody of or discretionary authority over assets of a client. The

Commissioner has determined that, absent custody or discretion, the need for a bonding requirement is questionable and results in an added expense for the investment adviser, which is unnecessary in light of the negligible protection it offers to investors.

SDiv 2014(d)

Minn. Stat. Section 80A.05, Subd. 5 (1978) states that "[a]ny appropriate deposit of cash or securities shall be accepted in lieu of any bond so required." The proposed change would permit the Commissioner to allow, as an alternative, the obtaining of an irrevocable letter of credit. The Commissioner has determined that such an alternative would provide protection to investors equivalent to that provided by a bond or a deposit of cash or securities but would be less costly to licensees.

SDiv 2014(e) [80A.25]

The proposed addition to 2014(e) would exempt investment advisers from the bonding requirements of 2014(c) if they maintain net capital of at least $100,000. The Commissioner has determined that such a net capital requirement is, in terms of investor protection, a reasonable alternative to bonding and eliminates an uncessary expense for qualifying investment advisers. This exemption is identical to that allowed agents employed by broker-dealers who maintain net capital of $100,000 (SDiv 2014(e)).

SDiv 2015(d)(1) and (2); and 2016(j) and (k) [80A.06, Subd. 1 80A.25]

The Commissioner has determined that the effective administration of Chapter 80A, particularly 80A.01(a), necessitates requiring broker-dealers and investment advisers to preserve copies of all advertising material. Such a requirement is needed to assist the agency in the enforcement of the provisions of Chapter 80A. The reference to SDiv 2123(c) is made in order to clarify that the devices set forth therein shall also be deemed deceptive or misleading when employed by a broker-dealer.

SDiv 2015(e)

The proposed addition clarifies what is required to be preserved by SDiv 2015.

SDiv 2017(a)
[80A.06, Subd. 2]

Allows a broker-dealer a more reasonable period of time in which to file its annual report. The proposed change is intended to address the problem of a broker-dealer which conducts its audit at the close of an accounting year and which, without the proposed change, would need to conduct an additional audit at the close of its fiscal year. The Commissioner has determined that this situation is an unreasonable burden and unnecessarily expensive; and furthermore, has determined that the proposed change will not work to the detriment of investors.

SDiv 2018
[80A.10, Subd. 2(b)]

(Deleted) The Commissioner may "by rule or otherwise" (Section 80A.10, Subd. 2(b)) require a copy of any agreements with or among underwriters with respect to a security registered by coordination with the SEC. The Commissioner has determined that it is no longer necessary in all instances to require that copies of warrants or options to underwriters accompany every application for registration by coordination. Copies of such agreement may be requested by means of an administrative order if it is determined that there is a need to examine them. In addition, information regarding such agreements is required to be disclosed in the prospectus.

SDiv 2019(b)(1)
[80A.31]

Both the existing and proposed definitions of "offering circular" refer to offering circulars which comply with the requirements of the Securities Act of 1933. The proposed change cites the Act broadly rather than referrring to specific rules and forms, which may be modified from time to time.

SDiv 2022(a)(1)

The proposed changes are intended to correct an ambiguity in the existing language of the rule, in order to clarify the authority of the Commissioner.

SDiv 2024
[80A.12, Subd. 8
80A.25]

The proposed change would eliminate the requirement that quarterly reports be filed with respect to a registration statement required by Chapter 80A, and would substitute a requirement that the registrant notify the Commissioner upon the occurrence of certain material events. Quarterly reports are expensive and time-consuming for the registrant to prepare (especially small companies) and are not examined by the agency due to lack of staff. In addition, there is no public interest served by this requirement and the agency, for administrative reasons, does not sanction registrants who fail to file.

Notification of the occurrence of certain material facts will alert the Division to potential adverse effects upon the financial condition of the issuer and will eliminate a considerable amount of duplication. Also, the information found in the quarterly report may be obtained by order of the Commissioner.

SDiv 2025
[80A.12, Subd. 8
80A.25]

The proposed change eliminates the requirement that an issuer file semi-annually a report of sales, and in its place imposes a requirement that such issuer immediately notify the Commissioner of sales in excess of the dollar amount registered. Such "oversales" are infrequent. (This information may be obtained by order of the Commissioner). The change would have the advantage of informing the Commissioner at an earlier stage of any oversale of registered securities while eliminating, for the issuer, the necessity of filing a "report of sales" when there have been no oversales, thereby putting the burden only on those companies not in compliance with the law.

SDiv 2027(b)(2) (new)
[80A.12, Subd. 10]

The proposed change would allow certain issuers to file, in lieu of an annual report, a current prospectus as filed with the SEC. The prospectus contains all the

essential information, but is generally a more abbreviated document than the annual report. The proposed change will thus eliminate essentially duplicate filings on the part of the issuer, with consequent cost savings.

The reduced size will also expedite the examination process and will require less storage space.

[Note: The proposals set forth in SDiv 2029 and 2030 represent an easing of the restrictions pertaining to "minimum investment" and "cheap stock" as a result of the recognition of the need to make capital more accessible to companies, especially small companies. The Commissioner has determined that these proposals continue to provide protection to investors and are consistent with the policies and provisions of chapter 80A.]

SDiv 2029 (new) [80A.13 80A.25] (a) In general, the proposed amendments are intended to relax the restriction on the minimum equity investment (measured as a percentage of the "fair value of the equity investment") required of issuers of equity securities, from its present level of 15% of the "total equity investment" to 10% of the first million dollars, and 5% thereafter of the "total equity investment." This change represents a modification of policy intended to assist issuer-businesses in raising venture capital, especially during periods when prevailing economic conditions make it difficult to obtain capital from lending institutions etc. The amendments reflect a recognition of the increased amount of capital required to start-up or expand a business in the present economic environment. The Commissioner has determined that continuing to require a minimum investment based upon a fixed percentage of 15% of the total equity investment will impose unreasonable restrictions upon businesses seeking to raise venture capital. It is the determination of the Commissioner

that such a reduction is not adverse to the public interest as the amount of the investment required of the issuer will continue to be sufficient to demonstrate good faith and willingness to risk its own capital.

SDiv 2029(b)(1)

It is proposed that a qualified evaluation of intangible assets be included in calculating the "fair value of the equity investment." Such a change would allow an issuer which lacks capital or tangible assets to meet the minimum investment requirements (2029(a)) by contributing valuable, but intangible, assets. The proposal is based upon a determination that a need exists to make capital markets more readily available to individuals and others whose contributions to a venture consist only or primarily of intangible assets. The requirement of a qualified independent appraisal of such assets will assure that they are indeed valuable. The phrase "as adjusted by the retained earnings of the issuer" is applicable only with respect to positive adjustments to retained earnings, and does not operate to reduce the minimum equity in the case of a deficit in retained earnings.

(b)(2)

Revise to account for the changes in SDiv 2029(b)(1).

(c)(2)

The proposed change would result in the inclusion in the definition of "equity investment" of the net proceeds of an offering rather than the gross amount thereof. Again, the change is intended to assist issuer-businesses in raising venture capital. As the minimum investment required of the issuer is a percentage of the total equity investment, it is felt that inclusion of the net proceeds rather than the gross proceeds of the offering in the definition of equity investment is more just in that it reflects the amount the issuer will actually realize from the offering.

(d)

Presently, in determining compliance with the rule, the appraised value of real property, if greater than the acquisition cost, may be considered only under specific conditions. The Commissioner has determined that the rigid refusal to consider other possibly valid considerations may unreasonably hinder an issuer's attempt to raise venture capital.

SDiv 2030 [80A.13 80A.25]

(a) The proposed amendment would increase the amount of "cheap stock" which may be issued. In the opinion of the Commissioner the current limits on cheap stock tend to discourage the issuance of equity securities due to a perception on the part of some promoters that a benefit equivalent to twice that received by public investors is not a sufficient incentive, especially in light of the restriction placed upon the transferability of the stock (SDiv 2020). The Commissioner has determined that the proposed changed would provide greater recognition of the contribution of promoters by allowing "credit" for the amount of his or her time and effort involved in planning, organization, research etc., while continuing to promote investor confidence and protection.

(c)(1) No significant change.

(c)(2) and (3) The proposed additions represent language formerly found in the rules (old SDiv 296) which was inadvertently deleted when the rules were revised in 1973. In general, restrictions on cheap stock are among the oldest and most common of the "blue sky" laws and are directed at issuers in the promotional or developmental stage, at which there exists a higher level of investment risk. Consequently, the securities of issuers who can demonstrate a significant record of operations or earnings prior to the date of the proposed offering or who can demonstrate the presence of a public market for their securities have historically been excluded from the definition of cheap stock.

SDiv 2031 [80A.13 80A.25]

The proposed change would increase the allowable maximum percentage of outstanding options to all directors and employees (based upon the to be outstanding common shares of the issuer) from 12% to 20%, unless a larger percentage is approved by a majority of disinterested shareholders. The regulation of options has historically been one of the most widely regulated substantive areas of the "blue sky" laws. While options have a proper role in the financing and operation of

publicly held companies, that role must be limited lest the options cause excessive dilution to the investment of the shareholders of the company. The Commissioner believes that the proposed amendment provides a reasonable balance between preserving the integrity of a public shareholder's investment against dilution and the business needs of the issuer, one of which is the need of a financially troubled company to offer an outside executive sufficient incentive to assume the management of the company in an attempt to reverse its financial decline.

The reference to "qualified" options is being deleted due to amendments to the Internal Revenue Code. The Tax Reform Act of 1976 amended certain sections of the Code affecting qualified stock options. As a result of these amendments, which require options granted under existing plans to be exercised prior to May 21, 1981 in order to be eligible for certain beneficial tax treatment, qualified stock options under section 422 of the Code have fallen into disuse.

SDiv 2031(b)

Allows shares to be issued to employees and directors at less than fair market value, upon approval by a majority of disinterested shareholders. The intent of the proposal is to assist companies in attracting qualified employees and directors, thereby benefitting the shareholders of such companies.

Present SDiv 2031(d) has been determined to be unnecessary and consequently has been deleted.

SDiv 2036(a)
[80A.25, Subd. 2
80A.31]

The deletion of the reference to Form S-1 is made in order to avoid confusion should the SEC change the numbering of such form. Also, the Commissioner has determined that, for purposes of investor protection, it is necessary and helpful to incorporate federal requirements pertaining to the disclosure of interests of affiliates of the registrant in any material transaction.

SDiv 2039(a) and (b) [80A.25]

The requirement that the speculative nature of securities (or that the offering involves substantial dilution of book value) be so noted on the cover of the prospectus is intended to alert propsective purchasers to such facts. The Commissioner has determined that allowing this information to be set forth on the cover or on the following two printed pages accomplishes this intent. The change also reflects a recognition of the trend in recent years to include a summary page in the forepart of the prospectus.

SDiv 2050 [80A.25, Subd. 1]

See statement following SDiv 2039 above.

(b) The Commissioner has determined that the proposed addition is needed to reflect an industry practice of issuing "money market" mutual funds to take advantage of recent high interest rates on short term debt instruments. These debt oriented funds do not purchase equity securities "for short-term trading" but rather purchase debt securities which mature over the short-term. The Commissioner has determined that the elimination of the requirement to disclose the speculative nature of "short-term trading" for these funds will not work to the detriment of investors and will eliminate an expense which must ultimately be paid by investors.

SDiv 2051 [80A.25]

The proposed change would delete the maximum expense limitations on an investment company's securities. It is the opinion of the Commissioner that competition among investment companies does and will continue to act as a strong incentive to keep expenses at reasonable levels. Also, many states have eliminated maximum expense limitations in recent years. The experience of these states would indicate that such a step will not result in unreasonably high expenses.

SDiv 2052 [80A.25]

The existing language of SDiv 2052 prevents, in most instances, an investment company from registering its shares in Minnesota until its assets reach $1,000,000. The original intent of the rule was, in part, to deter any unseasoned managers from selling shares of a fund which may not be of the size necessary to properly diversify and spread the risks of such an investment. It has been demonstrated for many years that seasoned professional investment company managers which generally have national sales networks and significant expertise, are greatly hindered by a restriction which requires that they delay registration in Minnesota until assets of that particular fund reach $1,000,000. The proposed addition would exempt those having over $100,000,000 under management from the minimum capitalization requirements. As such, the proposed exemption would not have an adverse effect on investors and would relieve those unreasonable and unnecessary burdens and costs currently placed upon experienced investment company managers.

SDiv 2057(c)(6) Technical, in order to make this provision correspond with the requirement of 2057(b)(2).

SDiv 2113(a) and (b) Pursuant to Minn. Stat. Section 80A.15, Subd. 1(h)(1978), as amended, interests in stock purchase plans and pension and profit sharing plans are exempt from the registration and filing provisions of Chapter 80A. Such plans are defined in existing SDiv 2113(a) and (b) to mean those which are, or could be, qualified under certain provisions of the Internal Revenue Code. In the opinion of the Commissioner it is no longer necessary or helpful to limit the definition of such plans by simply referencing federal tax laws, which are often too restrictive and do not encompass the intent of the securities law. Also, with respect to stock purchase plans, the Code has been amended to virtually elminate their use.

(c) See statement following 2118)(j) below.

SDiv 2115 [80A.25]

Clarifies existing practice regarding the determination of the number of sales made, or to be made, pursuant to the isolated sales exemption. The existing reference to "only those sales which would be included within the scope of Chapter 80A" is too broad in that it encompasses virtually any sale. The purpose of the rule is to clarify that when determining the number of sales made pursuant to the isolated sales exemption, only those sales which would be subject to the registration provisions of Chapter 80A (and not, for instance, the anti-fraud provisions) are to be included.

(d) Technical. Clarifies how time is to be computed.

SDiv 2117 [80A.25, Subd. 1]

Minn. Stat. Section 80A.15, Subd. 2(g) 1978, as amended, exempts certain offers or sales from the registration and filing provisions of Chapter 80A, including offers or sales to "other financial institution[s] or institutional buyer[s]." The rationale for the exemption provided by this rule is that such institutions and buyers are sophisticated investors capable of making informed investment decisions. Similar exemptions are available under federal law. The reference to " any single investor who purchases $100,000 or more of an issue with respect to such sale" is intended to apply to a single sale and not to several sales which, in the aggregate equal $100,000.

The proposed change to SDiv 2117 specifically defines "financial institutional or institutional buyer" to include certain corporations, institutions or buyers who, in the opinion of the Commissioner, possess the requisite investment sophistication. The rule does not, however, limit the exemption to such corporations, institutions or individuals.

SDiv 2118(b) [80A.15, Subd. 2(h) 80A.25, Subd. 2]

Amended to update the numerical limitations on purchasers in connection with the limited distribution exemption (Section 80A.15, Subd. 2(h)) in order to more closely parallel, for purposes of uniformity, current federal securities exemption regulations.

SDiv 2118(c) and (d)

Technical.

SDiv 2118(g)(2) [80A.15, Subd. 2(h) 80A.25, Subd 2]

Under SDiv 2118(g)(1) the statutory exemption for limited distributions (Section 80A.15, Subd. 2(h)) is withdrawn for any security sold in a "public distribution", which is defined as a "public offering registered under the Securities Act of 1933 or exempted by Section 3(b) of that act ...". In the opinion of the Commissioner the reference to Section 3(b) is too broad and in effect withdraws the exemption for many offerings (e.g., those exempt from federal regulation under SEC Rule 240 or Rule 242) which are governed by substantial restrictions and protections under federal law. The intent of the proposed change is to make the equity capital markets more accessible to companies, especially smaller companies.

Language regarding the "exercise" as opposed to the "offer" of options is technical and is meant to clarify the intent of the rule.

SDiv 2118(j) [80A.15, Subd. 2(h)]

Minnesota Statutes, Section 80A.15, Subd. 1(h) exempts from registration "any interest in any employee's savings, stock purchase, pension profit sharing or similar benefit plan, or a self-employed person's retirement plan." The proposed change would provide that a distribution from any of these is also exempt if it satisfies the requirements of Section 80A.15, Subd. 2(h).

In the opinion of the Commissioner such an exemption will allow an individual with an interest in such a plan to more easily realize that interest. The Commissioner further believes that such a change will not act to the detriment of the holder of such an interest.

SDiv 2118(k)
[80A.15, Subd. 2(h)]

The proposed change sets forth the present policy regarding sales to 25 or fewer persons (the limited distribution exemption under Section 80A.15, Subd. 2(h)). The Commissioner has determined that the anti-fraud requirements of Minn. Stat Section 80A.01(b)(1978) require the use, by issuers, of an offering circular (or other documents offering full disclosure) due to the affirmative obligations placed upon them to set forth material facts in connection with any sales and the need to assure that no untrue statements of material facts have been made and that there have been no omissions of material facts.

SDiv 2118(l)
[80A.25]

See SDiv 2115(d).

SDiv 2119
[80A.15, Subd. 2(i)
80A.31]

Minnesota Statutes, Section 80A.15, Subd. 2(i)(1978) permits the offer (but not sale) of a security for which a registration statement has been filed under Minnesota Statutes Chapter 80A and the Securities Act of 1933. Since certain securities are exempted from registration under the Securities Act of 1933, e.g., Regulation A offerings (SEC Rules 251-63), such offerings technically do not qualify under Minn. Stat. Section 80A.15, Subd. 2(i). The proposed change would permit any security to be offered (but not sold) as long as a registration is on file with the Division. If the registration statement ultimately is denied or withdrawn no sales may be made. The change also recognizes that such "red herrings" or preliminary prospecti are a commonly used method by which indications of interest in an offering are ascertained.

SDiv 2122
[80A.25
80A.15, Subd. 2(o)]

The proposed deletion would eliminate the requirement that, with respect to sales by an affiliate of the issuer made pursuant to SEC Rule 144 ("Persons Deemed Not to be Engaged in a Distribution and Therefore Not Underwriters"), a copy of SEC Form 144 be submitted to the Commissioner contemporaneously with its transmittal to the SEC.

As Rule 144 is an SEC requirement there is no need for the agency to receive a duplicate copy in every case. If the necessity to confirm compliance with Rule 144 arises, the form or the necessary information can be obtained by order of the Commissioner.

SDiv 2123(b) [80A.16 80A.06]

Minnesota Statutes Section 80A.16(1978) authorizes the Commissioner to require the filing of sales or advertising material. The rule currently requires such a filing at least five days before the dissemination of the material. The proposed change would require filing only upon the written request of the Commissioner.

In the opinion of the Commissioner mandatory filing of all sales and advertising material is an unnecessary burden on both the publisher and the agency (due to staffing limitations) and provides little protection to investors.

The proposed change further clarifies that broker-dealer advertising must also, upon written request of the Commissioner, be filed.

SDiv 2123(e) [80A.01 80A.25]

The proposed change is intended to clarify, but not limit, in the context of the distribution of false or misleading sales literature, the meaning of "any person".

SDiv 2124 [80A.18]

Re-worded to clarify the intent of the rule, which is to require that the legend set forth therein appear on all registration statements and prospecti for securities registered under Chapter 80A, if such documents do not bear a similar federal legend.

SDiv 2125(b)(1) [80A.25]

The present rule is identical to a rule of the NASD which has been interpreted by some to mean that those broker-dealers subject thereto have no affirmative obligation to ascertain a customer's resources and needs. The proposed change is intended to prevent a similar interpretation of SDiv 2125(b)(1) which would have the effect of placing a premium on ignorance and encouraging

securities broker-dealers and agents to ascertain as little as possible about their clients. The proposed change will require an affirmative determination on the part of a broker-dealer of his customers' financial situations and needs.

SDiv 2125 (d)(1) [80A.25]

The rule currently prohibits broker-dealers from excessive trading in customer accounts. The proposed change would impose the same restraints upon investment advisers. In the opinion of the Commissioner the potential for harm to customers through excessive trading in their accounts is as great or greater when an investment adviser handles the account. The rule is further amended to delete the reference to discretionary power over an account. "Churning" of accounts is clearly not tolerated, whether or not the broker-dealer or investment adviser has discretion over the accounts.

(e) (new)

The proposed rule sets forth criteria which are to be considered in determining what fee a broker-dealer may charge a customer when buying or selling for his own account. The rule is based upon the Rules of Fair Practice of the National Association of Securities Dealers, Article III, Section 4 (Commerce Clearing House NASD Manual, paragraph 2154). The Commissioner has determined that such a rule is necessary in order to assure that investors are not charged unreasonable mark-ups and mark-downs. The NASD guideline has been determined to be workable and reasonable and is proposed for adoption due to the brokerage community's familiarity with it, because the policy has proven to be a fair and equitable one and because of a desire to promote uniformity.

SDiv 2126

Technical, in order to correct an inaccurate reference to Chapter 80A.

SDiv 2135

Technical.

4 MCAR Section 1.2127 Minnesota Statutes Section 80A.28, Subd. 3 requires that the Commissioner designate those amendments to an existing license or registration which require "an order of the Commissioner". The proposed rule sets forth agency policy with respect to which amendments to existing licenses or registrations require an order of the Commissioner.

4 MCAR Sections 1.2140 - 1.2146 (new)
[80A.25, Subd. 2 80A.31]

(Subchapter 8: Commodity Pool Guidelines)

The Commissioner has determined that the increased use of commodity pools in recent years necessitates the adoption of specific rules for the protection of investors because of the inherent speculative nature and conflicts of interests (e.g., self-dealing) associated with commodity pools. Commodity pools represent a very unique investment vehicle and rules are necessary on a state level in order to supplement regulations promulgated by the Commodity Futures Trading Commission (CFTC) and to establish standards for determining whether a pool offering is "unfair and inequitable" to the investing public (Section 80A.13, Subd. 1(6)). Further, since the CFTC does not review commodity offerings for merit, or for disclosure, as does the Securities and Exchange Commission with respect to securities filings, the role of state regulatory agencies is accentuated and the need for consumer protection is more pronounced.

The Commissioner has determined that these proposals provide needed and reasonable protection to those investors who participate in this type of investment:

4 MCAR Section 1.2141	Experience and financial requirements of sponsors, advisers and clearing brokers.
4 MCAR Section 1.2142	Suitability standards for investors.
4 MCAR Section 1.2143	Limitations on fees, compensation and expenses.

4 MCAR Section 1.2144 Democracy rights of participants.

4 MCAR Section 1.2145 Minimum disclosure requirements.

4 MCAR Section 1.2146 Fiduciary responsibility of sponsors and redemptions.

By analogy, the Commissioner has previously established the need for specific rules relating to other unique types of investments and, consequently, has adopted rules pertaining to real estate limited partnerships (Subchapter 4, SDiv 2058-2066), oil and gas programs (Subchapter 5, SDiv 2067-2080), cattle feeding programs (SDiv Subchapter 6, SDiv 2081-2089) and real estate investment trusts (Subchapter 7, SDiv 2090-2109). The proposed rules, in large measure, incorporate the provisions of the above referenced rules which have been proven to be effective methods of providing investor protection. The proposed rules have been modified, where necessary, to reflect unique characteristics of commodity pool programs.

The rules are proposed in substantially the same form as the Commodity Pool Guidelines adopted by the Central Securities Administrators Council (CSAC) in 1978, which guidelines were the product of a collective effort of securities regulatory agencies of several states (including Iowa, Michigan, Minnesota, Missouri, Wisconsin, Illinois, and Indiana) and interested industry group participants. The guidelines were published in draft form for comment through the Commerce Clearing House. Numerous comments were received and considered and many suggestions were incorporated into the guidelines as finally adopted. The guidelines have proved to offer meaningful investor protection for approximately three years and are used as a model guideline by several

states, other than those states which have formally adopted them, as well as by many sponsors of commodity pool programs.

4 MCAR Section 1.2140 [Definitions]

The defined terms are taken, insofar as possible, from other existing rules (SDiv 2058, 2067, 2081 and 2090), from federal legislation or from common industry usage. "Net Profits" is the only term not fitting the general usage. The term is intended to define the limits upon which a commodity adviser is compensated, that being on how well it performs with the assets under its management. The definition prohibits an adviser from receiving an incentive fee twice, if the asset value decreases and then subsequently increases to the previous level, by requiring losses to be carried forward. This corresponds with industry practice.

4 MCAR Section 1.2141

The Commissioner has determined that it is necessary for the protection of public investors to adopt certain minimum requirements for promoters of commodity pools and other persons providing services to a pool. These minimum requirements are patterned after existing rules SDiv 2059, 2063(b), 2066, 2068, 2069, 2076, 2080, 2083, 2088(g) and 2091(b), which have been proven effective, and are adapted to apply to commodity pools.

Paragraph B is based upon an Internal Revenue Service ruling (Rev. Proc. 72-13). The provisions of paragraph E have been taken from the North American Securities Administrators Association guidelines for the registration of oil and gas programs, which have proved to be effective in preventing sponsors from passing on to participants liabilities imposed by law upon the sponsors. Paragraph F is necessary to assure compliance with CFTC (Commodity Futures Trading Commission) regulation.

4 MCAR Section 1.2142 The Commissioner has determined that it is reasonable and necessary to adopt rules which establish minimum suitability, disclosure, marketing, and investment requirements in order to protect public investors from participating in unsuitable investments. The proposals are drawn from existing rules SDiv 2060, 2077(a) and (e) and 2087, and are needed in view of the limited transferability, the relative lack of liquidity, and the high risk of many programs.

4 MCAR Section 1.2143 The Commissioner has determined that it is necessary and in the public interest to adopt rules relating to the amount of fees, compensation and expenses which are paid by a commodity pool to sponsors, advisers and clearing brokers. These new proposals correlate to existing rules SDiv 2061, 2071, 2084 and 2095. They are adapted to suit commodity pool programs and reflect standard industry practices, which experience has indicated are reasonable and workable.

4 MCAR Section 1.2144 The Commissioner has determined that it is necessary to adopt rules relating to democracy rights of investors and minimum reporting requirements in order to protect the investing public, assure that current financial information of the pool will be available to participants and to make certain rights available to investors by a majority vote. These new proposals are patterned after existing provisions in SDiv 2064, 2073, 2079, 2085(a)(1), 2089, 2098 and 2099, which provisions have proved to be reasonable and effective.

4 MCAR Section 1.2145 The Commissioner has determined that it is necessary to adopt rules relating to minimum disclosure requirements for the protection of investors. These proposals include, by way of example, disclosure of the risks associated with commodity pools, the use of proceeds, investment objectives, prior experience of the promoters and advisers, federal tax implications, commodities

futures markets, agreement summaries and financial information. These provisions are related to existing rules and are adapted to apply to commodity pools (refer to SDiv 2065, 2066(e), 2077(b) and (c), 2078, 2080(b), 2088 and 2096).

Certain other substantive provisions have been found by the Commissioner to be necessary in order to ameliorate certain conflicts of interest and to establish specific standards and requirements for the protection of the investing public. These provisions include, by way of example, minimum program capital, the prohibition of certain activities and limitations on other activities, notification to investors and participant approval of any material changes in the investment objectives or trading policies.

The Commissioner has previously determined in existing rules that certain conflicts of interest, if not restricted, would be unfair and inequitable to participants. These substantive provisions may be found in SDiv 2062, 2063, 2070, 2075, 2085(d), (e), (f), (g) and (h), 2086, 2091, 2092, 2093, 2094, 2103, 2104, 2105, and 2107. The proposed rules have been adapted to specifically address commodity pool programs in the interest of the investing public while maintaining standards reflecting accepted industry practices.

4 MCAR Section 1.2146

The Commissioner has determined that it is necessary to adopt a specific rule relating to the fiduciary responsibility of the sponsors. This rule tracks existing SDiv 2066(a), 2080(a) and 2085(c).

The Commissioner has determined that it is in the public interest to adopt a rule relating to the redemption of program interests by participants. This particular proposal cannot be related to existing rules because of the unique nature of commodity pools. However, it has been determined that the proposal works to the benefit of investors and does reflect current industry practices.

FORMS
[80A.25, Subd. 2]

Form 101 (application for investment adviser's license) is proposed for repeal and SEC Form ADV is proposed as a substitute, for purposes of convenience and uniformity with related federal regulation.

The quarterly report form is proposed for repeal due to the proposed elimination of the requirement of filing quarterly reports with respect to all effective registration statements (SDiv 2024).

Form BD (application for broker/dealer's license), which is a SEC form, is being revised to correspond with the updated SEC form.

4 MCAR Section 1.2150
[80A.25, Subd. 2
80A.31]

The proposed rule would allow the Commissioner to waive the rules with respect to Real Estate Limited Partnerships (Subchapter 4), Oil and Gas Programs (Subchapter 5), Cattle Feeding Programs (Subchapter 6), Real Estate Investment Trusts (Subchapter 7) and Commodity Pools (Subchapter 8) where the registrant can demonstrate compliance with statements of policy or guidelines of other (national or regional) securities regulatory organizations. The Commissioner has determined that this provision is needed in order to possess the flexibility required to appropriately respond to the often quickly changing requirements and needs of the industry and its investors. The intent of the proposal is to promote uniformity among the different states in the regulation of such investments. The Commissioner will have participated, by reason of membership in such regulatory organizations, in the promulgation of most, if not all, of any such policies or guidelines. The waiver is made discretionary in order to allow the Commissioner to be assured of the effectiveness of such substituted regulatory provisions, and it must be based upon a determination that such provisions satisfy certain enumerated criteria.

4 MCAR Section 1.2151 [80A.14(j)] The proposed rule is authorized by Minn. Stat Section 80A.14(j)(1978), which provides that an "investment gem" means any gem which the Commissioner may specify by rule upon a showing that such gem is being purchased and sold by the public as an investment. It has come to the attention of the agency over the last several years that diamonds, rubies, emeralds and sapphires are being purchased and sold by the public as an investment. Information available to the agency includes solicitation materials from the following companies, all offering investors the opportunity to purchase diamonds and/or rubies, emeralds and sapphires as an investment and emphasing the investment advantages of such gems:

Diamond Selection Limited - Offices in Toronto, New York, Buffalo, Los Angeles, San Diego and Antwerp

International Diamond Group Limited, Miami, Florida

Diamond Resources Corp., New York, New York

Troisieme, Inc., Miami, Florida

Kimberly House Ltd., Beverly Hills, California

Diamond Collectors Guild of America, Limited, New York, New York

International Diamond Exchange Limited, New York, New York

Trans-World Diamond Center, No. Miami, Florida.

In addition, articles appearing in local publications substantiate the fact that diamonds are being offered and purchased as an investment. Articles to this effect have appeared in the St. Paul Pioneer Press on January 13, 1980 at page F-1; the Minneapolis Star on February 13, 1980 at page 1-C and the Minneapolis Tribune on August 17, 1980 at page 1-D (Articles attached.)

It is essential to include diamonds, rubies, emeralds and sapphires as "investment gems" under the provisions of Minn. Stat. Section 80A.14(j) in order to extend the protection of the Minnesota Securities Act to investment transactions involving such gems. Information contained in the newspaper articles cited herein as well as magazine articles such as Dun and Bradstreet Reports of July and August, 1978 at page 5; National Jeweler of September 1, 1979; and Changing Times -The Kiplinger Magazine of October, 1979 (attached) all indicate the substantial risk of fraud in connection with the sale of such gems, especially diamonds, as an investment. In addition, a news release issued by the Commodity Futures Trading Commission on May 25, 1980 (attached) warned that high-pressure marketing schemes in investment diamonds "could be fraught with fraudulent sales techniques".

The sale of investment gems, especially diamonds, has included high-pressure long distance telephone calls, the use of high-pressure sales tactics in person at seminars and the sale of poor quality or imitation gems instead of the high-quality ones advertised. One of the largest telephone sales operations selling diamonds filed for bankruptcy in 1978 and its principals were indicted by a federal grand jury in June of 1979 on 14 counts of mail fraud, wire fraud and use of fictitious names. It is estimated that the company took in more than 100 million dollars from 15,000 investors.

Under these circumstances, it is necessary in the public interest and for the protection of investors to define diamonds, rubies, emeralds and sapphires as investment gems.

OFFICIAL NOTICES

Pursuant to the provisions of Minn. Stat. § 15.0412, subd. 6, an agency, in preparing proposed rules, may seek information or opinion from sources outside the agency. Notices of intent to solicit outside opinion must be published in the *State Register* and all interested persons afforded the opportunity to submit data or views on the subject, either orally or in writing.

The *State Register* also publishes other official notices of state agencies, notices of meetings, and matters of public interest.

Department of Commerce Securities Division

Notice of Intent to Solicit Outside Opinions Concerning the Possible Adoption, Amendment, Suspension or Repeal of Rules Relating to Minn. Stat. ch. 80A. (Minnesota Securities Act)

Notice is hereby given that the Securities Division is soliciting opinions and comments pertaining to the adoption, amendment, suspension or repeal of rules promulgated pursuant to and/or authorized by Minn. Stat. § 80A.25.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing and must be received by February 29, 1980. Written statements of information and comment may be addressed to:

Mr. Daniel W. Hardy
Assistant to the Commissioner
Securities Division
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

Oral statements of information and comment will be received during regular business hours over the telephone at (612) 296-5689 and in person at the above address. Any written material received by the above date will become part of the record of any rules hearing which might be held.

The Division would, in particular, like to receive comments relevant to the following rules:
SDiv. 2002(e) (investment adviser — segregation of funds);
SDiv. 2009 (termination notice);
SDiv. 2012(d) (examinations — licensing);
SDiv. 2013 (broker dealer — net capital requirements);
SDiv. 2014 (bonding requirements);
SDiv. 2019 (offering circular required);
SDiv. 2020 (cheap stock — restrictions on transferability);
SDiv. 2021 (escrow of securities — terms and conditions);
SDiv. 2022 (proceeds impoundment — conditions);
SDiv. 2023 (proceeds impoundment — release of funds);
SDiv. 2024 (quarterly reports);
SDiv. 2025 (report of sales);
SDiv. 2027 (annual report — filing requirements);
SDiv. 2029 - 2034 and 2042 (equity securities);
SDiv. 2049 - 2052 and 2054 (investment companies);
SDiv. 2113, 2117, 2119, 2122 (exemptions);
SDiv. 2123 (advertising material);
SDiv. 2124 (required language).

November 29, 1979

Daniel W. Hardy
Securities Division

Department of Commerce Banking Division

Bulletin No. 2148: Maximum Lawful Rate of Interest for Mortgages for the Month of December 1979

Notice is hereby given that the Banking Division, Department of Commerce, State of Minnesota, pursuant to House File No. 564, Chapter 279, 1979 Session Laws, as it amended Section 47.20, Subd. 4, Minnesota Statutes, effective May 31, 1979, hereby determines that the maximum lawful rate of interest for home mortgages for the month of December, 1979, is thirteen and one-half (13.50) percent.

November 27, 1979

Michael J. Pint
Commissioner of Banks

Department of Education Instruction Division

Notice of Opening for a Leadership Development Specialist/Consultant

A Leadership Development Specialist/Consultant is needed by the Elementary/Secondary Section of the Department of Education to provide technical assistance and inservice training to its elementary/secondary specialists.

Starting January 31, 1980, the specialist/consultant will:

1. assess the client network that the Section serves in order to determine how the needs for service have changed during the past 5-6 years;

2. assess Section and Division resources: time, staff, budgets;

DORSEY, WINDHORST, HANNAFORD, WHITNEY & HALLADAY

HENRY HALLADAY
JULE M. HANNAFORD
ARTHUR B. WHITNEY
RUSSELL W. LINDQUIST
DAVID R. BRINK
HORACE HITCH
ROBERT J. JOHNSON
MAYNARD B. HASSELQUIST
PETER DORSEY
GEORGE P. FLANNERY
CURTIS L. ROY
ARTHUR E. WEISBERG
DUANE E. JOSEPH
JAMES B. VESSEY
WILLIAM A. WHITLOCK
EDWARD J. SCHWARTZBAUER
THOMAS M. BROWN
CORNELIUS D. MAHONEY, JR.
WILLIAM C. BABCOCK
THOMAS S. ERICKSON
MICHAEL E. BRESS
RAYMOND A. REISTER
JOHN J. TAYLOR
WILLIAM J. HEMPEL
JOHN S. HIBBS
ROBERT O. FLOTTEN
JOHN D. LEVINE
ROBERT J. STRUYK
MICHAEL A. OLSON
LARRY W. JOHNSON
THOMAS S. HAY
G. LARRY GRIFFITH
CRAIG A. BECK
DAVID L. McCUSKEY

THOMAS O. MOE
JAMES H. O'HAGAN
JOHN M. MASON
LOREN R. KNOTT
PHILLIP H. MARTIN
REESE C. JOHNSON
CHARLES J. HAUENSTEIN
CHARLES A. GEER
JOHN C. ZWAKMAN
JOHN R. WICKS
EUGENE L. JOHNSON
JOHN W. WINDHORST, JR.
MICHAEL PRICHARD
JOHN P. VITKO
WILLIAM R. SOTH
RICHARD G. SWANSON
FAITH L. OHMAN
DAVID A. RANHEIM
ROBERT J. SILVERMAN
THOMAS R. MANTHEY
WILLIAM R. HIBBS
PHILIP F. BOELTER
WILLIAM B. PAYNE
ROBERT A. HEIBERG
JOHN D. KIRBY
ROBERT A. SCHWARTZBAUER
DAVID N. FRONEK
THOMAS W. TINKHAM
JON F. TUTTLE
EMERY W. BARTLE
WILLIAM A. JOHNSTONE
STEVEN K. CHAMPLIN
MICHAEL J. RADMER
MICHAEL TRUCANO

2300 FIRST NATIONAL BANK BUILDING
MINNEAPOLIS, MINNESOTA 55402

(612) 340-2600

CABLE: DOROW
TELEX: 29-0605
TELECOPIER: (612) 340-2868

880 W-FIRST NATIONAL BANK BLDG.
ST. PAUL, MINNESOTA 55101
(612) 227-8017

115 THIRD STREET SOUTHWEST
ROCHESTER, MINNESOTA 55901
(507) 288-3156

312 FIRST NATIONAL BANK BLDG.
WAYZATA, MINNESOTA 55391
(612) 475-0373

JAMES A. FLADER
DAVID L. BOEHNEN
MICHEL A. LAFOND
DON D. CARLSON
PAUL J. SCHEERER
WILLIAM J. KEPPEL
FRANK H. VOIGT
WILLIAM H. HIPPEE, JR.
ROBERT A. BURNS
ROGER J. MAGNUSON
PETER S. HENDRIXSON
JAY F. COOK
STANLEY M. REIN
CHARLES L. POTUZNIK
VERLANE L. ENDORF
DENNIS P. BURATTI
ROBERT L. HOBBINS
BARRY D. GLAZER
IRVING WEISER
STEPHEN E. GOTTSCHALK
KENNETH L. CUTLER
OWEN C. MARX
J. ROBERT HIBBS
MICHAEL E. MURPHY
GARY M. JOHNSON
ROBERT G. BAYER
SUZANNE B. VAN DYK
STUART R. HEMPHILL
J. DAVID JACKSON
W. CHARLES LANTZ
STEVEN F. WOLGAMOT
J. MARQUIS EASTWOOD
EDWARD J. PLUIMER
JAMES E. BOWLUS

THOMAS D. VANDER MOLEN
MARK A. JARBOE
PAUL B. KLAAS
MARGERY K. OTTO
RONALD J. BROWN
MARC L. KRUGER
CATHERINE A. BARTLETT
DAVID J. LUBBEN
BRUCE J. SHNIDER
GEORGE G. ECK
DARRON C. KNUTSON
BARBARA B. FARRELL
LENZA McELRATH, JR.
MARIANNE D. SHORT
MICHAEL E. REESLUND
ELIZABETH A. GOODMAN
MARIANNE E. DURKIN
JOHN K. ELLINGBOE
ROBERT J. DWYER, JR.
BRIAN L. NORDWALL
BRIAN E. PALMER
MICHAEL T. WESTERMEYER
JEROME P. GILLIGAN
DIANE D. MALFELD
DEBORAH S. KLEINMAN
WILLIAM J. BERENS
JAMES D. ALT

OF COUNSEL
WALDO F. MARQUART
JOHN F. FINN

February 28, 1980

Mr. Daniel W. Hardy
Assistant to the Commissioner
Securities Division
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

FEB 28 2 30 PM '80
SECURITIES DIV

Dear Sir:

In response to your solicitation of comments relating to revisions in the rules under Chapter 80A of the Minnesota Statutes, we are resubmitting certain comments previously given by the HCBA Securities Law Section and submitting some additional comments prepared by us as the Special Committee appointed by the Executive Committee of the Section for that purpose.

The Executive Committee of the Section felt that the memorandum of comments submitted on behalf of the Section on November 30, 1978 addressed the most significant suggestions or comments the Section had on the existing rules. We believe that those comments are still a part of the record for this rule-making proceeding, but we wish to resubmit them pursuant to your recent notice and have included a copy of that memorandum with this letter.

The Executive Committee also appointed a Special Committee to prepare more detailed comments on features of the regulations which the Special Committee believed to be of interest. A copy of the Special Committee report is enclosed which represents the work of the members of that committee only and has not been reviewed by the Executive Committee. John Larson was a member of the Special Committee and participated in its discussions, but we did not ask him to join in our final report since it contains at least one or two recommendations in which he had participated in contrary administrative decisions while serving on the staff of the Securities Division or as its Commissioner.

The Special Committee concentrated mainly on rules relating to exemptions since we believe it is usually the determination that registration is not needed (or that the limited distribution exemption can be used instead of a full registration) which is of greatest benefit in avoiding unnecessary costs incident to small transactions or small business clients. If you wish additional comments upon any of the matters contained either in the comments of the Section or in report of the Special Committee, we would be glad to provide them.

Respectfully submitted,

Reese C Johnson

Reese C Johnson, Chairman of the
Special Committee

HCBA Securities Law Section

Report of Special Committee on

Proposed Revisions to Rules Adopted

Under Chapter 80A
Of
The Minnesota Statutes

1. SD Rule 2115 (isolated sales)

(i) The method for computing the period of "twelve consecutive months" should be specifically stated. We believe most people compute the period by using a 365 day year, i.e. if five sales are made on January 15, 1979, then the next time that sales may be is January 15 (or perhaps January 16), 1980. If, however, one regards a "month" as an indivisible unit, then it is possible to argue that the first day on which additional sales may be made is January 1, 1980, January 15, 1980 or February 1, 1980, depending on whether one is allowed to count the month in which sales were initially made as the first month of the twelve. We believe the computation of time is controlled by Minn. Stat. § 645.14 which deals with computation of time periods stated in months. The result is substantially identical to the 365 day rule referred to above. Since the computation of the time period is critical to the existence of the exemption, the method of computation should be specified. A cross-reference to § 645.14 would be sufficient.

(ii) The last portion of paragraph (c) of the Rule should be revised to state that in computing the number of sales made, "only those sales which would be subject to the registration provisions of Chapter 80A, as determined by Section 80A.27, shall be included."

Subdivision 3 of Section 80A.27 provides that an "offer to sell" made from Minnesota will not be subject to the registration provisions of the Minnesota Securities Law if the offer is not directed to or received by the offeree in Minnesota. For instance, we gather this allows a Minnesota-based corporation which wants to sell securities to six employees, three of whom are located in Minnesota and three in other states, to make the Minnesota sales in reliance on the isolated transaction exemption. Therefore, the "scope" of Section 80A.27 is greater with respect to the antifraud provisions or broker-dealer provisions than the securities registration provisions. The current language of subparagraph (c) of Rule 2115 is unclear as to just which "scope" is intended. We assume the registration provisions were intended and that the language suggested in the first sentence of this paragraph would be clarifying.

(iii) We believe it would be desirable to have a rule which specifically states that sales under the isolated sale exemption are not

integrated with sales under the exemption in Section 80A.15(2)(k) and vice versa. We believe this corresponds to the current interpretation of the statute by the Division.

2. SD Rule 2117 (financial institution or institutional buyer)

(i) We would recommend that the Rule 2117 be revised to designate as institutional investors (i) any corporation with a class of equity securities registered under 12(g) of the Securities Exchange Act and (ii) any person who purchases more than $100,000 of an issue with respect to such sale. (Compare the concept of "accredited person" defined in subparagraph(a)(1)(ii) of SEC Rule 242).

(ii) We would also recommend that Small Business Investment Companies be deemed institutional buyers. Our experience with SBIC's indicates that they have reasonable sophistication and most people would regard placements with them as rather secure private placements under the federal securities laws. In fact, the recently adopted SEC Rule 242 specifically includes SBIC's as "institutional purchasers." The current version of Rule 2117 evidently contemplates that individual SBIC's will apply for specific exemptions after demonstrating their "sophistication," which we do not consider either a practical or a necessary procedure.

3. SD Rule 2118 (limited distributions)

(i) The comment with respect to the computation of the period "twelve consecutive months" made with respect to Rule 2115 is equally applicable here.

(ii) We believe that Rule 2118(a) should be revised to permit sales to persons who would be considered "accredited purchasers" under Rule 242 without counting such sales as part of the limited number which may be made.

(iii) We recommend that Rule 2118 be amended to increase the maximum number of purchasers to 35 in all circumstances. The development of SEC Rule 146 during the past few years and the recent adoption of SEC Rule 242 has caused 35 purchasers to be the central number around which most private placements will be structured, so we believe that 35 purchasers have become the reference point on which the statutory exemption should be based. The exemption could still be restricted or limited in specific kinds of offerings if the commissioner chooses to do so. We believe the adoption of this approach, either by regulation or be statutory change, is very desirable. If this proposal is adopted, then our suggestions in subparagraphs (iv) and (v) below would be moot.

(iv) We would recommend that subparagraph (b) of Rule 2118 be revised to provide only that offerings must be in "substantial" compliance with Rule 146 since there are a number of areas in which there are no legal standards for compliance with the Rule. The current

phrasing of Rule 2118 has caused some attorneys to advise their clients not to rely on the provisions of subparagraph (b) and to limit offerings to 25 or fewer. This seems undesirable and serves no useful purpose. Similar comments apply to paragraphs (c) and (d).

(v) Paragraphs (b), (c), and (d) of Rule 2118 sould be revised to include securities sold pursuant to rule 242 of the Securities and Exchange Commission. Rule 242 has substantially the same disclosure requirements as Rule 146 and has effectively replaced Rule 146 in all situations in which Rule 242 is available. Perhaps only a few ventures of the kind referred to in paragraph (c) and none of the kind referred to in paragraph (d) can qualify to use Rule 242, but we assume that the Securities Division would be willing to exempt them if they could qualify.

(vi) We believe that a new provision should be added to Rule 2118 stating that the 10-day waiting period may be deemed waived as of the date on which the Division has issued a clearance letter on a particular filing under subdivision 2(h). This will avoid the current need to issue an order to waive the period.

(vii) The definition of "public distribution" in paragraph (g)(2) should be revised to exclude sales pursuant to Rule 242. Such sales will be "restricted securities" for purposes of the federal securities law even though Rule 242 is an exemption adopted under Section 3(b) of the Securities Act.

4. Recommended Change in Form 170 (Statement of Issuer)

We recommend a minor modification in the second paragraph of Item 12(b) on the form of Statement of Issuer. The paragraph currently specifies a particular legend to be placed on certificates, but also allows language "equivelant thereto." The legend specified is almost never a satisfactory legend since almost all sales under the limited distribution exemption will also be offerings as to which transfer is restricted under the federal securities laws. We believe the basic thrust of the paragraph should more clearly reflect that fact and we propose the following paragraph in lieu of the existing one:

> The issuer will cause all certificates issued pursuant to this filing to bear a restrictive legend indicating that the securities issued pursuant to this filing may not be sold, transferred or otherwise disposed of except pursuant to a registration or an exemption under the securities laws of the State of Minnesota. Legends which restrict transfers generally which would be in violation of state or federal securities laws in the absence of registration or an exemption will satisfy this requirement and the following legend is also satisfactory and should be used if no more restrictive legend is being placed on the securities: "The securities represented by this certificate have not been registered

under Chapter 80A of the Minnesota Securities Laws and may not be sold, transferred, or otherwise disposed of except pursuant to registration, or an exemption therefrom.

5. New Exemption for Certain Offers.

We would recommend that a rule be adopted pursuant to Section 80A.15, Subd. 2(i) exempting any offers made by the use of preliminary offering circulars under Regulation A after filing of an application for registration with the Securities Division. This will obviously be more important if for any reason the current legislation introduced by the Securities Division is not adopted, so that the comparable change is not made in the statute. We believe it would be beneficial to adopt a rule exempting all offers of securities for which an application has been filed with the Securities Division. This will solve a number of timing problems which can arise under the current approach. If the preliminary material is too deficient, recirculation of corrected material could be required.

6. New Exemption for Certain Conversions.

We believe a new rule should be adopted pursuant to §80A.15, subd, 2(n) specifically stating that securities issued upon conversion of convertible securities are exempt even if the issuer of the securities issued on conversion is different from the issuer of the convertible security. We believe the current statutory language contemplates this result, but the question arises from time to time, particularly since debt offerings of a subsidiary convertible into common stock of the parent company have developed some popularity.

7. SD Rule 2122 (offers and sales by affiliates of issuer)

We strongly recommend that subparagraph (1)(cc) of Rule 2122 be rescinded. This paragraph requires the filing of the Form 144 with the Minnesota Securities Division in order for an affiliate to rely on this exemption. Since Form 144's are usually filed by the seller or his broker, we are not sure to what extent this rule is observed. We believe that it is relatively little known and widely ignored. We have never believed that subparagraph 1(cc) served any useful purpose. Securities attorneys recognize that there is great despairity among various issuers and their attorneys as to how they define the concept of "affiliate." Some have virtually all officers and directors filing under Rule 144 and some argue that only a few key directors need really observe these restrictions. The result is a wide despairity in terms of the scope of the restriction of sales by affiliates. In addition, many sales under Rule 144 involve only a few shares and no attorney is involved. We believe that the exemption for affiliate sales should be designed so as to be fulfilled "accidentally" if one has complied with Rule 144 and if the class of securities is registered under Minnesota Law.

8. New Definition Relating to Industrial Revenue Bonds.

We believe a new rule should be added specifically stating the categories of organizations which are considered exempt persons under §80A.14(g). This could be done by adopting a regulation detailing, with a little amplification, the types of issuers listed in clauses (h) and (i) of Subdivision 1 of Minn. Stat. § 295.05. When Chapter 80A was adopted in 1973, the prior exemption for nonprofit issuers was removed, but they were allowed to register by notification under §80A.09. Simultaneously, the legislature adopted the existing definition of "industrial revenue bond" in §80A.14(g). The last sentence of that definition exempts the industrial revenue bonds of many nonprofit issuers from registration since they are included within the types of organizations specified in clauses (h) and (i) of Subdivision 1 of Minn. Stat. §295.05. Because the statutory changes removed the exemption for securities of nonprofit issuers and then reintroduced it, on a limited basis, as to industrial revenue bonds, there has been some confusion as to the proper interpretation of the statute. This has caused a few underwriters to register offerings of hospital revenue bonds by notification under §80A.09 even though such offerings were not "industrial revenue bonds" within the definition of §80A.14(g). We believe the rule suggested above would clarify the status of such securities beyond a doubt. Perhaps a more desirable change would be to adopt a rule stating that non-profit issuers are not deemed to be engaged in a "trade or business" so that their revenue bonds will not be subject to the registration provisions. This would result in an exemption somewhat broader than the current language of clause (g) implies.

9. Broker-Dealer Exemptions

We believe that the commissioner should adopt an exemptive regulation pursuant to Section 80A.14(c)(5) exempting from the definition of "broker-dealer" any licensed real estate broker who is engaged in the offer or sale to institutional buyers of debt securities secured by an interest in real estate. On January 4, 1979, the Acting Commissioner of the Securities Division entered an exemptive order along these lines relating to mortgage bankers who deal in industrial revenue bonds. We think that this order should be the basis for a formal rule to be sure that it is effective. The original questions which arose were in the context of industrial revenue bonds, since that is where the conflict between the traditional brokerage community and tbe mortgage bankers occurred, but we believe the same principle is applicable to any debt instrument secured by an interest in real estate, so that the exemption should be broader. We believe it is not questioned that there is no public interest involved in applying separate licensing requirements in such transactions.

We believe that the statutory relationship between the licensing requirements of securities broker-dealers (who frequently handle mortgage

securities and business acquisitions) and real estate-business opportunity brokers (who frequently handle transactions involving contracts for deed and promissary notes secured by mortgages) needs to be re-examined and clarified.

10. Other Recommendations.

We recommend that paragraphs (b) and (c) of SD Rule 2035 be deleted. As a result of the 1979 amendments to the Minnesota Business Corporation Act, corporations are authorized to make loans to officers and employees (which may include directors) and we believe the Securities Division should impose restrictions on those practices only on a case by case basis. This also seems more consistant with the intent of the legislature in adopting the amendments to Section 301.32 of the Minnesota Business Corporation Act.

DATED: February 28, 1980

Respectfully submitted,

Reese C Johnson

Reese C Johnson, Chairman

Timothy M. Heaney

Timothy M. Heaney, Member

William S Lapp

William S. Lapp, Member

FAEGRE & BENSON

1300 NORTHWESTERN BANK BUILDING

MINNEAPOLIS, MINNESOTA 55402

612/371-5300

TELEX 29-0034

ROBERT J. CHRISTIANSON
GEORGE D. McCLINTOCK
EVERETT A. DRAKE
DONALD L. ROBERTSON
WRIGHT W. BROOKS
RODGER L. NORDBYE
GEORGE E. HARDING
JOHN S. HOLTEN
G. ALAN CUNNINGHAM
ROBERT W. OELKE
ERWIN M. GOLDSTEIN
JAMES A. HALLS
GERALD T. FLOM
CHARLES L. HORN
JACK D. GAGE
PETER W. ANSON
JAMES FITZMAURICE
GORDON G. BUSDICKER
JOHN D. FRENCH
RONALD B. HEMSTAD
NORMAN R. CARPENTER
LAWRENCE C. BROWN
MARTIN N. BURKE
JOHN E. HARRIS
PAUL T. BIRKELAND
DAVID M. BEADIE
RICHARD C. SCHMOKER
THOMAS M. CROSBY, JR.
LUDWIG B. GARTNER, JR.
JAMES B. LOKEN
ARTHUR L. DOTEN
DUANE W. KROHNKE
GEORGE W. FLYNN
JAMES A. DUEHOLM
HUBERT V. FORCIER
JAMES M. SAMPLES
DALE E. BEIHOFFER
PETER R. KITCHAK
GALE R. MELLUM
JERRY W. SNIDER
HENDRIK DE JONG
STEPHEN ROSHOLT
FRANK B. BUTLER
GORDON B. CONN, JR.
BRUCE A. ACKERMAN
MICHAEL H. HARPER, JR.
THOMAS L. KIMER
JOSEPH M. PRICE
W. SMITH SHARPE, JR.
PHILIP S. GARON
JOHN F. BEUKEMA
WALTER J. DUFFY, JR.

J. B. FAEGRE (RETIRED)

JOHN C. BENSON
PAUL CHRISTOPHERSON
JOHN B. FAEGRE, JR.
COUNSEL

JAMES P. STEPHENSON
F. REID CARRON
A. DAVID KELLY
JOHN K. STEFFEN
CHARLES E. BOHLEN, JR.
JOHN B. GORDON
THOMAS M. MAYERLE
THOMAS G. MORGAN
EDWARD G. HEILMAN
JOHN H. HINDERAKER
ROBERT L. SCHNELL, JR.
RICHARD A. NELSON
BRIAN B. O'NEILL
THOMAS J. MOORE
WILLIAM R. BUSCH, JR.
BONNIE M. FLEMING
HENRY F. FRISCH
RANDY L. MILLER
JACK M. FRIBLEY
JOHN S. JAGIELA
DAVID B. DEAN
STEVEN C. SCHROER
JOHN P. BORGER
HEIDI M. HOARD
JAMES G. RAY
RICHARD A. HELDE
MARGARET S. ANGLE
STEVEN R. ANDERSON
JAY D. CHRISTIANSEN
CHARLES S. FERRELL
DAVID B. MILLER
JAMES E. NICHOLSON
REBECCA L. ROM
NICHOLAS J. SPAETH
MARK F. ENGEBRETSON
JAMES A. O'NEAL
RICHARD T. THOMSON
MICHELE M. MIELKE
BETSY TAYLOR
ROBERT L. COLLINS
MARC J. DETTMANN
BRUCE M. ENGLER
SUSAN L. JACOBSON
WALTER A. PICKHARDT
ANNA W. SHAVERS
DONALD C. SHEPARD
WENDY J. WILDUNG

February 29, 1980

FEB 29 3 58 PM '80
SECURITIES DIV

Mr. Daniel W. Hardy
Assistant to the Commissioner
Securities Division
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

RE: Comments on Rules Under Chapter 80A

Dear Mr. Hardy:

Pursuant to the Notice of Intent to Solicit Outside Opinions concerning rules under the Minnesota Securities Act, dated November 29, 1979, we are writing to provide you with comments on the following aspects of the rules and the Act.

SDiv 2030. Definition of Cheap Stock. SDiv 2030(b) provides that securities issued at a price that is substantially less than the public offering price are "cheap stock" unless the price at which they were sold can be justified "with reference to the existence of an active public market for such securities." This has led to questions regarding both an issuer's ability to achieve registration of an initial public offering and the need to escrow officers' and directors' stock under SDiv 2020 because of the lack of a public market against which to measure the price at which the securities were issued. In practice, the Commissioner has permitted issuers to justify the price at which securities were issued prior to an initial public offering by reference to contemporaneous appraisals or other evidence reasonably demonstrating the fair value of such securities. We believe it would be desirable to revise SDiv 2030(b)(2) to provide specifically that the price at which securities were issued prior to a public offering may be justified by any reasonable means and not simply by reference to an active public market.

SDiv 2031. Employees' and Directors' Compensation Plans. As you no doubt realize, qualified stock options under Section 422 of the Internal Revenue Code of 1954 (the "Code") have fallen into disuse as a result of amendments to the Code in recent years, and have been replaced by other forms of executive compensation involving corporate securities. Experience suggests that further changes in the tax laws in this area can be expected to occur at relatively frequent intervals in the future. It can also be expected that companies' legitimate executive compensation practices will continue to evolve to meet changing circumstances, including not only changes in the tax laws, but also changes in the nature and combination of incentives that are needed to attract and retain competent executives.

We therefore believe it would be most appropriate to adopt a more general approach to deal with the problem addressed by SDiv 2031, namely, excessive dilution of other investors' interests as a result of the use of executive compensation plans involving corporate securities. Such an approach could consist of a numerical limit similar to that contained in present SDiv 2031(a), combined with a general requirement that the value of any rights received by officers and directors under such plans must bear a reasonable relationship to the value of the services rendered to the issuer by the recipients of such rights.

In order to minimize the need for the Commissioner to provide individual issuers with advance interpretive rulings on the application of such a general rule prior to their adoption of a new incentive plan, it would be desirable to supplement the general rule with a "safe harbor" provision setting forth in some detail various circumstances in which the general rule would automatically be deemed to be satisfied. We do not have any particular suggestions for the contents of this part of the rule. No doubt, the staff of the Securities Division is in the best position to develop the outlines of the "safe harbor" based on their perspective gained from the examination and review of a variety of plans.

SDiv 2035. Loans to Officers and Employees. As an expression of legislative policy in Minnesota, the recent amendment to Section 301.32 of the Minnesota Business Corporation Act, to permit corporations to make loans to their officers or employees, suggests that SDiv 2035 should be reconsidered. Further, we question the need for a specific regulation requiring disclosure of loans to officers, directors and shareholders. To the extent that loans by a corporation to such persons are material, disclosure of such loans would be required under SDiv 2036.

SDiv 2036. Management Transactions. We believe SDiv 2036 should be modified to take account of the continuing progress in the development of an integrated disclosure system by the Securities and Exchange Commission. Forms such as Form S-7 used by established issuers do not require the inclusion of detailed information on transactions with management, since that information is available in such issuers' periodic reports. Form S-7 and similar forms should nevertheless be considered adequate to satisfy Minnesota disclosure requirements.

Section 80A.14(k). Investment Metal Contracts. The definitions of "investment metal contract" and "investment gem contract" in Section 80A.14(k) of the Minnesota Securities Act contain an exclusion that permits a purchaser in a cash transaction to designate a bank or similar institution "within this state" to accept delivery on the purchaser's behalf. Concern has arisen that this language may give rise to a reverse implication that a transaction falls within the definition if it takes place under exactly the same circumstances, except that the purchaser wishes to designate a bank or similar institution located out of state to accept delivery. Such a result would seem unwarranted, particularly in view of the language in the basic definition which contemplates a contract where the seller or an affiliate of the seller retains possession of the investment metal or investment gem. That is, regardless of the location of the purchaser's designated custodian, the transaction should not be deemed an investment metal or gem contract if the seller relinquishes possession. While we believe that this result flows from the statute itself, we believe that a rule clarifying this point would be advisable.

SDiv 2118. Exemption for Limited Distributions. Under SDiv 2118(g), the statutory exemption for limited distributions is withdrawn for any security sold in a "public distribution". This latter term is defined in part as a "public offering registered under the Securities Act of 1933 or exempted by Section 3(b) of that act ...." The effect of this definition is to withdraw the exemption for offerings that are exempted from federal registration by Rule 240 or Rule 242 promulgated under the Securities Act of 1933. In view of the substantial restrictions and protections included in Rule 240 and Rule 242, and continuing need to make our equity capital markets more accessible to smaller companies, we believe this result is unwarranted, and would recommend that an appropriate modification of SDiv 2118(g)(2) be adopted to make the Minnesota limited distribution exemption available for use in conjunction with Rule 240 and Rule 242 at the federal level. Similarly, SDiv 2118(b) should also be broadened to encompass Rule 240 and Rule 242.

Very truly yours,

Henry F. Frisch

HFF/jj

LEONARD E. LINDQUIST
NORMAN L. NEWHALL
LAURESS V. ACKMAN
GERALD E. MAGNUSON
EDWARD M. GLENNON
MELVIN I. ORENSTEIN
ISRAEL E. KRAWETZ
EUGENE H. KEATING
JAMES P. MARTINEAU
RICHARD J. FITZGERALD
PHILIP J. ORTHUN
MACLAY R. HYDE
EDWARD J. PARKER
JOHN A. FORREST
WILLIAM E. FOX
JERROLD F. BERGFALK
WILLIAM T. DOLAN
JOHN H. STROTHMAN
DAVID G. NEWHALL
KURTIS A. GREENLEY
ROBERT V. ATMORE
HOWARD J. KAUFFMAN
JOHN B. WINSTON

LINDQUIST & VENNUM

4200 IDS CENTER • 80 SOUTH 8TH STREET

MINNEAPOLIS, MINNESOTA 55402

TELEPHONE (612) 371-3211

CABLE ADDRESS: LINLAW

WAYZATA OFFICE
740 EAST LAKE STREET
WAYZATA, MINNESOTA 55391

LAURANCE R. WALDOCH
THOMAS H. GARRETT III
DARYLE L. UPHOFF
DAVID J. DAVENPORT
MARK R. JOHNSON
RICHARD A. PRIMUTH
JEFFREY R. SCHMIDT
KRISTINE STROM ERICKSON
TIMOTHY H. BUTLER
ROBERT G. MITCHELL, JR.
J. MICHAEL DADY
J. KEVIN COSTLEY
ROBERT J. HARTMAN
JOSEPH G. KOHLER
JACK A. ARNOLD
RICHARD D. McNEIL
ALAN C. PAGE
JAMES P. McCARTHY

OF COUNSEL
THOMAS VENNUM
DENNIS M. MATHISEN

February 27, 1980

Mr. Daniel W. Hardy
Assistant to the Commissioner
Securities Division
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101

STATE OF MINNESOTA
FEB 28 1980
DEPARTMENT OF COMMERCE

Dear Mr. Hardy:

Pursuant to the Securities Division's notice dated November 29, 1979 I am sending the enclosed memorandum which was prepared on behalf of representatives of the Minneapolis brokerage community during former Commissioner Larson's "equity rules hearings" which were conducted in November of 1978. Messrs. Bonniwell, O'Connell and Engler have requested that I communicate their views to you in connection with this most recent round of Securities Division review of its equity rules with the hope that their attitudes on the cheap stock and minimum investment regulations. Their experience since submission of the memorandum continues to confirm their views that something must be done by the Securities Division if the Division has an interest in encouraging small business enterprise in the State of Minnesota.

Very truly yours,

LINDQUIST & VENNUM

THG

Thomas H. Garrett III

THG:lh
Enclosure
cc: George B. Bonniwell
Howard O'Connell
Michael Engler

MEMORANDUM

FROM: George B. Bonniwell Howard O'Connell and Michael Engler

TO: EQUITY RULES COMMITTEE

RE Broker-Dealer Comments on the Current Regulations of the Minnesota Securities Division Relating to Equity Offerings

George B. Bonniwell, President of Craig-Hallum, Inc., Howard O'Connell, President of John G. Kinnard & Co., Inc. and Michael Engler, Chairman of the Board of Engler & Budd Company (the "Commentators"), met on October 30, 1978, for the purpose of sharing their respective views on the regulations of the Minnesota Securities Division pertaining to equity offerings. This meeting was an outgrowth of an invitation directed to a number of interested persons by Mr. John R. Larson, Securities Commissioner for the State of Minnesota, to comment on the impact such regulations have on the small entrepreneur's access to capital in the State of Minnesota. The commentators reviewed Minnesota Regulations, Subd. 2019 through 2041 and Subd. 2132 through 2134 (the "Regulations"), and they wish to make the following observations with respect to the Regulations:

1. General. Each Commentator expressed his concern about the ability of small entrepeneurs to obtain capital in the public market place. Each expressed similar viewpoints concerning the dilemma noting that a combination of factors, including inflation, the rising expenses of "going public", the declining number of institutions willing to make high risk private investments, and the risks encountered by underwriters in bringing "start-up"

enterprises public were creating difficulty for small entrepreneurs find when seeking equity capital. Each recognized that the Regulations constituted one of the several factors which have made the small entrepreneur's access to capital more restricted in recent years.

With two exceptions, the Commentators felt that the Regulations adequately balance the needs of businesses of all sizes to obtain access to the capital markets by means of registered offerings and the needs of the public for fair and full disclosure. The two exceptions are the cheap stock limitation (Subd. 2030) and the minimum investment regulation (Subd. 2029).

2. Cheap Stock. Under the present Regulations, the amount of cheap stock which may be outstanding after a proposed offering is limited to an amount equal to twice the percentage of shareholders' equity prior to the issuance of shares in a proposed offering (the "fair value of the equity investment"). If such equity is 15% of the sum of such equity plus the new public investment then the cheap stock or "promotors shares" may not exceed 30% of the shares outstanding after the public offering. Cheap stock is defined on a sliding scale based upon the years the shares have been outstanding prior to the offering and the price at which such shares were purchased. Thus stock acquired for less than 66% of the public offering price within one year before the offering is deemed to be cheap stock. Cheap stock does not include securities which have been outstanding more than three years prior to the proposed registration.

The concept of a limitation on the amount of cheap stock held by entrepreneurs results from the concern of regulators that promoters could issue to themselves substantial amounts of stock prior to going public without adequate or sufficient considerations. Such activities would permit promoters to obtain a disproportionate share of the equity in a corporation relative to the capital provided by public investors.

It is the experience of the Commentators that the cheap stock provision prevents the small entrepreneur, who may have a worthwhile business concept but no personal funds, from seeking capital in the public market place without diluting his interest in such enterprise so significantly that he is discouraged from even entering the public marketplace. In the situation where an entrepreneur cannot afford to invest his own capital in a project but desires to maintain absolute control over his enterprise, he is forced away from a public offering by means of a registration and into the private placement alternative. This result is caused by the fact that the Securities Division does not apply its regulations to the "private placement" exemptions afforded within the Minnesota Securities Act. Historically, those entrepreneurs who were unable to meet the cheap stock test would seek private equity capital, pricing their shares at a level which would result in the private placement purchasers acquiring shares which would not be deemed "cheap stock" under the Regulations. After the private placement proceeds were received and added to shareholders' equity the issuer would then be able to make a filing for a public offering at a later date demonstrating the necessary

"fair value of the equity investment" since such "fair value" would include not only the entrepreneur's investment, but the investment of the private purchasers as well.

The Commentators acknowledge that there may be benefits in causing entrepreneurs to first obtain equity capital in private placements since the persons who make private placement investments are in a position to assess and afford the risks of such investments. It is their investment that permits the entrepreneur to test out his idea, create a first prototype and develop his marketing plan. Since many businesses fail within a short period after they are created, it is recognized that there may have been some public benefit in passing off this risk to the type of investor that is most able to analyze and incur such risk. Each of the Commentators believes, however, that private placements to individual risktakers are rarely feasible under present Regulations when amounts in excess of $200,000 are needed. Since the great majority of small entrepreneurs do not have access to "institutional investors", their ability to raise meaningful sums of capital in private placements has substantially diminished in recent years as inflation has expanded the amount of money necessary to properly finance a new business. The Commentators believe that the elimination of the cheap stock limitations (not the elimination of the cheap stock concept) coupled with the retention of the regulations relating to the escrow of cheap stock would have the effect of enhancing the small entrepreneur's access to the capital markets while at the same time preventing the abuses the Regulations are designed to combat.

3. Minimum Investment. The Regulations require an issuer who has not had profitable operations for two of its last three fiscal years to have shareholders' equity prior to a proposed offering of at least 15% of total shareholders' equity giving effect to the proposed offering. Thus an entrepreneur seeking to obtain $500,000 of new equity in a public offering must have stockholders' equity prior to the public offering of $88,235. (15% X [$500,000 + $88,235] = $88,235). If the entrepreneur cannot afford to put in $88,235 of his own equity or does not have friends who can provide such equity, he is precluded from entering the public capital market by means of a Minnesota registration. It is the opinion of the Commentators that this particular regulation is the most detrimental of all the Regulations insofar as such Regulations impact upon the ability of the small entrepreneur to raise capital. Over the years inflation has made it extremely difficult to capitalize a business with less than $200,000 or $300,000. Naturally, there are businesses which can be capitalized for less (the "ma and pa" operation for example), but those businesses which require substantial sums of capital are the businesses which create jobs and expand a state's tax base. It is the latter type of business which usually seeks out the services of an investment banker such as the firms which the Commentators represent. The creation of an across-the-board restriction on businessmen who cannot meet the 15% minimum equity test presents a sizable deterent to the entrepreneur. It is the experience of two of the Commentators (Mssrs. O'Connell and Engler) that in certain situations where the minimum investment

test cannot be met entrepreneurs are seeking capital in other markets, most notably the Denver marketplace. This is regarded as unhealthy for the business climate of our state.

The Commentators believe that some investment should be made by an entrepreneur seeking to start a business. However, to create a standard 15% test penalizes the entrepreneur who may not be independently wealthy. Moreover, there are certain entrepreneurs who expend a great deal of time and their own money to develop a concept over a long period of time. When it becomes appropriate to create a balance sheet for a new corporation, it is extremely difficult to place a value on that time or to recreate the expenditures in a form necessary to satisfy auditors. Nevertheless, the monetary value of the time and the expenditures may represent a significant portion of the entrepreneur's net worth. It is the opinion of the Commentators that those factors should be taken into consideration when making a decision on whether the entrepreneur has made an appropriate commitment to the business. It is also clear that the price of total commitment can vary considerably, depending on an entrepreneur's net worth.

As indicated above in the discussion of the cheap stock question, the minimum investment regulation causes entrepreneurs to seek private placement equity capital prior to going public. Such private placement equity capital is factored into the 15% amount. For the same reason stated above, the private placement alternative is becoming less desirable as amounts necessary to finance businesses exceed the amounts which can be generated in a private placement. Accordingly, it is the opinion of the Commentators that the minimum investment regulation serves as a substantial hinderance to the small entrepreneur seeking to raise capital.

The Commentators believe that the minimum investment regulation should either be removed in its entirety, or structured to create the flexibility necessary to take into consideration the individual situation of each entrepreneur. Moreover, the percentage test appears to be completely inappropriate in a business climate where offerings to capitalize a business more often than not must exceed $500,000. The Commentators suggest that another alternative to eliminating the minimum investment requirement entirely would be the establishment of a fixed dollar amount which could function as a minimum ($10,000 to $25,000).

4. Recommendations. It is the opinion of the Commentators that the regulation relating to minimum investment should be abolished and the regulation concerning cheap stock revised so as to simply define cheap stock for purposes of placing it into an escrow rather than limiting the amount of cheap stock which may be held by an entrepreneur. The Commentators believe that the adoption of their recommendation would not harm the integrity of the equity capital markets in the State of Minnesota, while enhancing the ability of the small entrepreneur to obtain capital.

If their first recommendation is not adopted, the Commentators propose that the Minnesota Securities Division explore the feasibility of a "limited registration" which would permit issuers to engage in an offering to a limited number of qualified Minnesota residents. Such a "limited registration" would cover that number of sales ranging from 25 purchasers to a larger number, perhaps 75 or 100. In connection with the "limited

registration" the issuer would not be required to meet the cheap stock or minimum investment tests. The securities sold under the "limited registration" could be restricted as to resale for some period of time (perhaps two years) by regulation so that the securities would not find their way into the public marketplace prematurely. The issuer could then rely upon the "limited registration" for his Minnesota registration requirements and rely upon the "intrastate offering" exemption or the Regulation A exemption to meet his obligations under the federal securities laws. Such a "limited registration" would permit entrepreneurs to do what the Regulations presently force them to do (that is engage in a private placement before filing for a public registration), but permit them to raise more than the amounts which can be raised when making sales to 25 investors.

The alternative of a "limited registration" appears to be within the statutory authority of the Commissioner of Securities whereas the alternative of raising the total number of sales permitted in the 15(2)(h) exemption from 25 to some larger number would require legislative action. Accordingly, if the abolishment of the cheap stock limitation and the minimum equity requirement is unacceptable, the Commentators would urge that an intermediate category be structured so as to permit larger private offerings.

SF-00006-01

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL - Bremer Tower **Office Memorandum**

TO : MIKE MILES
Assistant Attorney General

DATE: JANUARY 26, 1981

FROM : RICK EVANS REE.
Special Assistant
Attorney General

PHONE: 6-7519

SUBJECT: SECURITIES RULES

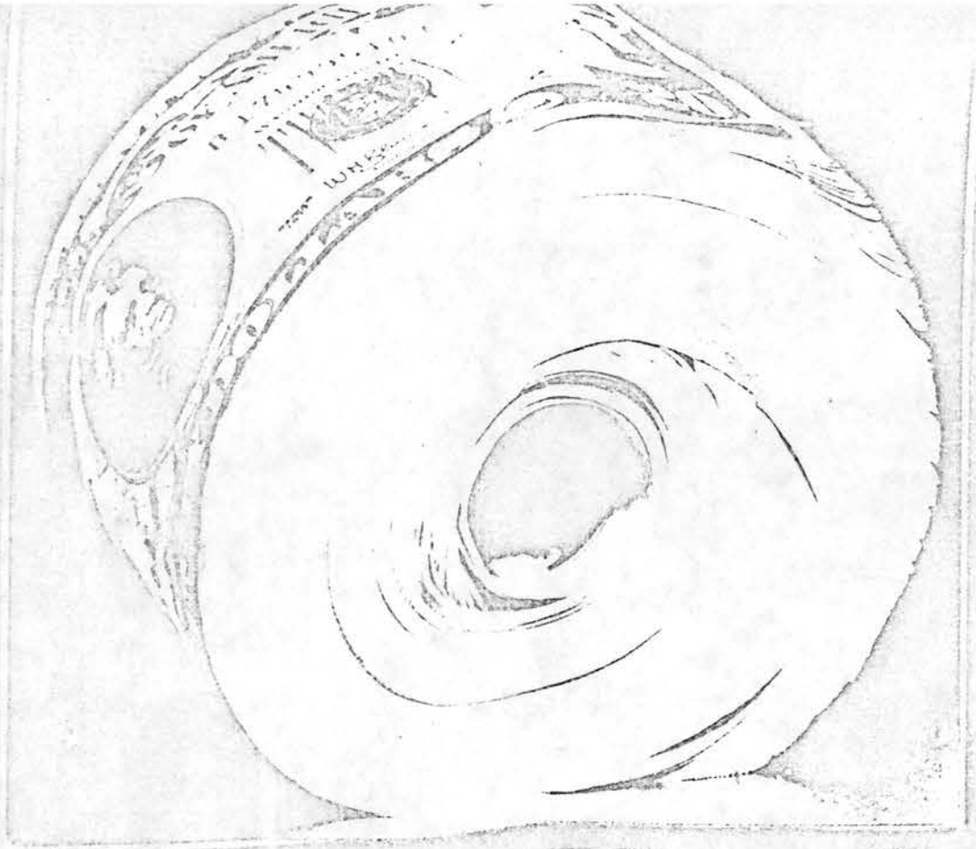
As you will recall, on January 16 I personally delivered to you the filing materials relating to the adoption of certain revisions to rules of the Securities and Real Estate Division.

If at all possible, my client would like to receive final word from the attorney reviewing those rules by no later than Friday, January 30, 1981. This is necessary in order to allow them to publish the newly-adopted rules in the next edition of the State Register.

Thanks for your consideration of this special request.

lf

RECEIVED
JAN 27 19[illegible]
[illegible]NAL
ADMINISTRATIVE AGENCIES

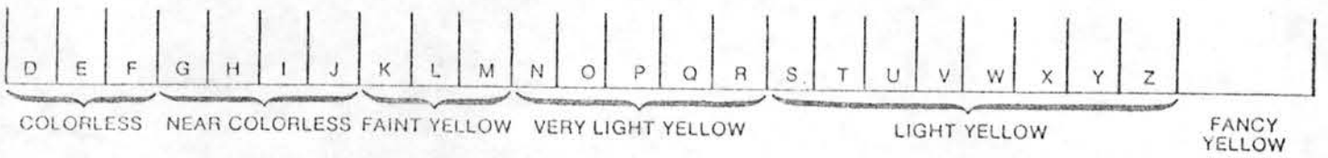


Why Pay More?

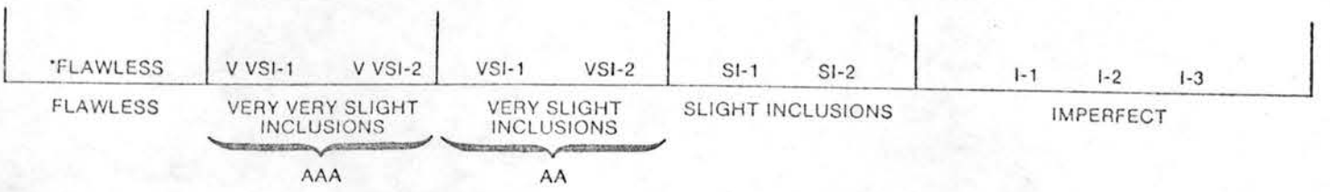
Your Diamond Dollars
Go Further At

TRANSWORLD
DIAMOND SERVICE

Color Grading Scale



Clarity Grading Scale



*ALL GRADES UNDER 10X MAGNIFICATION

Why Buy Diamonds?

In these times of worldwide monetary uncertainty, traditional vehicles of investment are just not working very well. The stock market is a gamble at best and fixed yield instruments such as bonds, guaranteed investment certificates or mortgages do not compensate for inflation. But as the preceding graph so clearly shows, diamond prices have risen at a pace which far exceeds the rate of inflation in North America.

Normally, the threat of runaway inflation is confined to "banana republics" or severely underdeveloped third world countries. However, the rates of inflation experienced by the developed western economies over the last two years have proven that no economy is immune. The reasons are complex but one thing is certain — the next few years will see little improvement in the world monetary situation. Deterioration of private wealth through inflation of devaluation remains a constant threat. Every concerned individual must *carefully reappraise his financial portfolio in light of today's political and economic uncertainty. Diamonds, unlike dollars sitting in a savings account, do not devalue.*

Why Have Diamond Prices Risen Dramatically?

The pricing policy of De Beers is committed to maintaining the purchase power of "diamond currency". This has resulted in a constant adjustment of diamond prices upward.

In addition, now more than ever before, astute collectors in Europe, Asia and North America are converting unstable paper currencies into the strength and security of quality diamonds. As a result, demand threatens supply capability of the diamond industry, a major reason for the uptrend in prices.

In a recent trade magazine survey of 300 jewelers, 80% stated that customers were buying more diamonds with collecting in mind.

"Even Banks are Buying Diamonds" . . . . Diamant, the international journal of the diamond industry, reported that European banks have been buying substantial quantities of diamonds. The banks apparently consider diamonds a secure investment such as dollars or gold.

For years the wealthy of Europe have invested in fine quality precious gems. Royalty to merchant have recognized the intrinsic value of jewels . . . an excellent safeguard against economic and political upheaval for centuries. Now you can have the opportunity collect radiant high-quality diamonds.

The mention of diamonds has caused men's and women's hearts to quicken for untold centuries. The shimmering gleam, the sparkling purity of the world's most precious gem is now available to individual buyers.

Protect Your Future With Diamonds

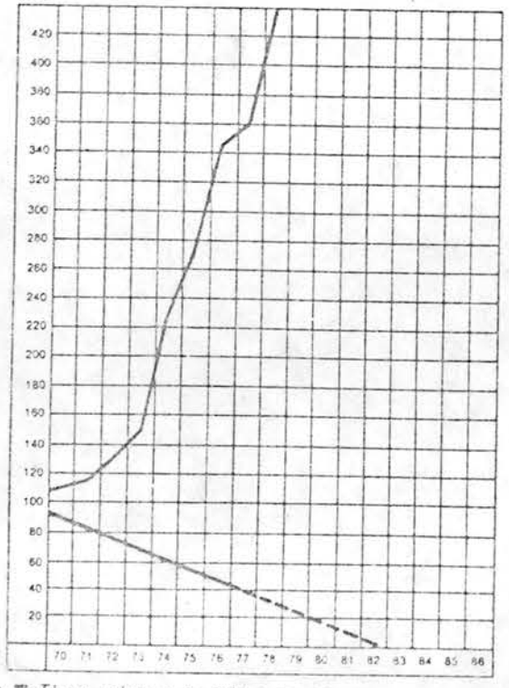
Almost the entire production and trade in diamonds is a near monopoly; members of the diamond trade have formed a closely knit cartel. Offerings of uncut diamonds to sub-wholesale markets within the industry are always kept just short of world demand.

The Central Selling Organization creates orderly markets and constant values.

Investment Quality Diamonds have consistently outpaced Gold, Silver and the Stock Market.

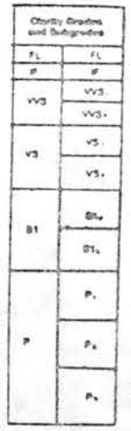
Real estate, stocks, gold, and silver continue to fluctuate and the experts stay alert for highs, lows, "new floors," and buy and sell signals. But investment grade diamonds continue their upward climb.

Since 1966, the dollar has dropped to about 40 percent of its purchase power. In 1978, diamonds grew to nearly four and one-half times their 1966 buying power. Compare the track record of diamonds with other investments, and you'll see for yourself that diamonds are for you.



Diamonds ■ vs. Dollars. ■ Their relative purchasing power. Percent of purchasing power adjusted to Consumer Price Index.

World's Most Treasured Possession



We, at the Transworld Diamond Corp. deal in only V.S.-V.V.S., commercial white, brilliant diamonds of the highest quality, as illustrated on the chart. Diamonds of this calibre have proportionately increased in value far more than diamonds of lesser grades.

Scientifically selected. The quality depends on many factors. We use the latest scientific equipment and trained experts to insure consistent, high quality diamonds. The main areas of concern in diamond selection are color, clarity, cut and carat weight. We offer a brief explanation of each to enable you to better understand the significant quality of your diamonds.

Carat:

This is precisely determined in the metric carats to two places of decimals (1.00 carat) by means of an electric balance. You are assured of accurate weighing which further enhances your wise investment.

Cut:

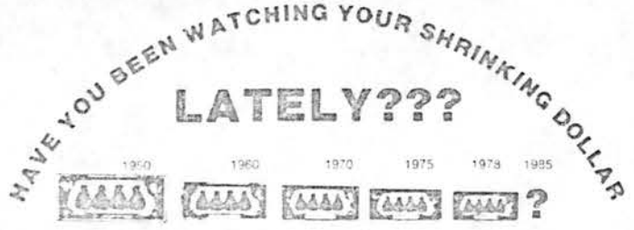
The cut, make and perfection of cut are terms which cover the style, proportions are symmetry of cut. We ship only round brilliant cut diamonds. This cut is the classic of the industry and most perfectly shows the rare beauty of the world's most beautiful gem. Skilled diamond cutters insure that each stone is cut to perfection thus further insuring the future appreciation of your investment in beauty.

Clarity:

This term defines purity and also takes account of internal and surface faults. By popular definition, anything that stops or is a hindrance to the free passage of light through the stone, is taken into consideration when the clarity of the stone is determined. It should be stated that V.S.-V.V.S. are terms that mean very slight or very, very slight inclusion. Only a few diamonds are capable of meeting the V.S. standard in the diamond industry.

Color:

The color is measured by using modern scientific instruments which surpass the old-fashioned optical personal viewpoint of gemologists. These modern methods are not only more accurate but eliminate most common errors.



Everyone knows what inflation is, or at least most people think they do.

Inflation, as most know it, is going to the supermarket and finding milk up two cents a quart or bread up three cents a loaf. That's like looking at the tip of an iceberg.

INFLATION IS THE BIGGEST THREAT TO BOTH THE ECONOMY OF OUR COUNTRY & THE LIFESTYLES THAT WE AS INDIVIDUALS STRIVE TO BUILD AND MAINTAIN.

In Japan, right now a cup of coffee is $2.80, bottle of Scotch costs $35, and beer sells for $20. per six-pack.

We are not immune, the 1946 dollar is now worth 36¢. If inflation continues at its present rate by the year 2000 that 1946 dollar will be worth 3¢. The question that concerns most people right now, is how do we protect ourselves from this monster known as inflation?

We think we have the answer. If you are concerned about your future. We can show you how over the last 4½ years we have put thousands of people in a position where they don't have to worry about what will happen to them should the dollar become worth 3¢.

With each package you will receive:

1. *A certified appraisal from an independent appraiser, that will be acceptable to most insurance companies.*
2. *N.B. Because of our three step operation:*
   (a) Direct from diamond jobber to —
   (b) Transworld Diamond Corporation —
   (c) TO YOU —

Packaging:

There are several different diamond packages available to you from Transworld Diamond Corp. Our experienced, qualified diamond merchants, who have access to diamond cutters and diamond exchanges the world over, choose the best out of many thousands of diamonds in order to protect and insure the appreciation of your diamond collection.

Liquidity and Marketability:

There are many ways you can dispose of your diamonds. They are a precious and valuable commodity.

Many people sell their diamonds privately through advertising in newspapers.

You can also contact dealers in any one of the major diamond centers in the world.

If you wish, we will advertise your diamonds in the Wall Street Journal or in leading publications on a weekly basis.

Summary

- *Top Quality Diamonds have not declined in value for approximately forty years.*
- *Diamonds are, and have always been, the world's hardest currency.*
- *Diamonds are an internationally recognized form of wealth.*
- *There is a dwindling supply and an increasing worldwide demand for diamonds.*
- *You protect yourself against international currency problems when you collect diamonds.*
- *Diamonds can be used and enjoyed while appreciating in value.*

How Do I Purchase V.S. V.V.S. Diamonds?

You determine how much money you can afford, keeping in mind that we do not recommend short term trading in diamonds or borrowing money to buy diamonds.

Once you have decided upon the amount you wish to spend on your diamonds, our representative will recommend what size of diamonds are best for your specific needs. Most of our customers store their diamonds in a bank. You can, however, wear your diamonds, should you so desire. **Diamonds, unlike dollars sitting in a saving account or a bank, do not devalue.**

We have access to a complete line of jewelry setting at wholesale prices. If you wish to have your diamonds set in jewelry, write to us. Naturally, there will be no charge for placing your diamonds in to any setting you purchase from us.

- *We recommend V.S.-V.V.S. diamonds as an excellent collectable for your future, with good growth potential.*
- *Buy at today's prices, to safeguard your tomorrows.*

TRIVIA INDEX

While we quiver of another price rise in gasoline, groceries and housing, we tend to Ignore the "little ticket items" that eat away at our shrinking paychecks. A New York businessman, Raymond F. DeVoe, Jr., has published a collection of such statistics in his DeVoe Report. Herewith is a sampling of items from DeVoe's latest "Trivia Index". Just for "fun", we've figured the Annual Percentage Compound Increase and the 20 Year Price Forecast and added them to his list. The numbers may make you weep.

	1974 Price	1979 Price	Annual % Cmpnd. Increase	% Change	20 Yr. Forecast
Time Magazine	$ .50	$ 1.25	20%	+150%	$ 48.00
Playboy	1.00	2.50	20%	+150%	97.00
New York Times	.15	.25	11%	+67%	2.00
TV Guide	.15	.35	18%	+133%	10.00
McDonald's Milkshake	.40	.69	9%	+73%	4.00
Cup Coffee	.20	.37	13%	+85%	4.00
Haircut (now taxed in N.Y.)	2.50	4.16	11%	+66%	32.00
Developing 35 exp. Kodachrome	3.95	5.75	8%	+46%	26.00
Women's Hair Wash & Set	6.00	8.75	8%	+46%	40.00
Suit Cleaned & Pressed	2.37	3.25	7%	#27%	12.00
Cleaning Woman (per hour)	2.00	3.75	13%	+88%	47.00
Cheeseburger	.79	1.45	13%	+84%	17.00
Band-Aids	.79	1.19	9%	+51%	6.00
Dog License	6.10	8.10	6%	+33%	25.00
Brooks Bros. Striped Tie	7.50	14.00	13%	+87%	170.00
Baskins Robbins cone (single)	.30	.60	15%	+100%	10.00
Slice of Pizza	.35	.65	13%	+86%	8.00
Chewing Gum	.10	.30	25%	+200%	25.00
Kleenex (packet)	.10	.20	15%	+100%	3.00
Bus fare	.30	.50	11%	+67%	4.00
Parking Meters (per hour)	.10	.25	20%	+150%	10.00
Garage Parking (one hour)	1.75	3.30	14%	+89%	42.00
Movie	3.00	4.50	8%	+50%	23.00
Paperback Book	1.25	2.65	16%	+112%	54.00
Musical Theatre Tickets	9.00	20.00	17%	+122%	500.00
Postage Stamps	.08	.15	13%	+88%	2.00
Visit Podiatrist	9.00	18.00	15%	+100%	300.00
Bufferin	1.75	2.69	9%	+54%	15.00
Vitamins	2.50	5.19	16%	+108%	100.00
Hershey Bar	.10	.25	20%	+150%	10.00
Staten Island Ferry	.10	.25	20%	+150%	10.00
Shoeshine	.50	1.00	15%	+100%	16.00
New York Rangers Tickets	6.00	14.00	18%	+133%	420.00
Bounced Check Charge	3.00	5.00	11%	+67%	40.00

Might be kind of fun (?) to keep track of your own personal expenses that can "nickel and dime" you right out of business. On the other hand, unless you've stocked up on pre-inflationary supplies of Kleenex and Bufferin, maybe you better just take Mr. DeVoe's word that" ... it's not always the big things — like the monstor in 'Jaws' — that can do us in ... One can be eaten alive by minnows as well as by sharks.

Trans-World Diamond Center, Inc.
The International Building

100 N.E. 125 St. • Suite 101
No. Miami, Fla. 33161
(305) 895-0036

SPECIAL REPORT

Colored gems look undervalued.

The dramatic run-up in diamond prices the last few months has left some attractive investment opportunities in colored stones, primarily "the big three:" rubies, sapphires and emeralds. Prices for the best quality colored stones have tripled in the last 18 months, according to Joseph Abramoff, president of Balance Trading Group Ltd., a New York gem dealer.

The trade monthly *Jewelers' Circular-Keystone* reports that dealer prices for medium-to-better rubies (about the second-best quality in investment stones) climbed 53 percent from March 1979 to March 1980. Sapphires climbed 82 percent in that period, and emeralds rose about 10 to 20 per cent.

This surge in colored and semiprecious stones is a natural realignment in the wake of diamond prices, according to Mr. Abramoff. "We expect a major increase in values of colored stones in the next five years as diamonds pull up the rest of the market," he said. Investors would forego liquidity to buy colored stones for their portability, durability, and scarcity, he explained.

However, major institutional investors will be wary of investing in colored stones until the refinement of a scientific and consistent system to measure and certify colored stones. Mr. Abramoff, who lectures widely on gemstone investments, reports serious institutional interest waiting only on the development of such a system. The industry is responding.

Allan Elgart of European Gemological Laboratories says his firm is perfecting an instrument which will measure and report color with the aid of a computer. The test will be repeatable and unaffected by the variances of the human eye or judgement. This machine should be available within months, he added.

Gem Instruments, a subsidiary of the Gemological Institute of America, based in Los Angeles, is marketing the Color Master which "communicates" gem color by a complex number. The gemologist mixes different percentages of red, green and blue within the machine and compares the resulting hue to the stone's in two kinds of light. When the operator is satisfied with a match, the percentages show a digital readout and those numbers are used to describe the stone's color to retailers and wholesalers. Because people see color in different ways, this process is still subjective, but more descriptive than previous methods, according to Vicki Bruno, sales administrator for Gem Instruments. In the two months the machine has been on the market, 75 have sold: about 60 per cent to retailers and the rest to wholesalers. Other labs are also working on the problem of a consistent system.

Even without further development of a certification system, Mr. Abramoff predicts "continuous enlargement of public demand over the next two years."

This demand reflects a continued flight from paper assets and would intensify with any weakness in paper currencies and with strength in gold, he said. At the same time, supplies are scant and unstable. Mr. Abramoff cited U.S. diamond imports worth $3 to $3.5 billion in 1979, compared with a mere $60 million in rubies and sapphires and $100 million in emeralds. The rubies are mined largely along stretches of the Thailand-Cambodia border; emeralds, in Colombia; and sapphires, in Sri Lanka and Africa.

Colored Stones

Median wholesale prices per carat, medium-to-better colored stones and D-VVS1 diamonds:

	1974	1977	1979	1Q, 1980
Emeralds	$1,100	$3,500	$ 3,300	$ 3,000-$3,500
Rubies	$ 800	$2,000	$ 1,800	$ 3,000-$3,300
Sapphires	$ 500	$1,000	$ 750	$ 1,200
Diamonds	$4,550	$5,800	$14,200	$44,000

Sources: Balance Trading Group, Ltd., New York, and Hasenfeld Stein, New York.

Brazil is the source of most semiprecious stones, which are relatively abundant. Usually priced from $15 to $500 per carat, stones such as topaz, tourmaline, garnet, aquamarine or zircon are even less certifiable than the big three. Prices can range from $10 for a zircon to $10,000 per carat for the rare alexandrite.

Christie's reports the all-time high gemstone price is $123,859 per carat for a flawless pink diamond, but the record for rubies is $100,639 per carat; emeralds, $48,240 per carat; and sapphires, $25,815 per carat. With exceptions for very finely crafted Art Deco and other signed pieces, most jewelry is bought for the stones themselves. A spokeswoman for Christie's said the auction house expects a continued strong market. □

—Lee Kottke

Reprinted from *The Collector Investor*

Volume 6, Series 1

Trans World Diamond Center Report

NEW INTEREST IN COLORED STONES

Colored stones! Never have they been more important to America's retail jewelers. The door that opened part way to a wider variety of gemstones two years ago — due to skyrocketing prices for diamonds — has been flung wide open by confusion and fear about gold prices.

As the price of diamonds has continuously gone up, Trans World has been aware of an increased intensity of interest in colored stones. There have been reports in the national press about rubies selling at $100.00 per carat. Reports like these, in addition to the new records being set at jewelry auctions at Christie's and Sotheby Parke Bernet, have piqued reader interest. We unquestionably consider diamonds the prime investment gem. However, Trans World would be doing our clients a disservice if we did not make every effort to expand their knowledge of colored stones.

Somehow predictions always seem to be the victim of unexpected political events. Predictions about gems for the beginning of 1979 were based on a continuing erosion in the worldwide value of the dollars, expectations regarding OPEC policies, changes in the prices of precious metals, and projections about the rate of inflation in the U.S. and abroad. The price of gold is even surprising the "gold bugs". Of course, nobody could know that there would be such violent circumstances taking place in Iran, or that there would be a Soviet invasion of Afghanistan, to use two obvious examples. It is interesting to see how the year's events affected the market for tangibles.

Diamond prices are the easiest to observe and tabulate. There was a major increase in October amidst a booming market that had started earlier in the year. The price of a Flawless-D of 1 carat size rose to an unimaginable $40,000 per carat by year's end, at the cutters' level! Sales of investment diamonds in 1979 reached an all-time high. But the rise in diamond prices may well have been artifically LOW as a result of De Beers' control and insistence on an orderly marketplace. This speculation is supported by events in the colored stone market, which is subject only to the ageless laws of supply and demand.

The largest measurable price increases of Ruby in 1979 must surely be attributed to the lord of gems, ruby. While prices of rubies rose an average of 50% in 1978, dealers noted a tremendous surge in the middle of 1979 that carried into the end of the year and resulted in an average 100% increase in the price of rubies for the full year. Individual stones of exceptional quality were marked up as much as 300% last year. One fine stone of under 2 carat size was sold to an investment house for nearly $7500 per carat. "Piece de resistance" of all this was a report of the November 22, 1979 auction sale at Christie, Manson & Woods in Geneva. New record high prices for colored stones were set for all the "precious" stones (ruby, emerald, sapphire), with one ruby, a 4-carat stone in a ring, bringing $100,639 per carat. An excellent summary of the auction prices and an overview of the colored gem marketplace was presented in the Investing Section of the New York Times, Sunday, December 22, 1979.

Ruby is perhaps the best known of all colored gemstones, and worldwide demand for it continues to climb. Larger stones are especially hard to find, even in Bangkok. Gems over 8-10 carats are hardly seen at all and may bring as much as $25,000 per carat at wholesale. It is no longer considered inadvisable to buy purplish stones for long range holding, since even these gems have appreciated substantially.

By far the dominant material on the current marketplace is ruby from Thailand. This tends to be purplish-red in color, sometimes with a hint of pink. The finest Thai stones are a rich, dark red hue with no secondary colors. These command a tremendous premium, as much as twice the cost of comparably-sized purplish-red gems.

Burma has long been considered the "premier" locality for ruby. However, political problems in Southeast Asia have led to the virtual disappearance from the marketplace of Burmese stones; this has resulted in (a) an enormously high premium placed on finer Burmese goods, and (b) the rise to prominence of the Thai material. The best Burma rubies are "stop-light" red of tremendous saturation and superb hue. The best Thai material, also pure red, but of a much darker tone that is not as vibrant as the Burma color. It would not be surprising to hear of a piece of $25,000 per carat of a fine 3-4 carat Burma ruby, while the best Thai gem would bring perhaps half this amount.

The prognosis for ruby appears to be much the same for 1980. The Soviet invasion of Afghanistan proves that military activities in Asia are a fixture of current world politics. Inflation is getting worse, not better. The ruby supply is not increasing, but demand is growing strongly. If all related factors carry forward even at their present rate, we should see substantial increases in ruby prices in the next year. Dealers are predicting that an enormous increase at wholesale will develop when the old stocks are gone and the full impact of higher Bangkok prices is felt on the U.S. market early this year.

The International Building • Suite 101-103 • 1001 N.E. 125th Street • North Miami, Florida 33161 • Phone: (305) 895-0036

GEMSTONES

Corundum crisis is growing worse

"The ruby situation is very grave", says Abe Nassi, Abe Nassi, Inc., New York. "Shortages are so acute that dealers from Bangkok are coming here to buy."

As a result of these scarcities, JCK's Colored Stone Index shows a 20% jump between July and September in the mediun price dealers are charging for medium-to-better rubies. What is more, the Index shows ruby prices up 46% in a year's time. And there is no end in sight.

"Things are atrocious", says Roland Naftule, Nafco Gema, Phoenix, Arizona. "I was just in Bangkok where sellers were parting with fine rubies only at astronomical prices. When I balked, one said, "That's fine. Tomorrow a Japanese buyer will pay me what I ask."

Both Nassi and Naftule blame critically short supplies of decent ruby on Thai government restrictions against heavy mining in the ruby fields.

The situation isn't too much better for sapphires. Nassi, who also has returned from the Far East recently reports.

"We're seeing far fewer better sapphires because the supply of stones suitable for burning (heat treatment to improve color) has fissled out. Supples are short in sizes between 1/2 and 5 carats. In fact, there are many dealers who have nothing at all to show. Things in Siam today remind me of what happened in Burma just before the Communists cut off supplies there."

REPRINTED FROM JEWELERS CIRCULAR KEYSTONE MAGAZINE

St. Paul Sunday Pioneer Press 1/13/80 Metro/Region E-1

Diamonds becoming investors' best friend

By Ella Warmington
Staff Writer

From the looks of things, Eastern diamond dealers have contacted all the wealthy lawyers, doctors and businessmen in town, according to St. Paul lawyer Robert Chandler.

They tell of skyrocketing prices, and how they offer the finest quality "investment diamonds" at wholesale cost and suggest that buyers can make a fortune.

Chandler, who is knowledgeable about diamonds and has advised many purchasers, says such overtures are questionable at best.

"I THINK THAT in diamonds, you have to know what you are doing or you will be eaten alive," he said."You have to either know your diamonds or you have to know your dealer."

Diamond values have escalated dramatically in the last few years and are a hot investment item. About $500 million worth of them were sold to U.S. investors in 1978, a figure that might run $750 million in 1979—about 20 percent of the total diamond trade in this country.

Locally, jewelers have said diamond sales are up and that people are interested in larger stones. "A year ago the demand for one-carat stones was very high, and today it is for two-carat and over," said DeWayne Amundsen, diamond buyer and certified gemologist at the H. Bockstruck Co. Five years ago, the finest one-carat stone went for about $5,000. Today it's $40,000."

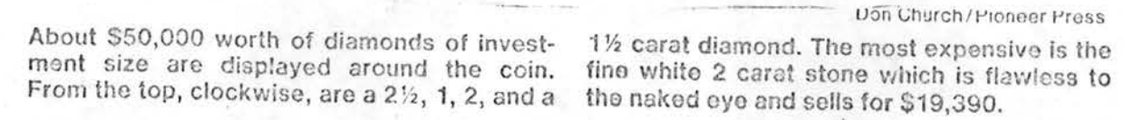
"You have to know what you are doing or you will be eaten alive."

THE RICHFIELD Bank and Trust Co. has announced that it will buy diamonds for customers who want to use them in certain retirement plans. It also will buy them for corporate pension and profit-sharing plans. The bank is one of the few nationally that has begun to handle diamonds in this manner.

"People more and more are interested in diamonds as an investment," Robert Prentiss Jr., a vice president and trust officer at the Richfield bank, said. "Ten years ago, the only place you bought diamonds was the jewelry store. Now

See Diamonds, Page 8

Don Church/Pioneer Press



About $50,000 worth of diamonds of investment size are displayed around the coin. From the top, clockwise, are a 2½, 1, 2, and a 1½ carat diamond. The most expensive is the fine white 2 carat stone which is flawless to the naked eye and sells for $19,390.

Diamonds: Investors see gems as their best friend

Continued from Page 1

there are more and more dealers.

"I have seen the interest for three or four years among our customers," he said. "If you buy right, diamonds are a pretty good hedge against inflation."

But that's the Catch-22.

UNLIKE THE ounce of gold, which has a universal and widely known value, diamonds are a unique and complicated quantity. It takes an expert to pick out the finest, and novices are easy game for con men.

Differences in color, clarity and cut vary prices thousands of dollars. For instance a two and a half carat stone now for sale at the Bockstruck Co. is highly flawed and not the best cut. It costs $9,135. A two carat, fine white stone that is flawless to the naked eye at the store costs $19,390. "It has been cut to maximize beauty and not to save weight," Amundsen said. "It could have been a four carat stone at the same price. You will not see a diamond like this in the diamond for investment line."

Investment diamond swindlers will sell inferior stones that are flawed and less than one carat—considered minimum investment weight. They may attach an appraisal from a conspirator who will inflate the value. And they may offer a buy-back agreement which only has a weak "best efforts" meaning. A money-back guarantee may be contingent on the package seal not being broken—making it impossible to examine the stones.

CHANDLER ADVISES anyone approached by a telephone diamond sales firm to hang up.

In addition to outright swindles, potential diamond investors should keep several other things in mind.

"If you buy a diamond today and sell it six months from now, you won't get what you paid for it," Val Nemer, Morel Jewelers Minneapolis manager, said. "You have to hold on to it for a long time so it appreciates." Nemer spoke about the problem many investors face of buying stones at retail prices, but having to sell at wholesale prices. Retail markups may range up to 100 percent.

THE PERSON, however, who purchased an engagement ring years ago for $500, now may find that it is worth $5,000, Nemer said.

Morel is a retail jeweler which has a special division for large stones such as three or five carat.

"Actually, diamonds are made to be worn—not stuck in a vault," Nemer said. "They are good investments because they don't depreciate in value. The people we have dealt with may buy a two or three carat stone. They have it mounted and their wives or girlfriends wear it," Nemer said.

Europeans and the Japanese traditionally have preferred to put their money in diamonds, preferring the tangibles to paper investments.

UNLIKE SELLING stock or gold, however, there are no registered diamond brokers. There is no ready market and it is likely persons will have to find their own customers, competing with many well established, knowledgeable retail jewelers.

Another consideration is that the gems will earn no interest. The only money to be made is on the appreciation value of the stone.

Too often, "wholesale" or "discount" prices have turned out to be higher than in a retail store. "Beware of jewelers who cut prices," Chandler said. "Unscrupulous jewelers will sell people stones as bargains, when in fact they are no bargain. They will inflate the price terrifically and then discount it down to above retail prices."

ALTHOUGH DIAMONDS which have been certified (described) by the reputable Gemological Institute of America are considered safe, there are many other certifications which are worthless.

Chandler looks to the antique and estate sales for diamonds and says persons may be able to avoid high markups in that area. "The old rule is to buy for one-third to one-half of the appraised value. Then you are starting out right as far as investment goes."

One of the advantages of diamonds is that people can "appreciate them as they appreciate," Chandler said. "You can wear them. You can't wear your stocks and bonds. Diamonds are a thing of great beauty. There is nothing that does with light what a diamond will. It is intrinsically beautifully and can give a lot of enjoyment aside from the investment."

There still is plenty of romance left with the diamond market, and statistics show that three-fourths of all first-time brides receive diamond engagement rings. The average engagement ring cost about $700 in 1979, up $200 since 1978.

The gem market

Diamonds acquiring luster as investors' new best friend

By MURRAY SCHUMACH

Morton R. Sarett, president of the national Jewelry Industry Council, was threading his way through the crowds on Manhattan's Fifth Avenue when he turned to face a prominent diamond dealer.

"I just left ———," the diamond dealer told Sarett, naming another diamond dealer. "He was offered $100,000 for a one-carat stone. And he refused. It's wild," the dealer exclaimed. "Wild!"

Wild is, indeed, the word for the diamond business these days.

While the recent instability in the world's gold and silver markets has been capturing most of the headlines, many thousands of Americans have decided to follow the example of Europeans, Japanese and Arabs and buy diamonds as a hedge against inflation.

No one knows what percentage of the $200 million that Americans paid for diamonds in 1978 was spent for loose stones bought as investments, but it is clear that the amount was unprecedented.

In five years, the price of fine diamonds has soared about 250 percent; prices went up more than 30 percent last summer alone, and between November of 1979 and January 1980, the price of a specific high-quality one-carat stone went from $37,000 to $43,500.

The business of buying diamonds in today's "wild" market is complex, and the field is crowded with con men eager to separate investors and their investments. However, says Murray Schumach, former New York Times reporter and author of the upcoming book "The Diamond People," "There are good indications that, if it is done intelligently, investing in diamonds may be among the best anti-inflation hedges of all." Schumach provides basic information about buying diamonds and a precautionary checklist for would-be investors.

Because of the complexity of determining the value of a diamond, investing safely in diamonds is far different from buying, say, gold. And there is no mean supply of chiselers and chiseled.

Nevertheless, there are good indications that, if it is done intelligently, and if expert advice is followed, investing in diamonds may be among the best hedges of all.

How do diamonds compare with other investments?

A report in June by the investment banking house of Salomon Brothers that was intended to show that stocks were a good investment because they were so low, placed diamonds eighth in terms of performance over an 11-year period.

They were behind gold, Chinese ceramics, stamps, rare books, silver, coins and paintings, and ahead of oil, farmland, housing, foreign exchange, bonds and stocks.

What this report did not consider was that diamonds have special advantages for investors.

They are not subject to the wild fluctuations of gold. They contain enormous value in a very small package—millions of dollars worth of diamonds can easily fit into a watch pocket. They are the hardest substance.

These qualities are particularly important to those who feel it may be necessary to leave a country in a hurry.

How do diamond investment firms bring diamonds and customers together and how do they try to protect the customers?

Their diamonds come from diamond dealers and cutters. To get customers they advertise in publications that are read by persons interested in investment, their members speak at investment seminars, they give interviews in financial publications and they use lists of people who invest in stocks and bonds and collectibles.

Word-of-mouth is also important in attracting customers.

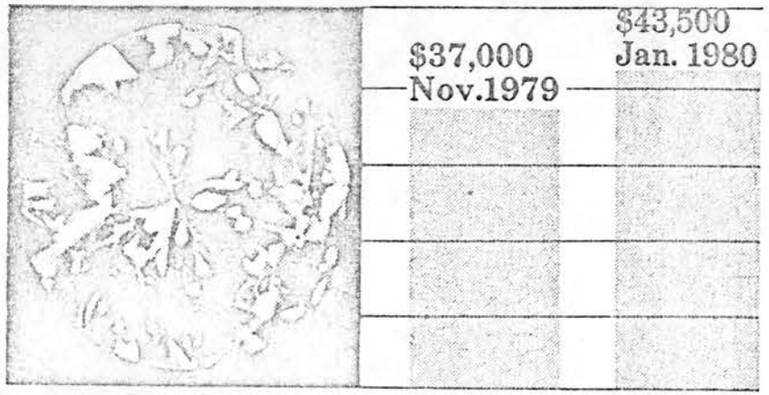
The key question is: How can diamond investment company officers know if the diamonds they buy are worth anything? And here we come to two major difference between gold and diamonds.

With gold, the 14-karat or 18-karat designations refer to the quality of the metal, and it is the same quality everywhere. But with diamonds, the word "carat" merely describes the weight of the diamond—there are 141.75 carats to the ounce.

The diamond carat has nothing to do with the quality of the stone. In fact, every diamond is different and the range in quality is prodigious.

Secondly, gold can be bought and sold in recognized market exchanges because the metal's quality can be established so clearly. This cannot now be done with diamonds.

The principal way investment companies protect themselves and their customers is through the diamond certificate. In recent years technological advances have made



The price of fine diamonds

Example: a specific high-quality one-carat stone

Star Chart by Donald Walker

Diamonds

Turn to Back Page

(Diamonds, from Page 1C)

it possible to examine diamonds more carefully than in the past, and companies have been established to do this for dealers, for jewelers and for the buying public.

The best-known of these companies—and the one considered the most reliable in this country—is the Gemological Institute of America, which has its East Coast office in New York.

Any responsible diamond investment company will want a GIA certificate for the diamonds it buys and sells. This certificate gives the diamond's weight, shape, cut, measurements and proportions; it offers an opinion of its polish and symmetry, and it grades the stone for clarity and for color.

A reputable investment company will sell only diamonds that fall within certain ranges of weight and quality, and these are indicated on the certificate.

The color of a stone is rated from D to Z; a quality gem should be between D and H.

The weight of the diamond should be between one and two carats.

Clarity is classified from "flawless" through "imperfect 1, 2 or 3." A high-quality stone should fall in the range of flawless through VVS2—"very very slight" imperfection.

The pressure of the growing demand for investment stones in these ranges has forced some diamond investment companies to lower their standards. Some of them sell diamonds that are less than a carat in weight, with color classifications down to I and J and even lower, and with clarity classifications as low as SI—"slight imperfection."

The GIA rating is not infallible.

There can be, for instance, honest differences of opinion among experts about the exact color or clarity of a diamond. The line between a diamond that has a D or E classification for color can be very fine—but the difference in price can be substantial.

One thing the GIA certificate does not do is place a monetary value on a diamond. The GIA has seen too wide a range of diamonds to become involved in the highly subjective and often deceptive hassles in pricing diamonds.

None of the attributes of diamonds is worth anything, however, for those who buy through untrustworthy diamond investment companies. Their stones might have certificates from unreliable, sometimes fictitious, laboratories, and the customer is not likely to know the difference.

Phone scripts

The operations of such companies—sometimes called boiler rooms because of the noise of the telephoning by the high-pressure sales people—are astonishing to investigators.

The telephone sellers often study scripts to learn their techniques. For a customer who seems to be leaning toward a purchase and says he would like to discuss the matter with his wife, the script of one company reads:

"(Talk low and softly, as though you're whispering a secret in his ear.) 'Mr. ———, let's be honest. Did you ever meet a woman who didn't love diamonds? Matter of fact, when buying stocks or commodities, if they go the wrong way

"Whereas with diamonds, you always have what you bought. Let's face it, there are not many things you can invest in, use and enjoy and 10 years later get back far more than you paid.

"Now, all women love a surprise gift, so let's register these diamonds in your wife's name and keep it a secret from her, and a few weeks from now she'll wake up one morning and find three sparkling diamonds on the breakfast table. And I'm sure she won't complain. Am I right, Mr. ———? Now get a pen or pencil and I'll tell you exactly how we'll handle the transaction. OK?' (Be sure to get the wife's first name.)"

Since the representatives of fraudulent diamond investment companies may often be more persuasive than those from legitimate ones, the problem for the would-be investor is recognizing the shady company.

Some precautions

There is no guaranteed way, but it is possible to take some reasonable precautions:

- Before making any commitment, check with your state attorney general.
- Buy only quality diamonds that are between one and two carats in weight. Do not go below H in color or VVS2 in clarity, and favor the round brilliant cut.
- Be sure, before buying diamonds for investment, that you can afford to tie up the purchase funds for a few years at least. Diamonds, unlike Treasury notes, for instance, do not pay interest while they mature. The best pulling power of diamonds is, apparently, in the long run.
- Be sure you insist on the right to have the diamond appraised independently. This brings us to what some investigators call the catch-22 of diamond scams.

When the stone is purchased, especially if it is bought by phone, it is usually delivered sealed in plastic. But some companies stipulate that if the stone is removed from the plastic, they can no longer help in the resale or guarantee that it is the same stone that they sent.

But if you leave the stone in the plastic, it can't be appraised. If you just put it away in a safe-deposit box, you may learn a few years later that the stone was not what the certificate claimed it was.

A reputable dealer will allow you to send the stone, wrapped in plastic, to the GIA for certification. (The New York City branch of GIA will not handle stones under one carat in weight, but their offices in Los Angeles and Santa Monica will accept smaller stones.)

Barring international upheavals, those who want to hedge against inflation with diamonds may have some success, provided they buy from trustworthy sources.

Still, there are those who see this development as an erosion, an intrusion that will reduce the number of beautiful things in the world.

Claude Arpels, president of the luxury jewelry stores of Van Cleef & Arpels, looks with some sadness on the trend toward buying diamonds for investment. To him, precious stones are intended for adornment, to be displayed in exquisite settings.

"In the old days," he said, "grandmothers passed on their jewelry as heirlooms. They did not sell them. I like to think that our people are buying once more with thoughts that what they buy may become heirlooms."

© New York Times Co.

Sunday
August 17/1980
1D

Diamonds may dazzle unwary investors

Staff Photo by Regene Radniecki

A diamond of this size and quality costs approximately $268,000.

By Jim Fuller
Staff Writer

Richard J. Harty wears success like an expensive cologne.

His hair is modestly styled in a manner appropriate to a 36-year-old executive. His fingernails are nicely manicured, his suit is well fitted but conservative in cut and color. He is soft spoken, but his manner fairly oozes confidence. He is remarkably handsome in a corn-fed sort of way.

Were it not for the extraordinarily heavy gold chain on one wrist and the rings on his two pinkies — worth several thousand dollars each if they're worth a dime — he could pass for a rising young vice president of, say, Control Data or Coldwell Banker. Even with the chain and the rings he might be the marketing head for some up-and-coming high-tech corporation.

If you're the suspicious sort, however, you might back off from Richard Harty when you learn that his business is selling diamonds — high-priced, investment-grade diamonds. This guy may seem just a bit too smooth.

It is interesting, however, that as Harty travels the country explaining the virtues of diamonds as investments to securities brokers, financial planners and other such folk, he makes a point of setting up interviews with reporters — as he did here last week — so he can talk about the many dangers of such investments and warn the public that "diamonds are not for everyone."

Diamonds continued on page 8D

Sun., Aug. 17, 1980

DIAMONDS: Investors may be stuck with lower-quality jewels

Continued from page 1D

It is a useful message in these days of high inflation and desperate scrambles to find ways of beating same.

Harty, raised and schooled in Iowa (Dowling High School in Des Moines, Loras College in Dubuque), is president of Diamond Source, Ltd., a Los Angeles purveyor of investment-grade diamonds that he founded in 1975. Before that he was an investment man for Procter and Gamble and International House of Pancakes and host of a syndicated television show.

A guest on the business-oriented program, which appeared in Missouri, Illinois and other Midwestern states, first piqued his interest in diamonds, he said last week. He bought some stones himself, arranged for a few clients to buy some and then went into the business full-time.

He was intrigued, as many an American is these days, by the record of diamond prices over the past several decades:

■ Average annual increases in value of as much as 40 percent a year for high-grade stones, and no major price drops in 40 years.

■ An over-all increase of 900 percent in the prices of investment-grade diamonds between 1967 and 1978.

■ A market largely protected from collapse by an international consortium that controls most of the world's supply of new diamonds.

The story is all true — and believing it can get you into a whole lot of trouble, Harty said.

The principal danger lies in the fact that the story applies only to investment-grade diamonds and, to a lesser degree, the top grades of jewelry stones. Such diamonds are large ("at least half a carat, certainly no less than a third of a carat"), clear, flawless or nearly flawless gems that are colorless, or nearly so, and "well proportioned" according to the diamond industry's exacting standards.

Lesser diamonds have value as adornments, Harty acknowledged, but they are not good investments in the pure sense of that word. In fact, values of lower-grade, unset stones of a fifth of a carat and less have dropped by as much as 20 or 25 percent in the last year, he said.

Unfortunately, Harty added, there are many dealers in this country who tell the true story of investment-grade diamonds and then sell their clients stones of lesser quality.

But "even if a diamond is a good buy, that doesn't mean it's a good buy for you," he warned.

Diamonds produce no income while they're tucked away in a vault, he noted. They are not exactly liquid assets, since the lag between a decision to sell and the time the seller collects his money averages six weeks and can be longer. And, since one normally buys at retail and sells at wholesale — and retail markups can be well over 200 percent — a buyer should figure on holding a diamond from three to five years, at minimum, before reselling, Harty said.



Richard J. Harty

"This is a long-term investment, not a get-rich-quick scheme," he observed.

To illustrate the dangers of inappropriate investment, Harty told of an 88-year-old man who came to him for advice, "unfortunately, after the fact."

The man had put his $57,000 life's savings into some stones of marginal investment quality, and Harty reckoned that "he'd be 120 before he could come out on the deal."

For those still interested in investing in diamonds after absorbing his warnings — and Harty obviously believes that diamonds are a great investment for those who can afford them — he offered further cautions:

■ Some sellers tell potential purchasers that while they can't guarantee the purchase of a particular stone, they will get "the best available." Don't buy from anyone who makes such a proposal, and never buy without knowing exactly what stone you are buying.

■ Do not buy diamonds on the installment plan. A number of dealers are now offering monthly payment plans, Harty said, and they're delivering diamonds. But the stones are what is called "melee" — they are too small to have any value as investments.

■ Ask about the "proportion" — not the shape — of a stone as well as about its color and clarity.

■ Never buy from a dealer who tries to hustle you into buying gems other than the ones he has advertised. He may be a "bait and switch" or "loss leader" dealer who advertises for the sole purpose of selling inferior stones to the unwary.

■ Beware of dealers who "guarantee" they will rebuy a stone at any time with no loss to you. Such guarantees are highly questionable and they violate U.S. securities law.

■ Check out a dealer "just as you would someone who's going to sell you a car." Ask the Better Business Bureau about him; get a Dun & Bradstreet report on him through your business or your banker; ask him for references and use them.

■ If possible, buy through someone who offers several types of investments besides diamonds and who is, therefore, "client-oriented." Such a person will let you know if diamonds are inappropriate investments for you.

■ Above all, get independent certification of the stone you buy.

Four companies operating in this country offer certification that is accepted throughout this country. Certification is not an appraisal, but an exact description of your stone and a guarantee that it is what the agency says it is.

The four firms are the Gemological Institute of America (New York, Los Angeles and Santa Monica, Calif.); European Gemological Laboratories (New York and Los Angeles in this country); American Gemological Laboratories (New York), and United States Gemological Services, Inc. (Santa Ana, Calif.).

Do not accept "certificates" or guarantees issued only by the seller, and pay no attention to documents that say a stone is "AAA" or some such nonsense.

Stones can be sent by registered, insured mail for certification, Harty said.

Now then, if you're still interested, and have upwards of $5,000 to invest for at least three years, you can start looking at diamonds.

COMMODITY FUTURES TRADING COMMISSION
2033 K Street, N.W., Washington, D.C. 20581

May 26, 1978

NETWORK ALERT

NATIONAL NETWORK OF COOPERATION

The Chairman of the Commodity Futures Trading Commission, William T. Bagley, has issued an alert to all State Attorneys General and State Securities Administrators regarding fraudulent activities in the sale of "Leverage" contracts. The Commission is greatly concerned over the presence of many of the same individuals and tactic which were prevelant in "London Options" sales now being found in "Leverage" sales.

Your support and cooperation is needed in heading off another nationwide scheme to defraud the public. I have enclosed a packet of material which will give you some background on the Leverage issue and the pitch being used in their sale.

If you need additional information please contact the Office of Intergovernmental Affairs - (202) 254-3596.

William A. Briggs
Director
Intergovernmental Affairs

NEWS

COMMODITY FUTURES
TRADING COMMISSION
2033 K STREET, N.W.
WASHINGTON, D.C.
FEDERAL REGULATORY AGENCY
FOR FUTURES TRADING

RELEASE # 406-78

FOR RELEASE Thursday, May 25, 1978

CONTACT: William J. Monahan
Bruce Stoner
(202) 254-8630

WASHINGTON -- State and Federal regulatory officials are being warned that high-pressure marketing schemes in investment diamonds could be fraught with fraudulent sales techniques.

In letters to State Attorneys General and Security Commissioners, and to the Securities and Exchange Commission, William T. Bagley, Chairman of the Commodity Futures Trading Commission, urged action to protect the general public.

"Disturbing results of a nationwide survey of the 'leverage' industry have been presented to me by our Division of Enforcement," Bagley told State and Federal officials. "I would like to call to your immediate attention the following findings of our investigation:

"1) Many commodities other than those specifically designated in Section 217 are being sold on a leveraged basis, including diamonds, copper, foreign currency and platinum.

"2) Many of the fraudulent, abusive practices which characterized the sale of London commodity options are being used to sell leverage contracts in commodities other than those designated in Section 217."

(MORE)

COMMODITY FUTURES TRADING COMMISSION
WASHINGTON, D. C. 20581

OFFICE OF
THE CHAIRMAN

May 24, 1978

Honorable Harold M. Williams
Chairman
Securities and Exchange Commission
500 North Capitol Street
Washington, D. C. 20549

Dear Mr. Chairman:

Disturbing results of a nationwide survey of the "leverage" industry have been presented to me by our Division of Enforcement. This special study was conducted to enable the CFTC to develop a regulatory and enforcement program in connection with our responsibilities under Section 217 of the Commodity Futures Trading Commission Act of 1974. This Section gives to the CFTC jurisdiction over transactions "for the delivery of silver bullion, gold bullion, or bulk silver coins or bulk gold coins, pursuant to a standarized contract commonly known . . . as a . . . leverage contract . . ."

I would like to call to your immediate attention the following findings of our investigation:

1) Many commodities other than those specifically designated in Section 217 are being sold on a leveraged basis, including diamonds, copper, foreign currency and platinum.

2) Many of the fraudulent, abusive practices which characterized the sale of London commodity options are being used to sell leverage contracts in commodities other than those designated in Section 217.

For your assistance, I have enclosed a brief discussion of our findings concerning the sale of "investment" diamonds as well as a collection of promotional material and articles which have appeared in newspapers throughout the country. These ads will give you a flavor of just how these instruments are being presented to the public.

These leverage activities, which involve primarily the sale of "investment" diamonds, appear to be the latest national lie-by-day and fly-by-night scheme. Indeed, some of the same individuals the CFTC successfully removed from the options business are now plying their trade in this new area.

COMMODITY FUTURES TRADING COMMISSION
WASHINGTON, D C 20581

OFFICE OF
THE CHAIRMAN

May 25, 1978

Honorable William J. Brown
Attorney General of Ohio
State Office Tower, 30 East Broad Street
Columbus, Ohio 43215

Dear Mr. Attorney General:

Disturbing results of a nationwide survey of the "leverage" industry have been presented to me by our Division of Enforcement. This special study was conducted to enable the CFTC to develop a regulatory and enforcement program in connection with our responsibilities under Section 217 of the Commodity Futures Trading Commission Act of 1974. This Section gives to the CFTC jurisdiction over transactions "for the delivery of silver bullion, gold bullion, or bulk silver coins or bulk gold coins, pursuant to a standardized contract commonly known . . . as a . . . leverage contract . . ."

I would like to call to your immediate attention the following findings of our investigation:

1) Many commodities other than those specifically designated in Section 217 are being sold on a leveraged basis, including diamonds, copper, foreign currency and platinum.

2) Many of the fraudulent, abusive practices which characterized the sale of London commodity options are being used to sell leverage contracts in commodities other than those designated in Section 217.

For your assistance, I have enclosed a brief discussion of our findings concerning the sale of "investment" diamonds as well as a collection of promotional material and articles which have appeared in newspapers throughout the country. These ads will give you a flavor of just how these instruments are being presented to the public.

These leverage activities, which involve primarily the sale of "investment" diamonds, appear to be the latest national lie-by-day and fly-by-night scheme. Indeed, some of the same

diamonds. Incomes of $50,000 to $100,000 are being advertised as easily obtainable in this area, and "diamond fever" seminars are being held to increase sales. Promotional material and ads emphasize that tremendous profits can be made through diamond leverage trades, often exceeding a 35 percent annual return on investment.

Promotional materials and contracts appear to be somewhat typical throughout this "new" industry.

The terms and conditions of one such contract reviewed by staff are summarized as follows:

-- The customer must deposit 20 percent of the total purchase price.

-- The company supposedly sets aside the remaining 80 percent.

-- The company or an affiliate purportedly holds the diamonds purchased on the leverage plan; the customer is charged interest on the unpaid balance; during the life of the contract (one year for the contract reviewed).

-- The customer may pay the remaining balance and take delivery or sell the contract back to the firm at the firm's price.

In Southern California alone, at least 5 to 10 firms have opened offices within the past 4 months to sell diamonds via leverage. The State of Arizona has identified approximately 13 diamond firms operating out of the Phoenix area and information

STAFF DISCUSSION OF DIAMOND LEVERAGE CONTRACT

Numerous companies, including some option firms registered with the Commission, have initiated nationwide sales campaigns offering margin or leverage-type contracts for "investment" diamonds.

Unless the Commission determines that a futures contract is involved, CFTC has no jurisdiction over diamond sales. However, the staff has received information indicating many diamond leverage contracts are being sold by cold canvass telephone solicitations from boiler room-type operations, similar to the methods employed in past commodity futures option sales campaigns.

Such tactics -- in which fraudulent activities were prevalent -- led the Commission to approve a suspension of commodity option sales which will be effective June 1.

Generally, the leverage contract currently in use in gold and silver is an agreement for the purchase or sale of a contract for the delivery at a later date of a specified commodity in a standard unit and quality, or the close-out of the contract by an offsetting transaction. The principal characteristics of the contract include:

-- Standard units, quality, and terms and conditions.

-- Payment and maintenance of margin.

-- Close-out by an offsetting transaction or by delivery, after payment in full.

-- No right or interest in a specific lot of the commodity.

leverage contracts fail to submit themselves to our jurisdiction by seeking designation as commodity futures contract markets."

Generally "leverage" contracts currently in use are standardized agreements for the purchase of a specified commodity for delivery or offset at a later date. Purchases are margined or "leveraged" by a present down-payment with interest and other carrying charges payable over the life of the contract.

The staff report said leverage customers are "totally dependent" upon the continuing financial integrity of their dealer for the performance of the contract.

"Such total dependence without any required segregation of funds or backing of the contract can only encourage the less savory elements to move into a legitimate enterprise using the now typical fraudulent and hyped-sales activities as we have seen in the sales of Florida swampland, aluminum siding and most recently in the sales of London options," Bagley said.

# # #

NOTE: Sample letter and enclosure attached.



Your Dollar

by SYLVIA PORTER

Diamonds Pitch Is a Phony

(First of a series)

It's early in the evening when your home phone rings. "Hello, Mr. Wilson, I'm the head buyer with Multinational Gems Exchange in New York City. I would like to talk to you about diamonds. Did you know that investment quality diamonds have increased at a rate of 30 per cent a year for the past 10 years? Most people don't. Instead, they buy diamonds at exorbitant retail prices.

"Here at Multinational Gems we are trying to let the average American get in on what professional investors have known all along. That is, you can make your fortune in diamonds. The price always goes up! One company mines 80 per cent of the diamonds in the world and that company controls diamond prices.

"WE ARE CALLING YOU to offer the highest-quality, investment-grade diamonds at wholesale prices . . . We deliver directly to you. The diamonds come with a 45-day money-back guarantee. If for any reason you don't like them, just send them back and we will give you your money back . . . And since the diamonds always increase in value, if you want to sell them, we will buy them back. We can resell while you wait on the phone.

"Trust me. You can't go wrong . . ."

How true are these claims?

They are typical of the most deceptive claims used by the few but pervasive high-pressure promoters selling diamonds over the phone, says Karl Lauby, fraud investigator for the Better Business Bureau (BBB) of Metropolitan New York. Lauby put together for me the hypothetical sales pitch you have just read and he warns that "over the next several months, countless thousands of Americans will realize that they have lost millions of dollars to con men selling diamonds and commodity options over the phone.

"It's incredible but it's happening and now."

WHAT'S WRONG with the pitch?

The name of the company sounds prestigious enough. But in fact, the company is not an "exchange" in the sense of an auction market; it is not "international" in the sense that it has operations in many countries; and it has been in business for only a short time.

The "head buyer"? He is really a pro, but not at diamonds. He is likely to be what the telephone sales trade calls a "heavy closer," a bucket-shop "high pressure" professional. To you, he is selling diamonds; last year it was silver; next month it may be sugar options; a few years ago it was Scotch whisky.

DIAMONDS IN GENERAL haven't been increasing in value at the spectacular rate of 30 per cent a year even in this era of galloping inflation.

This company isn't offering the "highest-quality, investment-grade" diamonds but frequently is pushing diamonds that are seriously flawed and less than a carat in weight—and that isn't investment quality.

The "45-day money back guarantee" is limited by terms and conditions, such as the fact that the container seals must remain unbroken. How can you examine the stones to see whether or not you want to exercise the money-back guarantee?

The "buy-back agreement" usually is fictitious. The company may try to resell your diamonds—meaning a "best efforts try"—but it doesn't guarantee the resale or the price. And it will charge a commission for the service.

AND THAT giveaway con-man's line about "trust me, you can't go wrong"—don't fall for it. A TV repairman in Oklahoma who got that pitch, laid out $12,000—and now he has learned his diamonds are worth only a fraction of what he paid for them.

You well may call back, find the company's phone is disconnected, and the "trust-me" salesman is off on a new adventure.

One large New York City company may have deceptively sold grossly overpriced diamonds of dubious worth to more than 5,000 customers from whom the company grossed in excess of $10 million in 10 months. The company is currently being investigated by federal agents. Some of the customers may get back a pittance, but they will wait a long time to retrieve even a small percentage of what they so invested because they were so gullible.

And, says the New York BBB, there may be at least a half dozen other companies operating nationwide and using the same deceptions to peddle diamonds over the phone.

NEXT: Warnings about diamonds.

(C) 1977, Field Enterprises, Inc.

COUNCIL OF BETTER BUSINESS BUREAUS, INC.
1150 17TH STREET, N.W., WASHINGTON, D.C. 20036

REPORT

DIAMOND INVESTMENTS

July 1978

The information contained herein has been compiled from sources deemed to be reliable and, while not guaranteed, is believed to be factual and accurate. It is not intended to recommend or deprecate, and is furnished solely to assist you in exercising your own judgement.
THIS REPORT IS NOT TO BE USED FOR SALES OR PROMOTIONAL PURPOSES.

Introduction

Diamonds, the brilliant stones that once adorned only the very rich, are now being heavily touted through advertising and telephone solicitation as an excellent investment that can increase in value anywhere from 25 to 40% a year. And it is true that in recent years prices paid for high quality cut diamonds have consistently increased. But anyone considering diamond investments should know that it is a highly speculative business; even for professional diamond dealers, it is a risky business with no guarantee of profits. Amateurs, facing even greater risks, must exercise extreme care and caution. The glowing claims of salespersons and slick sales brochures about the profits to be made should be investigated thoroughly before purchasing diamonds for investment.

Diamond prices are largely determined by supply and demand, with the Central Selling Organization (CSO), a London based cartel which markets nearly the entire world production of rough (uncut) diamonds, exercising significant control.

The Central Selling Organization, popularly known as "The Syndicate," sells the rough material to a very limited number of purchasers, all by invitation only, during 10 sales (called "sights") a year, with the quantity, the selection of grades of merchandise and the price all on a "take it or leave it" basis. Besides price rises occasioned by increased production costs and general inflation, the CSO in 1977 and 1978 instituted temporary surcharges on its sales in an effort to prevent speculators from influencing the market.

Characteristics of Diamonds

Diamonds are unique in many ways--in their physical characteristics, methods of locating and recovery from earth and ocean, methods of cutting and polishing, the manner in which they are marketed, and most importantly, the manner in which cut and polished diamonds are graded to establish their value.

(More)

The diamond industry recognizes four value factors, known as the "Four C's": cutting, color, clarity and carat weight. The first three "C's" determine the per carat value of a diamond of any given carat weight.

Color and clarity are primarily rarity factors; in the lower grades they also have a negative aesthetic effect. Cutting is the principal beauty factor; cutting to correct proportions and finish produces the brilliance and fire for which diamonds are known and coveted. Because many diamonds are cut to retain extra weight at the expense of beauty, cutting also affects the carat weight factor.

Since large diamonds are much rarer than small ones, the larger the stone the greater the price per carat; four one-half carat diamonds are worth far less than a two carat diamond of comparable quality.

Diamonds available to the general trade usually have a trace of yellowish or brownish body color, those with a colorless body (not the reflected light) being the rarest and most costly. It is the same with clarity. Nearly all diamonds have internal marks and surface blemishes, so those having fewer and less noticeable marks are rarer and command higher prices. A diamond may be termed flawless (extremely rare) only if it discloses no marks when examined by a trained expert using ten-power magnification in proper lighting.

Cutting, the only factor subject to human control, affects the diamond's capacity to reflect and refract light, and to disperse the light into a rainbow of colors. The closer a diamond approaches ideal proportions and angles, the greater its ability to reflect and disperse the light which enters it, the greater is the beauty of its brilliance and fire, and the greater is its desirability and value. Cutting, as a factor of diamond value, refers to the proportions and angles of its cross-section and the symmetry and polish of its facets, not to its shape, e.g., round, oval, pearshape.

A diamond's cut is the one factor most likely to be incorrectly described or completely ignored. Descriptions such as "modern cut," "European cut" and "round, brilliant cut" do not tell the purchaser where the diamond stands of a scale of best to worst.

Grading the value factors of diamonds is very complex. For example, Diamond Grading Standards of the American Gem Society (AGS), a professional association of retail and wholesale jewelers, define eleven grades, on a scale of 0 through 10, for each of the factors, cutting, color, and clarity, with 0 being the highest grade. Considering eleven grades in each of three categories, there can be 1331 grades of a diamond in any specific size.

The Gemological Institute of America (GIA), the leading educational organization of the jewelry industry, specifies and teaches the grading of color on an alphabetical scale from D to X, and ten grades of clarity starting with F (flawless), VVSI (very, very small inclusions), through I (imperfect). GIA reports omit the grade of cutting.

One other well known grading system used in Europe, Scan Diamond Nomenclature, is very similar in concept to the AGS Standards in that it grades all three quality factors.

This complexity and lack of universally accepted standards make diamond sales an attractive field for charlatans and con artists. GIA grading terminology is widely used in the diamond industry, and not only by those who have successfully completed GIA courses. Anyone can use the terms, including persons with little or no technical training. The same is true of other grading systems. However, the American Gem Society standards are intended for use only by its members, who are subject to expulsion from AGS for their misuse.

Proper grading and evaluating of diamonds requires the service of a trained expert of proven integrity, using specialized equipment and having access to current information of the diamond market. An appraiser's expertise and integrity are not necessarily confirmed by a diploma. One who has earned a diploma may lack both experience and access to current trade information, and may be less than objective in his analysis and valuations. This is why it is so important to know as much as possible about the reputation and integrity of those who appraise one's diamonds.

"Investment" Diamond Qualities

Many promoters of "investment" diamond purchases stress the recent tremendous increase in prices of "top quality" diamonds, and distinguish between so called "investment" grade and jewelry grade stones. While it is true that well cut, flawless diamonds of the highest color grade have increased dramatically in price, the extreme rarity of this grade, which makes these stones so valuable, also makes them virtually unobtainable. Because of their scarcity it is not likely that these stones are being sold every day as "investments."

Therefore so called "investment diamonds" are not necessarily better than diamonds normally used in fine jewelry, and may well be of lower grades. Nevertheless, like all diamonds, these stones have also appreciated greatly in value over the years.

Making a Profit

The advisability of any investment purchase depends on the probability of making a profit and the relative ease or difficulty of selling. Selling one's investment diamonds is not like selling stock, or even gold bullion. Despite statements

to the contrary, there are no "registered diamond brokers" as there are registered brokers in the stock market. Diamond "investment" promoters are primarily merchandisers, buying diamonds directly from a cutter or wholesaler, just as most well established jewelry retailers do. They must make a profit when they sell.

When the investor wishes to sell, there is no ready market, and prices are not listed on any stock or commodity exchange; the investor cannot check the paper "to see how his diamonds are doing today." Moreover, diamond qualities must be reestablished for the prospective customer.

In all likelihood the investors will have to find their own customers, competing in that effort with many well established, experienced, knowledgeable and adequately equipped jewelry retailers. If they are in a hurry, they must sell back to the diamond trade, and, because of the strong competition on that level, should expect to get less than the wholesale price at the time of sale. Finally, one should keep in mind that diamonds earn no interest and there are additional costs for safe storage, insurance, appraisals and selling.

Diamond Sales Techniques

Although there are reputable and legitimate firms that sell diamonds for investment and a number of dependable retail jewelers who make "investment" sales on a one-to-one basis, there has recently been an influx of companies attempting to sell diamonds through "cold canvass," nationwide telephone solicitations or other high-pressure sales schemes that are very similar to methods used in the now-banned sales of commodity options.

Typically, potential customers are offered "leverage" contracts for the purchase of investment diamonds and the promise of big profits. A leverage contract is a standardized agreement for the purchase of diamonds for delivery or offset at a later date. Purchases are margined or "leveraged" by a down payment with interest and other carrying charges payable over the life of the contract.

In a May 1978 letter to state attorneys general, the Chairman of the Commodity Futures Trading Commission (CFTC) warned that "...leverage activities, which involve primarily the sale of 'investment' diamonds, appear to be the latest national lie-by-day and fly-by-night scheme." The CFTC may have jurisdiction over these activities if the leverage contracts are determined to be "futures."

Noting that a CFTC staff report said that leverage customers are "totally dependent" on the continuing financial integrity of their dealer for contract performance, the CFTC Chairman

said that such dependence "...without any required segregation of funds or backing of the contract can only encourage the less savory elements to move into a legitimate enterprise using the now typical fraudulent and hyped-sale activities as we have seen in the sales of Florida swampland, aluminum siding and most recently in the sales of London options."

Investigate before Investing

The Council of Better Business Bureaus cautions that investing in unmounted, cut diamonds, like any other investment items that may not be readily liquidated, should be considered speculative. Persons considering buying diamonds as an investment should carefully examine the terms of any agreement involved. And if any questions arise, legal advice should be sought. Potential investors should also investigate thoroughly the worth and profit potential of any diamonds offered. (Some firms have reportedly sold investors diamonds with unrealistically high appraisals and at highly inflated prices that made chances for profitable resale slim.) Other areas to investigate and facts to consider include the following:

1. Who is offering the diamonds for investment? Is it a reputable firm of established integrity? Is the seller knowledgeable and qualified? Has the offer been made in a straightforward manner? Have your questions been answered completely and without evasion?

2. What are the sizes and qualities of the diamonds being offered? On what basis have they been priced? Is the appraiser truly independent of the seller? What are the appraiser's qualifications? Has the seller volunteered the weights of the individual stones, or was only the "total weight" stated?

3. Determine if the diamonds can be sold promptly. Does the seller offer a repurchase or resale policy? How is the price to be determined and what are the conditions of the buy back? (One company offered to buy back only if the package seal were unbroken, thus precluding independent examination of the stones.)

4. Make sure that any oral representations made by sales-persons, whether they concern repurchase offers, down payments, stone quality or other factors, be clearly spelled out in the written agreement. Also, one should determine whether the sales contract is covered by federal or state securities laws and, if so, whether the agreement meets statutory requirements.

5. Check out the reputation of the seller. What is its record in delivering diamonds or honoring repurchase or approval agreements? Sellers can be checked through your local

(More)

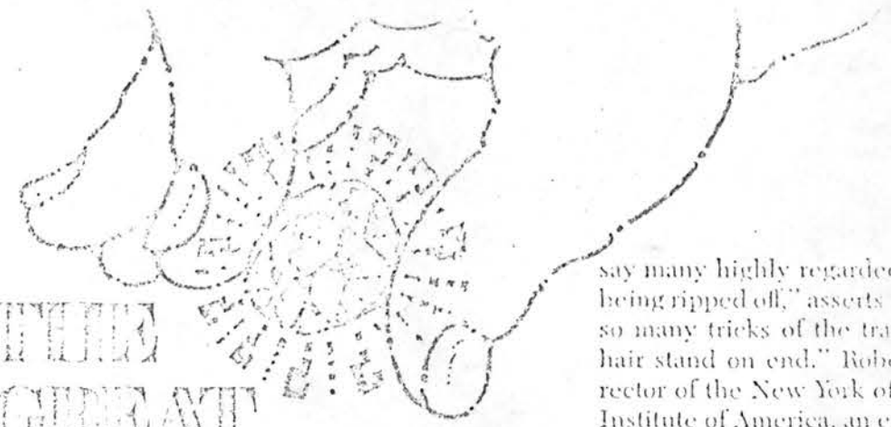
Better Business Bureau or consumer protection agency. Bank, supplier and customer references also should be investigated.

6. Consider the expense of storing diamonds in a safe deposit box (or other safe place) as well as the cost of additional insurance beyond coverage afforded by the usual homeowners policy.

The above information should not be considered a recommendation for or against investing in unmounted, cut diamonds. A reputable and competent investment counselor and a trained gemologist familiar with the gemstone market are the ones to consult in such matters. Prospective investors are reminded that there is an element of risk in any investment and no guarantee that profits will result.

Industry Standards Department

Stephen Jones:hc
July 11, 1978



THE GREAT DIAMOND HUSTLE

Pitfalls abound in this investment. For one thing, is buying at retail prices such a hot idea when you know you'll probably have to sell at wholesale?

DEPENDING on which account you read, diamond prices have surged, soared or skyrocketed. Rough diamond prices haven't dropped since 1934. In the view of a leading advisory letter, the long-term prospects for further appreciation have never been better.

Does that mean you'd be smart to salt away sparklers along with—or maybe instead of—stocks, bonds or savings accounts? That's precisely what diamond merchants are advocating.

By some accounts more than 200 organizations, mostly of recent vintage, are aggressively hawking so-called investment-grade diamonds as a key to riches or, at the very least, insurance against inflation. Precious stones have joined commodity options, cosmetics franchises and quarter-acre lots in the boondocks in the long line of heavily promoted "investments." Razzle-dazzle sales pitches are delivered by phone, at "diamond seminars" held in plush hotels and in glossy brochures that come by mail.

You may even hear diamonds extolled by an insurance agent or mutual fund salesperson. A number of gem companies are urging sellers of financial products to include diamonds among their offerings. The *Financial Planner*, a magazine published by the International Association of Financial Planners, is studded with ads plugging diamond investments.

But a lot of gem investors will end up poorer, say many highly regarded authorities. "Most are being ripped off," asserts one jeweler. "There are so many tricks of the trade it would make your hair stand on end." Robert Crowningshield, director of the New York office of the Gemological Institute of America, an educational and research arm of the jewelry industry, flatly rates gems as "very poor investments for the average layman."

Such warnings do not necessarily spring from an altruistic desire to protect the public. Jewelers and their suppliers worry that speculation will drive prices beyond the reach of their customers.

The boiler room operators

The majority of investment promoters may be legitimate, at least to the extent that the stones they deliver fit the advertised descriptions. Yet the business has plenty of con artists. James Kidd, a detective with the Phoenix police department's organized-crime unit, says at least 20 mass merchandisers are active in that region alone. One of the biggest of these telephone sales operations before it filed for bankruptcy last year was DeBeers Diamond Investment Co., Ltd., of Scottsdale, run by Harold Sager, also known as Harold S. McClintock. If the outfit's name sounds familiar, it's because the world's largest diamond cartel is De Beers Consolidated Mines, Ltd., based in Johannesburg. There is no connection between the two.

In June, Sager and three associates were indicted by a federal grand jury on 14 counts of mail fraud, wire fraud and use of fictitious names. Authorities estimate that the company took in more than $100,000,000 from 15,000 people.

In Massachusetts five gem companies are under orders to refrain from selling because they failed to register as securities dealers (in the Bay State most such offerings are classified as securities). In New York scores of boiler rooms are under investigation. A typical operation is described by an aide to the New York attorney general:

"They rent office space with a prestigious-sounding address, have a phone bank installed, hire professional announcers or free-lancing actors who make calls from sucker lists. What people get is either a poor-quality diamond or an imitation."

The fraud branch of the Postal Service has about a dozen enforcement actions in progress. One Salt Lake City operator was recently found

guilty of mail fraud in sales of emeralds. There doubtless would be more prosecutions if more people complained. Unfortunately, people seldom realize they've been fleeced until they try to sell, which may be years later.

For the most part "investment" diamonds are delivered by mail. A few dealers, however, are specializing in leverage contracts—agreements to buy stones at a later date for a stipulated price. The buyer pays money down plus interest and carrying charges. All too often, that's the last he ever hears of the seller. As a former chairman of the Commodity Futures Trading Commission warned state attorneys general, such offerings "appear to be the latest national lie-by-day and fly-by-night scheme." In July the commission was considering a rule that would prohibit sales of leveraged contracts for diamonds and other commodities.

The price and the product

Buying gems or anything else from strangers is, as a rule, foolish. "If somebody calls you selling diamonds, the best thing to do is hang up," cautions one lawman. "Don't even ask for their literature. These people are very sophisticated, very talented and very persuasive."

What about investing with reputable dealers? With the right kind of advice, and perhaps a little luck, this could pay off. But consider the risks.

▶ Prices of precious stones may have peaked, at least temporarily. Indeed, polished diamonds under one-sixth of a carat have slipped in value in the last few months. The last price explosion was unique; it resulted from a burst of speculation and a series of heavy surcharges imposed by De Beers Consolidated Mines in an attempt to discourage hoarding by dealers. In the 11 years preceding June 1979 the value of rough diamonds increased at an annual compounded rate of 11.8%—less than Old Master paintings (12.5%), rare U.S. coins (12.7%), stamps (18.9%), Chinese ceramics (19.1%) and gold (19.4%), according to a study by Salomon Brothers, a New York securities brokerage firm.

Another thing: About 80% of the world's rough diamond sales are controlled by De Beers through its Central Selling Organization. Historically, De Beers has attempted to maintain a high degree of price stability. The company wants to keep jewelry affordable. True, De Beers couldn't contain the recent speculation, but it is expected to do what it can to prevent a repetition by regulating supplies and disciplining dealers who hoard.

▶ Most investors have no choice but to buy at retail—paying markups of 30% to over 100%—and sell at wholesale. On top of the markup may be local sales taxes, insurance and appraisal costs. Gems, like gold, earn no interest. Offers of "discount" or "wholesale" prices are often phony, according to Barry Goodman, an independent financial adviser in Washington, D.C. "In many cases those prices are higher than you'd pay in a jewelry store."

▶ The value of a particular gem can only be estimated, and appraisal figures sometimes vary by 25% or more. The price of General Motors stock and gold bullion can be pinpointed at any given moment. Diamonds, by contrast, come in an infinite variety of sizes, shapes, colors and grades. There is no index of diamond prices comparable to stock averages or commodity prices. Flaws and such characteristics as "table spreads" and "depth percentages" complicate matters further. "This complexity and lack of universally accepted standards make diamond sales an attractive field for charlatans," notes the Council of Better Business Bureaus.

▶ Selling a diamond at a fair price may take a good while. If speculation continues, there could eventually be more sellers than buyers, as happened when millions of people were buying rural subdivision lots as surefire money-makers. Crowningshield of the GIA says a lot of people are already trying to sell and finding they can't unload quickly or get anywhere near the price they paid. Jewelers, of course, have their own supply sources and can usually buy on credit.

Diamonds sold as investments usually come with certification documents describing their physical characteristics. Certifications from the GIA or the European Gemological Laboratory are considered authoritative, but some others may be worthless. A certification is not an estimate of value but merely a physical description. The GIA does not appraise gems.

The Diamond Investment Corp. of Belgium recently ran full-page newspaper ads in this country offering diamonds with insurance by Lloyd's of London guaranteeing the accuracy of their certifications. The diamonds are mailed to buyers in sealed plastic containers. If the seal is broken, the certification becomes invalid and the insurance protection is lost, the ads point out. They do not explain how a certification can be verified unless the seal is broken and the stone examined.

For people who can afford risks, expert guidance and top-grade merchandise, gems could be a profitable speculation. Everyone else is likely to be disappointed.

National Jeweler
SEPTEMBER 1, 1979
THE COMPLETE NEWSMAGAZINE FOR THE JEWELRY INDUSTRY

Revealed at Diamond Investment Seminar

No End Seen for Federal Regulatory Vacuum

By ALAN RICHMAN
Editorial Director

NEW YORK—Effective federal control and regulation of abuses by interstate diamond investment merchants is unlikely in the foreseeable future.

That was the gloomy report to a roomful of retail jewelers by two speakers at the recent "diamond investment seminar" co-sponsored by NATIONAL JEWELER and Retail Jewelers of America.

(For reports on other topics covered at the seminar, see separate stories elsewhere in this issue.)

David Robbins, special deputy attorney general in the securities bureau of the New York State attorney general's office, told the assembled jewelers of his office's informed and aggressive stance within one state.

But Robbins also sadly declared that there was no history or outlook of effective national action in "diamond investment regulation" by two federal agencies most qualified for such activity—the Securities and Exchange Commission, and the Commodity Futures Trading Commission.

Robbins indicated their failure to act placed the total burden on individual states, who have limited capacity to investigate, regulate and prosecute those still involved in unethical or illegal practices.

Regulatory Problems Continue

Before introducing Robbins, moderator Milton Gralla, publication director of NATIONAL JEWELER, described the national "regulatory vacuum" which has continued since promoters began popularizing diamond investments via mail and long-distance phone calls in the mid-1970s.

Gralla said the regulatory problems were compounded by questions of jurisdiction, the question of diamonds as an investment or a commodity, and the extreme mobility of many of the less ethical investment merchants. He said only a few individual states had become effective in their controls, but that this added up to "minor harrassment . . . not major control."



STATES ARE acting to fill void left by federal government, New York's David Robbins tells seminar attendees.

Gralla said the investment field was now "cleaner than in the past, but certainly not all clean." He attributed the improvement to media exposure, public awareness, the disappearance of some "fly-by-nights," and some early efforts by the new American Association of Diamond Merchants.

Most speakers at the seminar, including prominent retailers, agreed that public interest in loose diamonds as an inflation hedge was "here to stay" because of weak paper currency, the lon-term record of diamond prices, and the confidential nature of diamond ownership.

Effective immediately, the New York State attorney general is calling for registration of all companies and individuals selling diamonds for investment in or from the state, Robbins told the group.

The deputy attorney general outlined the aims of the registration program.

"The attorney general is empowered to investigate and prosecute cases of improper sales of securities," Robbins told the audience composed of diamond cutters, dealers, retailers and a few investment specialists.

"No lengthy registration statements will be required," Robbins said, indicating that his office does not seek to burden the industry with excessive paper work. "We just want to know who you are, who the sales-people are and where you are."

Robbins, who has taken over diamond investment investigations from William Raikin, said that authority for the registration requirement stems from a January 1979 decision by New York's highest court. In Gardner vs. Lefkowitz, the court determined that diamonds sold for investment purposes are securities and therefore may be regulated under existing laws. An offer to buy back or to resell the diamonds is enough to bring a transaction under the definition of the law, Robbins said.

Criminals Denied Sales

Individuals with criminal records and those who have been barred from selling securities in other states probably will be denied permission to sell investment diamonds in New York, Robbins stated.

Dear Securities Commissioner, Sept 12, 1979

Thank you for responding to the diamond investment questionaire.

Since this article points out areas that have come up in our investigatio of the diamond investment business, we thought it would be of interest to you

DAVID E. ROBBINS
Special Deputy Attorney General

He also revealed he has undertaken a poll of the other 49 states to see how they regulate gem investments. Of 36 states responding so far, he said, 20 reported having received inquiries and/or complaints about diamond investment salespeople.

In nine states other than New York, he said, cease and desist orders have already been issued to some firms. These are Arizona, California, Idaho, Illinois, Iowa, Massachusetts, Michigan, Minnesota and Oregon.

Feds Failed to Curb Abuses

The federal government, Robbins claimed, has so far failed to act to curb abuses in the diamond investment field. But, he contended, state attorneys general are being awakened to existing and potential problems.

At the Diamond Investment Seminar, Robbins listed seven areas of particular concern to the New York State authorities:

1. *Markup.* "We don't care what you charge as a markup," he said, "as long as you disclose that markup fully to customers." He compared it to an investor knowing the amount of commission a broker receives for trading stocks.

2. *Fraud by omission.* This would include failure to discuss problems of liquidity and resale, the nature and extent of the risk, the absence of yield, and so on.

3. *Certification.* While Robbins said his office could not recommend a specific laboratory's grading document, he said failure to have a reputable lab's document for an investment diamond would raise questions about how well the seller was serving his client.

4. *Insurance.* Robbins noted that some firms claim Lloyds of London insurance, purporting that it protects the buyer. In fact, he said, it does not protect the buyer and such claim should be dropped.

5. *Sealed packets.* Use of such packets to hold investment stones, Robbins said, raises serious problems of authentication, since some sellers void all guarantees if the seal is broken. Yet, said Robbins, citing a Gemological Institute of America official, no reputable appraiser can offer an opinion on a stone that is contained in a sealed packet.

6. *Switching of stones.* Anyone found changing a stone after a certificate has been issued and a sale consummated will become a target for criminal prosecution, Robbins asserted.

7. *Telephone solicitation.* Characterizing many phone solicitation efforts as high pressure, Robbins described the average telephone salesperson as an "out-of-work actor working from a script; he usually knows nothing about the diamond business." Robbins urged his audience to screen and train all salespeople carefully, and to avoid pressure tactics.

Other hints he offered included the following:

—Make sure the client is suitable and can afford to lose his or her entire investment.

—Offer a lenient recission period during which the customer can obtain an appraisal of the stone and call off the deal if he or she wishes.

The main thing, he said, is to practice full disclosure. "If you disclose as much as you know," Robbins said, "there's nothing we will do to you . . . because the buyer bought with his eyes open."

Article taken from "Dun & Bradstreet Reports"
July - August 1978

Where Did All the Diamonds Go?

STATE OF MINNESOTA
AUG 3 1978
DEPARTMENT OF COMMERCE

A SUBDUED atmosphere permeates the long, fancy diamond palaces along Manhattan's Fifth Avenue. Here—in an aura of uncompromising luxury—deep carpets muffle the footsteps of customers, staffs, and security officers, often in plainclothes. Here, elegant draperies, fresh bouquets of seasonal flowers, discreet lighting, and the absence of cash registers conjure up drawing rooms of stately New York townhouses rather than modern salesrooms. And the voices, always respectfully hushed, negotiate big-ticket transactions with unfailing aplomb and self-assurance. Several months ago, however, an intrusive element burst upon this carefully constructed scene, threatening to disrupt the traditional stability surrounding the diamond and its commerce. A sudden surge of international speculation subjected the gems to the heat of a frenzied price-bidding that jarred and disrupted an otherwise tightly controlled industry.

Worried over the fiscal uncertainties generated by double-digit inflation, a generally sluggish American stock market, and currency fluctuations, speculators—from the monied to the modest, from Amsterdam to Antwerp, and from New York to Tel Aviv—looked to the diamond as a source of refuge. In Israel—the world's leading diamond cutting and polishing center—where concern focused on a persistent forty-per-cent inflation rate, on incessant Arab-Israel discord, and on potential diamond shortages, traders paid premiums of fifty per cent and more for rough stones. Instead of processing and sending the gems through their normal channels into the open market, the traders hoarded them, creating a stockpile of more than double its usual size. Political turmoil in Zaïre, Angola, and South-West Africa had disturbed diamond mining and fueled fears of rough-diamond shortages. And as those fears grew, so did the cutters' stockpiles. This speculative activity drove diamond prices to unprecedented heights—to levels that many experts acknowledged could not be supported by non-investment consumer demand. In mid-March, for example, the price of a high-quality one-carat diamond—a popular choice for engagement rings—climbed fifty per cent to between $3,000 and $4,000. An even greater increase concurrently marked the change in value of a one-carat D-flawless stone—a perfect-grade diamond. Its cost in the New York market jumped from last year's $6,000 to a staggering $18,000. The price increase and the market uncertainty caused by speculation, the countermove to restore market stability, and the varied reactions of the New York jewel merchants constitute this fascinating story.

ALTHOUGH small in size and population, Israel figures prominently in the diamond industry. There—in Ramat Gan, Haifa, and Tel Aviv—fifty per cent of the world's rough diamonds are cut and polished by private firms, and haggled over by brokers. Comprising Israel's largest export commodity, diamonds are the country's greatest currency earner next to citrus fruits.

But during the past year, diamond exportation dwindled, as many Israeli cutters and dealers held on to their rough stones in the face of economic and political instability. The practice created such an amplified and artificial demand for rough stones that not only did it upset the delicate balance of supply and demand—causing prices to increase—but it also created a rather bizzare situation wherein the price of a rough stone often surpassed that of its cut and polished counterpart. Reacting to this unusual combination, DeBeers Consolidated Mines, Ltd., the South African company that controls most of the world's rough diamond supply, warned in a March 16, 1978, newspaper advertisement that "a high level of speculative trading... has carried the price of rough diamonds in the open market to levels which are not justified in relation to prices at consumer level."

Though news of diamond speculation reached the forefront only recently, Israeli diamond traders hoarded large quantities of rough diamonds last year as well. In 1975, Israel imported about 5.8 million

TITLE 11 PUBLIC SAFETY
Part 1 Public Safety Department
11 MCAR §§ 1.4051-1.4056, 1.4061-1.4062 (adopted) 669
Part 2 Corrections Department
11 MCAR §§ 2.402-2.403, 2.432 (adopted) 948
TITLE 12 SOCIAL SERVICE
Part 2 Public Welfare Department
12 MCAR §§ 2.009, 2.017 (proposed).....752
12 MCAR § 2.065 (proposed temporary).....599
12 MCAR §§ 2.209, 2.162 (adopted).....756
TITLE 13 TAXATION
Part 1 Revenue Department
13 MCAR §§ 1.0021-1.0026 (adopted) 778
TITLE 14 TRANSPORTATION
Part 1 Transportation Department
14 MCAR §§ 1.3001-1.3043 (adopted) 875
14 MCAR §§ 1.7001-1.7013 (proposed) 633

PROPOSED RULES

Pursuant to Minn. Laws of 1980, § 15.0412, subd. 4h, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing, as long as the agency determines that the rules will be noncontroversial in nature. The agency must first publish a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. The notice must advise the public:

1. that they have 30 days in which to submit comment on the proposed rules;
2. that no public hearing will be held unless seven or more persons make a written request for a hearing within the 30-day comment period;
3. of the manner in which persons shall request a hearing on the proposed rules;

and

4. that the rule may be modified if modifications are supported by the data and views submitted.

If, during the 30-day comment period, seven or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of § 15.0412, subds. 4 through 4g, which state that if an agency decides to hold a public hearing, it must publish in the *State Register* a notice of its intent to do so. This notice must appear at least 30 days prior to the date set for the hearing, along with the full text of the proposed rules. (If the agency has followed the provisions of subd. 4h and has already published the proposed rules, a citation to the prior publication may be substituted for republication.)

Pursuant to Minn. Stat. § 15.0412, subd. 5, when a statute, federal law or court order to adopt, suspend or repeal a rule does not allow time for the usual rulemaking process, temporary rules may be proposed. Proposed temporary rules are published in the *State Register*, and for at least 30 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Public Hearings on Agency Rules
December 15-19, 1980

Date	Agency and Rule Matter	Time & Place
Dec. 16	Energy Agency Establishment of the MN Energy Conservation Service Program Hearing Examiner: Allan Klein	9:30 a.m., Large Hearing Room 83 State Office Building, 435 Park Street, St. Paul, MN

Department of Commerce
Securities and Real Estate Division

Proposed Rules and Forms Relating to the Minnesota Securities Act

Notice of Intent to Adopt, Amend and Repeal Rules Without a Public Hearing

Notice is hereby given that, pursuant to her authority under Minn. Stat. § 80A.25 (1978), the Commissioner of Securities and Real Estate intends to adopt, repeal and amend rules and forms relating to the Minnesota Securities Act (Minn. Stat. ch. 80A).

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

The commissioner desires that the proposed rules and forms be adopted, repealed and amended without a public hearing in accordance with Minn. Stat. § 15.0412 (1978), as amended by Laws of 1980, ch. 615, § 7.

A free copy of the proposed rules and material relating to the proposed forms may be obtained from the commissioner's office. Those interetsed in submitting comment pertaining to the proposed rules and forms may do so within 30 days of the publication of this notice in the *State Register*. Additionally, if during the 30-day comment period, seven or more persons make a written request for a hearing on the proposed rules and forms, the commissioner will hold a public hearing in accordance with Minn. Stat. § 15.0412, subd. 4 (1978), as amended by Laws of 1980, ch. 615, § 6. A request for a copy of the proposed rules and/or material relating to the proposed forms, all comments, any requests for a hearing and all questions regarding the proposed rules and forms, should be directed to:

Mr. Daniel W. Hardy
Assistant to the Commissioner
Securities and Real Estate Division
Department of Commerce
500 Metro Square Building
Saint Paul, Minnesota 55101
Telephone: (612) 296-5689

The proposed rules and forms may be modified by the commissioner if the modifications are supported by the data and views submitted during the 30-day comment period, provided the modifications do not result in substantial change.

The commissioner has prepared a Statement of Need and Reasonableness which contains a summary of the evidence justifying both the need for, and the reasonableness of, the proposed rules and forms. The Statement of Need and Reasonableness is available for inspection by the public, during regular business hours, at the above address.

If no hearing is required, the commissioner will submit to the Attorney General the proposed rules and forms and notice as published in the *State Register*, the rules and forms as proposed for adoption, any *written* comments received by the commissioner during the 30-day comment period, and the Statement of Need and Reasonableness for the rules and forms. On the same day these materials are submitted to the Attorney General, the commissioner will notify any person who has requested that the commissioner inform him or her of when these materials have been submitted to the Attorney General. Any person wishing to be so notified should contact Mr. Hardy, at the address listed above.

A copy of the existing Securities and Real Estate Division rules may be obtained from the Department of Administration, Documents Division, 117 University Avenue, Saint Paul, Minnesota 55155, (612) 296-2874.

Finally, Minn. Stat. ch. 10A (1978), as amended, requires each lobbyist to register with the State Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1979 Supp.) as any individual:

(a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including *his own* travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or

(b) Who spends more than $250, not including *his own* traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone: (612) 296-5615.

November 20, 1980

Mary Alice Brophy
Commissioner of Securities and Real Estate

Amendments as Proposed

SDiv 2006 (b) It shall constitute a "manipulative, deceptive or other fraudulent device or contrivance" within the meaning of ~~Section~~ Minn. Stat. § 80A.03 (1978), as amended, 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~~ Minn. Stat. §§ 80A.09, 80A.10 or 80A.11 (1978), as amended, 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

SDiv 2009 Upon termination of the activities of a licensed person, the broker-dealer or issuer shall, within ~~five~~ ten 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~~ Minn. Stat. § 80A.05, subd. 2 (1978), as amended, 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~~,~~ , or in the case of the acquisition of substantially all of the assets of a licensee, unless the transactions are entered into for the purpose of evading the operation of the licensing requirement.

SDiv 2012 ~~(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 any examination more than three times except as the Commissioner may in his discretion permit for good cause shown.~~

(c) ~~(d)~~ Any broker-dealer, agent or investment adviser whose most recent license has been terminated for a period of ~~one year~~ two years 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 (c) [The existing rule is proposed for repeal and the following language is proposed as a substitute.]

SDiv 2013 (c) The net capital requirements for broker-dealers, as set forth in this Rule, shall be calculated in conformance with 17 C.F.R. section 240-15c3-1, as amended.

SDiv 2014 (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.~~ Any investment adviser who has custody of, or discretionary authority over, any assets of any client shall have first posted with the commissioner a surety bond in the amount of $25,000, on such form as the commissioner may prescribe.

SDiv 2014 (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~~ Minn. Stat. § 80A.15, subd. 1, Clauses (a), (b), (c), (d) or (e) (1978), as amended. At no time shall the market value of the securities on deposit be less than 105 percent 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. The commissioner may allow an irrevocable letter of credit in lieu thereof.

SDiv 2014 (e) The provisions of SDiv 2014 (a) and (b) do not apply to any agent employed by a broker-dealer who continuously

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

maintains net capital of not less than $100,000. SDiv. 2014 (c) does not apply to any investment adviser who continuously maintains net capital of not less than $100,000.

SDiv 2015 (d) (1) Every broker-dealer shall keep and preserve any written, printed or other advertisement which is published in connection with the offer or sale of a security or which is reasonably intended to encourage individuals or others to engage the services of the broker-dealer or any of its agents.

(2) The practices deemed deceptive or misleading pursuant to SDiv 2123 (c) shall likewise be deemed deceptive or misleading when employed by or on behalf of a broker-dealer.

SDiv 2015 (e) ~~(d)~~ Every broker-dealer shall preserve all records, files, communications and other information 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 (j) (1) Every investment adviser shall keep and preserve any written, printed or other advertisement which is published in connection with the offer or sale of a security or which is reasonably intended to encourage individuals or others to engage the services of the investment adviser.

(2) The practices deemed deceptive or misleading pursuant to SDiv. 2123 (c) shall likewise be deemed deceptive or misleading when employed by or on behalf of an investment adviser.

SDiv 2016 (k) Every investment adviser shall preserve all records, files, communications and other information required by this rule 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 2017 (a) Every broker-dealer shall, within 90 days following the close of either its fiscal or accounting 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.

SDiv 2018 [Proposed for repeal; number reserved for future use.]

SDiv 2019 (b) (1) "Offering circular" means an offering circular ~~complying~~ in compliance with the requirements of ~~Rule 256 and Form 1 A under~~ the Securities Act of 1933 and the rules and forms promulgated thereunder.

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 require as a condition of registration, unless reason for exception can be demonstrated, 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.~~

SDiv 2024 [The existing rule is proposed for repeal and the following language is proposed as a substitute.]

SDiv 2024 So long as a registration is effective, the issuer shall, if possible, notify the commissioner in writing prior to or simultaneously with the occurrence of any of the following events, but in no event later than 10 days following the occurrence thereof:

(a) A decision to file for bankruptcy, enter receivership or any other similar proceeding;

(b) The cessation of business activities;

(c) A default on any payment of principal, interest, sinking fund installment or other similar payment, for a period of over 30 days, with respect to any indebtedness of the registrant or any of its subsidiaries exceeding five percent of the total assets of the registrant and its consolidated subsidiaries; or

(d) Any other event, occurrence or transaction which may or will have a material adverse effect upon the financial stability of the issuer.

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.~~ Every issuer or its agent shall immediately notify the commissioner in the event of a sale of securities in excess of the amount registered. Under no circumstances shall the notice be more than 30 days after the date on which the oversale occurred.

SDiv 2025 (b) ~~(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 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;

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

(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. 2132 of these regulations.

(b) (1) 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.

(2) Any issuer filing reports under the Investment Company Act of 1940 may file, in lieu of the report required by paragraph (a) of this section, a current updated prospectus as filed with the Securities and Exchange Commission or a copy of the annual report required to be filed with the Securities and Exchange Commission.

(c) The annual report or prospectus 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~~ SDiv 2027(a) (19) is not reasonably available at such time, such information may be filed on or before the 150th 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.~~ SDiv 2028 to 2109 shall not apply to securities or transactions exempted by ~~Minnesota Statutes, 1973 Supplement, Section~~ Minn. Stat. § 80A.15, subds. 1 or 2 (1978), as amended, 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 Programs SDiv 2081-2089

Subchapter 7 Real Estate Investment Trusts SDiv 2090-2109

Subchapter 8 Commodity Pool Guidelines 4 MCAR §§ 1.2140 to 1.2145

SDiv 2029 [The existing rule is proposed for repeal and the following language is proposed as a substitute.]

SDiv 2029 Minimum investment required.

(a) Unless an issuer or its predecessors have demonstrated profitable operations for two of the three fiscal years prior to registration, determined in accordance with generally accepted accounting principles, after taxes and excluding extraordinary items, the "fair value of the equity investment" of such issuer shall be at least 10 percent of the first $1 million and 5 percent thereafter of the "equity investment" which would result from the sale of all 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 irrevocably conveyed to the issuer, and together with an evaluation by a qualified independent appraiser of intangible assets including, but not limited to, patents, licenses, technologies, trademarks, and technical or professional services contributed by the promoters, as adjusted by the retained earnings of the issuer subsequent to the dates of such conveyances, payments or contributions, or

(2) the total shareholders' equity as set forth in a certified balance sheet prepared in accordance with SDiv 2132, less the value assigned to any intangible assets which have not been independently evaluated.

(c) "Equity investment" shall mean the sum of:

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

(2) an amount equal to the net proceeds which would be received by the issuer upon completion of the offering, assuming the maximum aggregate amount of securities registered are sold.

(d) An appraisal or other evaluation used for the purposes of complying with the minimum equity investment may not be reflected in any form, either in the prospectus or in the issuer's financial statements or any footnotes thereto, unless it conforms with generally accepted accounting principles.

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 investments" as defined in SDiv 2029(b):~~

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

~~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.~~ The amount of "cheap stock" allowable, based upon the "fair value of the equity investment" as defined in SDiv 2029(b), shall not exceed three times the first 10 percent of equity investment and two times any further equity investment to a maximum number of shares of cheap stock allowable of 90 percent of the total number of shares to be outstanding after the proposed offering.

SDiv 2030 (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.~~ Cheap stock does not include:

(1) securities which have been outstanding more than three years at the time of the proposed registration, provided that the issuer of its predecessors have been in active, continuous business operation for more than three years immediately prior to the proposed registration;

(2) securities of an issuer which (a) had earnings during the fiscal year prior to registration or (b) had earnings during two of the three fiscal years prior to registration, as determined in accordance with generally accepted accounting principles, after taxes and excluding extraordinary income, if such earnings are in an amount equal to 4 percent of the proposed public offering price on all outstanding shares of the same class at the date of application for registration; or

(3) securities previously issued pursuant to a registration under Minn. Stat. ch. 80A.

SDiv 2031 [The existing rule is proposed for repeal and the following language is proposed as a substitute.]

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

(a) Outstanding options to all employees and directors shall not exceed 20 percent of the to be outstanding common shares of the issuer unless a majority of the shareholders, excluding officers, directors, employees, and their spouses have approved a larger percentage, provided further that:

(1) the exercise price shall be no less than 100 percent of the fair market value on the date of the grant; and

(2) no such options in excess of 10 percent of the to be outstanding shares are granted to any individual who, immediately

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

before such option is granted, owns stock possessing more than 10 percent of the total combined voting power or value of all classes of stock of the issuer.

(b) 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 provisions of paragraph (a) of this section, 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 issuer, or unless a majority of shareholders, excluding officers, directors, employees and their spouses, have approved the issuance.

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 or rules promulgated by the United States Securities and Exchange Commission ~~pursuant to Form S-1~~ will be deemed to apply to this regulation.

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 or the following two printed pages 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 or the following two printed pages 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;

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 or the following two printed pages 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 but excluding money market funds or other investment companies whose portfolio holdings consist substantially of debt instruments.

(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 [Proposed for repeal; number reserved for future use; relating to the maximum annual expenses paid or incurred by an investment company.]

SDiv 2052 Minimum capitalization.

An investment company having net assets of less than $1,000,000 or an affiliated investment adviser with less than an aggregate of $100,000,000 under management 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 2057 Closed end investment companies.

(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 percent annually (see page ____).

(2) to leverage more than 10 percent of its total assets (see page _____).

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

(6) in relation to ~~85~~ 75 percent of its total assets, to invest more than 5 percent of such assets in any one issuer."

SDiv 2113 [Proposed for repeal; number reserved for future use.]

SDiv 2115 (c) For the purpose of determining the number of sales which have been made, or will have been made upon completion of a proposed distribution under Section 80A.15 Subdivision 2(a), only those sales which would be ~~included within the scope~~ subject to the registration provisions of Chapter 80A, as determined by ~~Section~~ Minn. Stat. § 80A.27, shall be included.

(d) For purposes of this rule, time shall be computed pursuant to Minn. Stat. § 645.15 (1978), as amended.

SDiv 2117 The terms "financial institution or institutional buyer" contained in ~~Section~~ Minn. Stat. § 80A.15, subd. 2(g) (1978), as amended, ~~do not ordinarily include a Small Business Investment Company unless it can be demonstrated that it possesses adequate sophistication with respect to the specific offer and sale~~ include but are not limited to: (1) any corporation with a class of equity securities registered under Section 12(g) of the Securities Exchange Act of 1934, as amended, (2) any single investor who purchases $100,000 or more of an issue with respect to such sale, provided the purchase is for cash and payment is made at the time of the sale, and (3) a Small Business Investment Company.

SDiv 2118 (b) The limitation of 25 purchasers contained in § 80A.15, subd. 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

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

with Rule 146 promulgated by the Securities and Exchange Commission [17 C.F.R. Section 230.146 ~~(1975)~~] ~~if such offering complies in all respects with that Rule~~ or rules promulgated under section 3(b) of the Securities Act of 1933, if such offering is in compliance with any such rules.

SDiv 2118 (c) The exemption contained in § 80A.15, subd. 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 principaliy 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. [17 C.F.R. Section 230.146 ~~(1975)~~].

SDiv 2118 (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. [17 C.F.R. Section 230.146 ~~(1975)~~].

SDiv 2118 (g) (2) For purposes of this rule, "public distribution" means ~~a public~~ an offering registered under the Securities Act of 1933 or exempted by Regulation A of Section 3(b) of that act, provided, however, that ~~this rule shall not apply to~~ a public distribution does not include exchange offers or ~~offers~~ the exercise of options pursuant to a plan approved, or proposed to be approved by shareholders.

SDiv 2118 (j) The requirement of Minn. Stat. § 80A.15, subd. 2(h)(1) is hereby waived in connection with any distribution of securities pursuant to any employer savings, stock purchase, pension, profit sharing or similar benefit plan, or self-employed person's retirement plan.

SDiv 2118 (k) The exemption contained in § 80A.15, subd. 2(h) is conditioned on the use of an offering circular or other documents offering full disclosure in connection with each offer or sale.

SDiv 2118 (l) For the purpose of this rule, time shall be computed pursuant to Minn. Stat. § 645.15 (1978), as amended.

SDiv 2119 Offers, but not sales ~~of any industrial revenue bond~~ for which a registration statement has been filed under ~~Sections 80A.01 to 80A.31~~ Minn. Stat. ch. 80A, are hereby exempted from registration pursuant to ~~Section~~ Minn. Stat. § 80A.15, subd. 2(i) (1978), as amended, provided, however, that any such written offer may be made only by, or only if accompanied by, the most recent preliminary or the final prospectus on file with the commissioner.

SDiv 2122 (a) Any offer or sale by an affiliate of the issuer thereof is hereby exempted from registration pursuant to ~~Section~~ Minn. Stat. § 80A.15, subd. 2(o) (1978), as amended, if the following conditions are met prior to any such offer or sale:

(1) if the sale is subject to Rule 144 of the Securities and Exchange Commission:

(aa) a registration statement is in effect with respect to securities of the same class of such issuer and

(bb) the sale is made pursuant to Rule 144 promulgated by the Securities and Exchange Commission and

~~(cc) a copy of Form 144 is transmitted to the Commissioner contemporaneous with its transmittal to the Securities and Exchange Commission and;~~

(cc) ~~(dd)~~ all annual, ~~quarterly~~ or other reports required by ~~Section~~ Minn. Stat. § 80A.12 (1978), as amended, or any rule thereunder have been filed or distributed during the twelve months preceding such sale (or for such shorter period for which the issuer was required to file such reports), or

(2) if the sale is not subject to Rule 144:

(aa) a registration statement is in effect with respect to securities of the same class of such issuer and

(bb) a statement of the facts called for by Form 144 has been furnished to the commissioner concurrent with the placing with a broker-dealer of an order to execute a sale (if a broker-dealer is used) or at the time of the offer (if a broker-dealer is not used) and,

(cc) all annual ~~,quarterly,~~ or other reports required by § 80A.12 or any rule thereunder have been filed or distributed during the twelve months preceding such sale (or for such shorter period for which the issuer was required to file such reports).

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 including that material required to be preserved pursuant to SDiv 2015 (d) (1), 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~~ Any such material shall, upon the written request of the commissioner, be filed with the commissioner prior to being disseminated.

SDiv 2123 Advertising material.

(c) Violations. Any person, including any broker-dealer or agent thereof, investment advisor or issuer 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 as required under chapter 80A, and is exempt from registration by § 3 (a) (11) of the Securities Act of 1933 as amended ~~or exempted by section 3 thereof~~ shall bear, on the front page of such registration statement or prospectus, the following language in capital letters and boldface type:

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE MINNESOTA SECURITIES AND REAL ESTATE 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 (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.

SDiv 2125 (d) (1) No broker-dealer, investment adviser, agent or employee of any of the above 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, amount or frequency in view of the financial resources and character of such account.

SDiv 2125 (e) If a broker-dealer buys for his own account from his customer, or sells for his own account to his customer, he shall buy or sell at a price which is fair, taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense involved, and the fact that he is entitled to a profit.

SDiv 2126 Any rescission offer described in ~~Section~~ Minn. Stat. § 80A.23, subd. ~~3~~ 8 (1978), as amended, shall normally be accompanied by a document meeting the requirements of a prospectus for a registration by qualification. Said document shall, in addition, clearly disclose any material facts concerning the alternatives available to the offeree.

SDiv 2135 Incorporation by reference.

Whenever a reference is made in SDiv 2000 to ~~SDiv. 2137~~ 4 MCAR § 2151 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 except that any such reference contained in SDivs. 2077, 2079, 2089, 2099, 2110, 2113-2119, 2122, 2126 and 2137 shall be to the version as of July 15, 1975~~ December 1, 1980.

Amendments to the Minnesota Securites Act Forms as Proposed

Form 101, "APPLICATION FOR INVESTMENT ADVISER'S LICENSE." [Proposed for repeal.] The following form is proposed as a substitute:

Form ADV, "APPLICATION FOR REGISTRATION AS AN INVESTMENT ADVISER OR TO AMEND SUCH AN APPLICATION UNDER THE INVESTMENT ADVISERS ACT OF 1940", as referred to at 17 C.F.R. § 279.1 (1980), as amended.

Form, "Quarterly Report." [Proposed for repeal.]

Form BD, "APPLICATION FOR BROKER/DEALER'S LICENSE." [Proposed for repeal.] The following form is proposed as a substitute:

Form BD, "UNIFORM APPLICATION FOR REGISTRATION, LICENSE OR MEMBERSHIP AS A BROKER-DEALER OR TO AMEND SUCH AN APPLICATION UNDER THE SECURITIES EXCHANGE ACT OF 1934, OR UNDER THE

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

LAWS OF THE JURISDICTIONS OR UNDER THE CONSTITUTIONS AND RULES OF THE SELF-REGULATORY ORGANIZATIONS ACCEPTING THIS FORM", as referred to at 17 C.F.R. § 249.501 (1980), as amended.

Rules as Proposed (all new material)

4 MCAR § 1.2127 Amendments "Requiring an order of the commissioner," pursuant to Minn. Stat. § 80A.28, subd. 3, (1978), as amended, shall mean any change in the language of the currently effective "order" of registration or licensing, including, by way of example:

A. A change in the name of the registrant, whether an issuer, broker-dealer or investment adviser;

B. A change in price, if equity securities are involved;

C. A change in interest rate, if debt securities are involved;

D. A change in type or class of security registered.

Subchapter 8: Commodity Pool Guidelines (4 MCAR §§ 1.2140-1.2145)

4 MCAR § 1.2140 Definitions. As used in these rules, the following terms shall mean:

A. Commissioner. The Commissioner of Securities and Real Estate.

B. Adviser. A person who for any consideration engages in the business of advising others, either directly or indirectly, as to the value, purchase, or sale of commodity futures contracts or commodity options.

C. Capital contributions. The total investment in a program by a participant or by all participants, as the case may be.

D. Clearing broker. Any person who engages in the business of effecting transactions in commodities futures contracts for the account of others or for his own account.

E. Commodity futures contract. A contract providing for the delivery or receipt at a future date of a specified amount and grade of a traded commodity at a specified price and delivery point.

F. Net assets. The total assets, less total liabilities, of the program determined on the basis of generally accepted accounting principles. Net assets shall include any unrealized profits or losses on open positions, and any other credit or debit accruing to the program but unpaid or not received by the program.

G. Net asset value per unit. The net assets divided by the number of units outstanding.

H. Net profits. The sum of:

1. The net of any profits and losses realized on all trades closed out during the period.

2. The net of any unrealized profits and losses on open positions as of the end of the period, minus,

3. The net of any unrealized profits or losses on open positions as of the end of the preceding period,

4. All expenses incurred or accrued during the period and

5. Cumulative net realized losses, if any, carried forward from preceding periods.

I. Organization and offering expenses. All expenses incurred by the program in connection with and in preparing a program for registration and subsequently offering and distributing it to the public, including, but not limited to, total underwriting and brokerage discounts and commissions (including fees of the underwriter's attorneys), expenses for printing, engraving and mailing, salaries of employees while engaged in sales activity, charges of transfer agents, registrars, trustees, escrow holders, depositories and experts; and expenses of qualification of the sale of securities under federal and state law, including taxes and fees and accountants' and attorneys' fees.

J. Participant. The holder of a program interest.

K. Person. A natural person, partnership, corporation, association or other legal entity.

L. Program. The limited partnership, joint venture or incorporated organization formed and operated for the purpose of investing in commodity futures contracts.

M. Program interest. A limited partnership or other form of ownership in a program.

N. Pyramiding. A method of using all or a part of an unrealized profit in a commodity futures contract position to provide margin for additional commodity futures contracts of the same or related commodities.

O. Sponsor. Any person directly or indirectly instrumental in organizing a program or any person who will be responsible for the management of a program. Sponsor shall include an adviser or a clearing broker who pays any portion of the organizational expenses of the program, a general partner, and any other person who regularly performs or selects the persons who perform

services for the program. Sponsor does not include wholly independent third parties such as attorneys, accountants, and underwriters whose only compensation is for professional services rendered in connection with the offering of the units. The term "sponsor" shall be deemed to include affiliates of any sponsor otherwise coming within this definition.

P. Valuation date. The date as of which the net assets of the fund are determined.

R. Valuation period. A regular period of time between valuation dates.

4 MCAR § 1.2141 Requirements of sponsors, advisers, and clearing brokers.

A. Experience. Any person providing management, advisory, or clearing services to the program shall have at least three years of relevant experience in the area of trading commodity futures contracts. Such experience must include the trading of commodity futures contracts for others or must otherwise demonstrate sufficient knowledge of such person to perform the services proposed and to carry out the program policies and objectives.

B. Financial condition. The financial condition of a sponsor must be commensurate with any financial obligations assumed in the offering and in the management and operation of the program. At a minimum, the net worth shall be the greater of:

1. An amount equal to 5 percent of the participants' capital in all existing programs in which a sponsor or an affiliate has potential liability, plus 5 percent of the total subscriptions in the program being offered, or

2. Fifteen percent of the gross amount of the current offering with respect to offerings of less than $2,500,000. If the offering exceeds $2,500,000, the net worth must be at least 10 percent of the gross amount of the offering, up to $1 million of net worth, but in no case less than $50,000. Net worth of individual sponsors shall be determined exclusive of home, furnishings and automobiles. Audited balance sheets of sponsors shall be furnished except that in the event a sponsor is an individual, an unaudited balance sheet prepared by a certified public accountant and signed and sworn to by such individual sponsor may be accepted for the purpose of determining required net worth. Also, evaluation will be made of contingent liabilities to determine the appropriateness of their inclusion in the computation of net worth.

C. Investment in the program. A sponsor must make a permanent investment in the program equal to the lesser of 3 percent of the public investors' interest or $50,000.

D. Tax ruling or opinion. A program organized in the form of a limited partnership must obtain a favorable tax ruling from the Internal Revenue Service or favorable opinion of qualified tax counsel in a form acceptable to the commissioner concerning the tax status as a limited partnership. A favorable tax ruling or opinion is one which concludes that the program will be treated as a partnership for tax purposes.

E. Liability and indemnification. The sponsor(s) shall not attempt to pass on to participants the liability imposed upon a sponsor by law except that the program agreement may provide for indemnification of the sponsor(s) under the following circumstances and in the manner and to the extent indicated:

1. In any threatened, pending or completed action, suit, or proceeding to which a sponsor was or is a party or is threatened to be made a party by reason of the fact that he is or was a sponsor of the program (other than an action by or in the right of the program), the program may indemnify such sponsor against expenses, including attorneys' fees, judgments and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if the sponsor acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the program, and provided that his conduct does not constitute gross negligence, wilful or wanton misconduct, or a breach of his fiduciary obligations to the participants. The termination of any action, suit or proceeding by judgment, order or settlement shall not, of itself, create a presumption that the sponsor did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the program;

2. In any threatened, pending or completed action or suit by or in the right of the program, to which a sponsor was or is a party or is threatened to be made a party, involving an alleged cause of action by a participant or participants for damages arising from the activities of a sponsor in the performance of management of the internal affairs of the program as prescribed by the program agreement or by the law of the state of organization, or both, the program may indemnify such sponsor against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the program as specified in this clause, except that no indemnification shall be made in respect of any claim, issue or matter as to which the sponsor shall have been adjudged to be liable for negligence, misconduct, or breach of fiduciary obligation in the

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

performance of his duty to the program as specified in this clause, unless and only to the extent that the court in which such action or suit was brought shall determine upon application, that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper;

3. To the extent that a sponsor has been successful on the merits or otherwise in defense of any action, suit or proceeding referred to in E.1. or E.2., or in defense of any claim, issue or matter therein, the program shall indemnify him against the expenses, including attorneys' fees, actually and reasonably incurred by him in connection therewith; and

4. Any indemnification under E.1. or E.2., unless ordered by a court, shall be made by the program only as authorized in the specific case and only upon a determination by independent legal counsel in a written opinion that indemnification of the sponsor is proper in the circumstances because he has met the applicable standard of conduct set forth in E.1. and E.2.

F. Additional requirements. Any sponsor, adviser, or clearing broker must present evidence that it is or will be in compliance with applicable licensing or registration requirements under the Commodity Exchange Act, as amended.

4 MCAR § 1.2142 Standards.

A. Disclosures. In view of the limited transferability, the relative lack of liquidity, and the high risk of loss of many commodity pool programs, suitability standards related to the risks to be undertaken will be required for the participants, and must be set forth in both the prospectus and a written instrument to be executed by each participant. The prospectus shall set forth the investment objectives of the program, a description of the type of participant who could benefit from the program and the suitability standards to be applied in marketing the program.

B. Sales to appropriate persons. A sponsor and each person selling program interests on behalf of a sponsor shall make every reasonable effort to assure that those persons being offered or sold the interests meet the suitability standards set forth in this section. The following shall be evidence thereof:

1. That the participant has the capacity of understanding the fundamental aspects of the program, which capacity may be evidenced by the following:

   a. The nature of employment experience;

   b. The education level achieved;

   c. Access to advice from qualified sources, such as an attorney, accountant or tax adviser; and

   d. Prior experience with investments of a similar nature;

2. That the participant has an apparent understanding:

   a. Of the fundamental risks and possible financial hazards of the investment;

   b. Of the lack of liquidity of the investment;

   c. That the investment will be directed and managed by the sponsor; and

   d. Of the tax consequences of the investment;

3. That the participant can bear the financial risks involved.

C. Maintenance of suitability records. A sponsor shall retain for at least three years all records necessary to substantiate the facts that program interests were sold only to participants for whom such securities were suitable. The commissioner may require a sponsor to obtain from the purchaser a letter justifying the suitability of such investment.

D. Minimum Investment. The minimum subscription shall not be less than $2,500 and shall be paid in cash at the time of purchase. Assessments of any kind shall be prohibited.

4 MCAR § 1.2143 Fees, compensation and expenses.

A. Organizational 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 percent of the gross proceeds of the offering.

B. Compensation.

1. Maximum expenses. The aggregate annual expenses of every character paid or incurred by a program, including management and advisory fees based on the net assets of the program but excluding commodity brokerage commissions, incentive fees, legal, audit and extraordinary expenses, calculated at least quarterly on a basis consistently applied, shall be reasonable but in no event shall exceed one-half of 1 percent of the program's net assets per month; provided a sponsor shall not receive a management fee if he receives any portion of the brokerage commissions under B.3.

The sponsor(s) shall reimburse the program quarterly for the amount by which such aggregate monthly 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 program's quarterly report and shall promptly notify the commissioner if the aggregate expense limitation is exceeded by reason of any extraordinary expenses.

2. Incentive fees. A sponsor or adviser will be entitled to an incentive fee. The total of the incentive fee shall not exceed 15 percent of the net profits of the program, calculated not more often than quarterly on the valuation date, over the highest previous valuation date. For purposes of this calculation, program losses shall be carried forward but shall not be carried back.

3. Brokerage commissions. The program shall seek the best price and services available in its commodity futures brokerage transactions. The program shall not effect any transactions in commodities futures contracts with any clearing broker affiliated directly or indirectly with a sponsor or with any adviser providing the sponsor with research information, recommendations, or other services which might be of value to any sponsor, unless such transactions are effected at competitive brokerage rates. In no event will the program be allowed to enter into any exclusive brokerage contract. If any person receives any portion of the brokerage commissions from program operations, the adviser may not be affiliated with such person. The commissioner may require the program to file periodic reports concerning all brokerage transactions.

4. Other income. Any interest or other income earned by any portion of the program assets shall accrue solely to the benefit of the program or the management fee shall be reduced by any amount which does not so accrue.

5. Expenses of the program. All expenses of the program shall be billed directly to and paid by the program. Reimbursements (other than for organizational and offering expenses) to any person or affiliate shall not be allowed, except for reimbursement of the actual direct costs to the sponsor or affiliate of legal and audit services used for or by the program. Expenses incurred in connection with administration of the program, including but not limited to salaries, rent, travel expenses and such other items generally falling under the category of overhead, shall not be charged to the program.

4 MCAR § 1.2144 Rights and obligations of participants.

A. Meetings. Meetings of the participants may be called by a sponsor or by participants holding more than 10 percent of the then outstanding units for any matters for which the participants may vote as set forth in a program agreement. Such call for a meeting shall be deemed to have been made upon receipt by a sponsor of a written request from holders of the requisite percentage of units stating the purpose of the meeting. The sponsor shall deposit in the United States Mails within 15 days after receipt of said request, written notice to all participants of the meeting and the purpose of such meeting, which shall be held on a date not less than 30 nor more than 60 days after the date of mailing of said notice at a reasonable time and place.

B. Voting rights of participants. The program agreement must provide that holders of a majority of the then outstanding units may, without the necessity for concurrence by the sponsor(s), vote to:

1. Amend the program agreement,

2. Dissolve the program,

3. Remove a general partner and elect a new general partner,

4. Elect a new general partner if a general partner elects to withdraw from the program, and

5. Cancel any contract for services with any sponsor or an affiliate without penalty upon 60 days written notice. A general partner shall not withdraw from a partnership without 90 days prior written notice thereof to the participants.

C. Access to program records.

1. The program agreement shall require the maintenance of a list of the names and addresses and interests owned of all participants at the principal office of the program. Such list shall be made available for the review of any participant or his representative at reasonable times, and upon request, either in person or by mail. A participant or his representative shall be furnished a copy of such list upon payment of the cost of reproduction and mailing.

2. The participants and their representatives shall be permitted access to all records of the program, after adequate notice, at any reasonable time. Records shall be maintained and preserved for a period of not less than six years.

D. Annual and periodic reports.

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

1. The program agreement shall provide for the transmittal to each participant of an annual report, within 120 days after the close of the fiscal year, containing at least the following information:

a. A balance sheet as of the end of its fiscal year and statements of income, participants' equity, and changes in financial position for the year then ended, all of which shall be prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an opinion (without material qualification) of an independent certified public accountant or independent public accountant.

b. A statement showing the total fees, compensation, brokerage commissions and expenses paid by the program, segregated as to type, and stated both in aggregate dollar terms and as a percentage of net assets.

2. Participants shall be furnished with quarterly reports, which may be unaudited, containing the same information required in D.1.a. and D.1.b. within 60 days after the end of the quarter.

3. All participants shall be provided all information necessary for the preparation of the participants' income tax returns by not later than March 15 of each year.

4. The net assets of the program shall be calculated daily and the net asset value per unit shall be made available upon the request of a participant.

4 MCAR § 1.2145 Disclosure and marketing requirements.

A. Minimum program capital. The minimum amount of funds required to activate a program shall be sufficient to accomplish the objectives of the program, including diversification. Any minimum less than $500,000, after deduction of any organizational and offering expenses, including commissions, will be presumed to be inadequate to diversify. Provision must be made for the return to participants of 100 percent of paid subscriptions in the event that the established minimum to activate the program is not reached. 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.

B. Sales literature. Sales literature, sales presentations (including prepared presentations to prospective participants at group meetings) and advertising used in the offer of sale of program interests shall conform in all applicable respects to the requirements of filing, disclosure and adequacy currently imposed by SDiv. 2125 on sales literature, sales presentations and advertising used in the sale of corporate securities.

C. Contents of the prospectus.

1. Information on the cover page. There should be set forth briefly on the cover page, or the following two printed pages of the prospectus, a summary which should include the following: the title and general nature of the program interests being offered; the minimum and maximum aggregate amount of the offering; the minimum and maximum amount of net proceeds; the subscription price; the period of the offering; the maximum amount of any sales or underwriting commissions to be paid (or if none, whether such commissions are to be paid by the sponsor(s).

2. Sales to appropriate persons. There shall be set forth a description of the type of person who could benefit from the program and the suitability standards to be applied in marketing it.

3. Definitions. Technical terms used in the prospectus should be defined in a glossary.

4. Risk factors. A participant should be advised in a carefully organized series of short, concise paragraphs, under subcaptions where appropriate, of the risks to be considered before making an investment in a program. The paragraphs should include a cross reference to further information in the prospectus.

5. Business experience. The business experience of the principal officers of all sponsors shall be prominently disclosed in the prospectus. Such disclosure shall indicate their business experience for the past 5 years. Disclosure shall also be made regarding the experience of any commodity trading adviser and any clearing broker who is utilized by the program. The terms of any material contracts entered into by the program shall be summarized in the prospectus.

6. Compensation. All direct and indirect fees and compensation of every type and from every source which may be paid by the program to any person shall be summarized in tabular form in one location in the forepart of the prospectus. A sponsor shall not receive any compensation, direct or indirect, other than that disclosed in the compensation section.

7. Use of proceeds. The prospectus shall state the purposes for which the proceeds of the program are intended to be used and the approximate amount intended to be used for each such purpose.

8. Investment objectives and policies.

a. Describe the investment objectives and policies of the program, indicating which policies may be changed by the sponsor(s) without a vote of the participants.

b. Describe the plan for distribution of income of the program.

9. Prior performance.

a. The previous relevant program experience of any sponsor or adviser shall be disclosed in the prospectus for all programs during the past three years which:

(1) Involved a public offering registered under state or federal securities laws;

(2) Involved a private or limited offering.

b. Information on previous programs shall include, but not be limited to, the following:

(1) Identification of the program, including the name and location;

(2) The effective date of the offering, the date it commenced operations and the date of dissolution or termination or, if it is continuing, that fact;

(3) The total amount of units, the gross amount of capital raised by the program, the number of participants, and the dollar amount of investment of the sponsor, if applicable;

(4) Income credited and cash distributed to participants and to any sponsor, adviser, or clearing broker;

(5) Compensation and fees to any sponsor, segregated as to type;

(6) Compensation and fees paid to other relevant parties such as advisers and clearing brokers;

(7) The net asset value per unit as of the end of each valuation period previously used;

(8) Such additional or different disclosures of the success or failure of the programs as may be permitted or required by the commissioner.

c. All of the foregoing information shall be set forth on a cumulative basis for each program in tabular form wherever possible and include a brief description of any material differences between a prior program and the program to be offered.

d. The following caveat should be prominently featured in the presentation of the foregoing information: "It should not be assumed that participants in the offering covered by this prospectus will experience returns, if any, comparable to those experienced by participants in prior programs."

e. The foregoing information shall be supported in the application for registration by an affidavit that the performance summary is a fair presentation of the information contained in the audited financial statement or the federal income tax returns of the program or in other reports or data.

10. Conflicts of interest and transactions with affiliates.

a. Any conflicts of interest between the program and any sponsor, adviser, clearing broker or any affiliate thereof, must be fully disclosed. This would include, at a minimum the following:

(1) Any conflicts arising out of involvement with previous programs;

(2) Any conflicts arising out of involvement in the area of activities not related to the management, advising or other services performed for commodity pools;

(3) Any other agreements, arrangement or transactions, proposed or contemplated, that may be a potential conflict of interest;

(4) The sponsor shall also be required to disclose the steps that will be taken to alleviate any real or potential conflict of interest;

(5) If the program pays higher than the minimum commission rates for commodity brokerage transactions, such fact shall be set forth along with a justification.

b. Certain material conflicts of interest are presumed to be sufficient to render the proposed program incapable of accomplishing its stated objectives in the best interest of the participants and shall be controlled as follows:

(1) No loans may be made by the program to any sponsor or any other person;

(2) The funds of a program shall not be commingled with the funds of any other person. Funds used to satisfy margin requirements will not be considered commingling;

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

(3) No rebates or give ups may be received by any person nor may any person participate in any reciprocal business arrangements which could circumvent these guidelines. Furthermore, the prospectus and program agreement shall contain language prohibiting the above as well as language prohibiting reciprocal business arrangements which would circumvent the restrictions against dealing with affiliates or other interested parties;

(4) The program agreement shall prohibit the commodity trading adviser or any other person acting in such capacity from receiving an advisory fee if they share or participate, directly or indirectly, in any commodity brokerage commissions generated by the program;

(5) The maximum period covered by any contract of the program with any adviser, clearing broker, sponsor or affiliate thereof shall not exceed one year. Any contract must be terminable without penalty upon 60 days written notice by the program, which provisions shall be set forth in the program agreement;

(6) Any other agreement, arrangement or transactions, proposed or contemplated, may be restricted in the discretion of the commissioner if it would be considered unfair to the participants in the program.

11. Federal tax consequences. The prospectus shall disclose the following tax aspects:

a. Tax treatment of the program;

b. Tax treatment of the participants;

c. Method of allocation of losses or profits and cash distributions;

d. Any other pertinent information applicable to the tax aspects of the investment; and

e. The possibility that the filing of state tax returns will be required in the states in which interests are held.

12. Commodities futures markets. At a minimum, the prospectus should disclose the following characteristics of the commodities markets:

a. That the commodities markets are extremely volatile and the risk of loss is great;

b. The procedures used in trading commodities futures contracts including, but not limited to, the margin requirements on the commodities to be invested in by the program, the exchanges or board of trade on which the program anticipates trading, and a description of the applicable exchange requirements.

13. Licensing and regulation. The prospectus shall disclose any licensing or registration requirements of the program, including those imposed by the Commodity Futures Trading Commission.

14. Prohibitions. The prospectus shall disclose that the program agreement specifically prohibits the following activities:

a. A program shall not engage in pyramiding;

b. A program shall not utilize borrowing;

c. A program shall not enter into an open position during a delivery month;

d. A program shall not permit the investment of its funds deemed "customer's funds" under the Commodity Exchange Act, as amended, in any securities other than as permitted by the Commodity Futures Trading Commission;

e. A program shall not commit more than 15 percent of its equity in the trading account at any time for margin in any one commodity irrespective of the delivery month. For this purpose gold and silver bullion, coins and futures contracts shall be considered one commodity;

f. A program's trading policy shall specifically exclude the purchasing, selling, writing or trading in commodity options or purchasing or selling securities, other than those mentioned in C.14.d.;

g. A program shall not engage in cash commodity transactions unless the cash commodity is fully hedged;

h. A sponsor shall not commit more than two-thirds of the net assets of a program as margin for commodity futures contracts and the balance of such assets shall be retained in cash or cash equivalent to apply as needed for additional margin or for redemption;

i. A sponsor shall not permit the churning of the program's account so as to generate a commission for itself or for the benefit of any other person.

15. Notification. Each participant shall be notified within seven business days from the date of any decline in the net value per unit to less than 50 percent of the amount on the last valuation date. Included in the notification shall be a description of the participants' voting rights pursuant to 4 MCAR § 1.2143B.

16. Material changes. Any material changes in the program's basic investment or trading policies or structure shall require prior written approval by a majority of program interests held by participants. This shall include, specifically, any transfer or withdrawal of any sponsor's required interest in the program.

17. Summary of any limited partnership agreement or other program agreement.

18. Legal proceedings. Briefly describe any legal proceedings to which the program or any person is or was a party which is material to the program and any material legal proceedings between any sponsor and participants in any prior program of the sponsor.

19. Financial information required on application. A sponsor and the program shall provide as an exhibit to the application for registration or where indicated below shall provide as part of the prospectus, the following financial information and financial statements:

a. Balance sheet of the program. As part of the prospectus, a balance sheet of the program as of the end of its most recent fiscal year, prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report without material qualification by an independent certified public accountant or an independent public accountant, and an unaudited balance sheet as of a date not more than 90 days prior to the date of filing;

b. Balance sheet of a sponsor.

(1) Corporate Sponsor. A balance sheet of a corporate sponsor as of the end of its most recent fiscal year, prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report without material qualification by an independent certified public accountant or an independent public accountant,and an unaudited balance sheet as of a date not more than 90 days prior to the date of filing. Such statements shall be included in a prospectus.

(2) Individual Sponsor. A balance sheet for each individual sponsor as of a time not more than 90 days prior to the date of filing an application; such balance sheet may be audited and should conform to generally accepted accounting principles and shall be signed and sworn to by such sponsor. A representation of the amount of such net worth must be included in the prospectus;

c. Statement of income for corporate sponsor. A statement of income for the last fiscal year of a corporate sponsor (or for the life of a corporate sponsor, if less) prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report without material qualification by an independent certified public accountant or independent public accountant, and an unaudited statement for any interim period ending not more than 90 days prior to the date of filing an application.

4 MCAR § 1.2146 Miscellaneous provisions.

A. Fiduciary duty. The program agreement shall provide that the sponsor(s) shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the program, whether or not in its immediate possession or control, and that it shall not employ, or permit another to employ, such funds or assets in any manner except for the exclusive benefit of the program.

B. Redemptions. The program shall provide an opportunity at least quarterly for the redemption of program interests at the net asset value as of the valuation dates upon the written request of any participant. The participant must notify a sponsor of his intent to redeem at least 30 days prior to the redemption date. The prospectus and program agreement must indicate the valuation dates for redemption. Such requests must be honored within 30 days following the valuation date, unless the quantity of redemptions would be detrimental to the tax status of the program. In that case, redemptions may be selected by lot, and participants notified within 30 days whether or not their program interests were redeemed. The program agreement may provide for the suspension of redemptions if the effect of substantial redemptions would impair the ability of the program to operate in pursuit of its objectives.

4 MCAR §§ 1.2147-1.2149 Reserved for future use.

4 MCAR § 1.2150 Waiver.

A. The requirements of subchapters 4, 5, 6, 7, and 8 may be waived by the commissioner upon proof of substantial compliance with rules, statements of policy or guidelines of national or regional securities regulatory organizations composed of securities administrators of this and other states.

B. Any such waiver shall be based upon a determination by the commissioner that compliance with such rules, statements of policy or guidelines is:

KEY: PROPOSED RULES SECTION — Underlining indicates additions to existing rule language. ~~Strike outs~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." ADOPTED RULES SECTION — Underlining indicates additions to proposed rule language. ~~Strike outs~~ indicate deletions from proposed rule language.

1. consistent with the purposes fairly intended by the policy and provisions of Minn. Stat. §§ 80A.01 to 80A.31 (1978), as amended.

2. appropriate for the protection of investors, and

3. promotive of uniformity of regulation.

4 MCAR § 1.2151 A diamond, ruby, emerald, or sapphire constitutes an "investment gem" pursuant to Minn. Stat. § 80A.14(j) (1978), as amended.

State Board of Education
Department of Education
Special and Compensatory Education Division

Proposed Temporary Rule Governing Special Education Procedures for Decisions on Formal Notice to Parents

Request for Public Comment

Notice is hereby given that the State Board of Education has proposed the following temporary rule for the purpose of implementing the provisions of Minn. Stat. §§ 120.17, as amended; 124.62, subd. 1(5) and subd. 2; 20 U.S.C. § 1401, *et seq.*, and the corresponding federal regulations, 45 C.F.R. part 121a.

All interested persons are hereby afforded the opportunity to submit their comments on the proposed rule for 20 days immediately following publication of this material in the State Register by writing to:

Wayne A. Erickson, Manager
Special Education Section
802 Capitol Square Building
St. Paul, Minnesota 55101

The temporary rule may be revised on the basis of comments received.

Any written material received shall become part of the record and the final adoption of the temporary rule.

November 21, 1980

Howard B. Casmey
Commissioner of Education

Temporary Rule as Proposed

Chapter Seven: Standards and Procedures for the Provision of Special Education Instruction and Services for Children and Youth Who Are Handicapped

5 MCAR § 1.0127 Formal notice to parents.

A. General notice provisions.

5. All notices must be sufficiently detailed and precise to constitute adequate notice for hearing of the proposed action and contain a full explanation of all of the procedural safeguards available to parents under the provision of these rules. All notices must:

e. inform the parents that they may:

(1) obtain an independent assessment at their own expense;

(2) request from the district information about where an independent assessment may be obtained;

(3) ~~request that~~ obtain an independent assessment ~~be conducted~~ at public expense. ~~in which case the district has the option of denying such a request. When a district denies such a request, the parents may request a conciliation conference and due process hearing to resolve the disagreement.~~ However, a district may initiate a due process hearing to show that its assessment is appropriate. If the final decision is that its assessment is appropriate, the parents still have the right to an independent assessment, but not at public expense.

STATE OF MINNESOTA

Banking Division
(612) 296-2135

Securities and Real Estate Division
(612) 296-2594

Insurance Division
(612) 296-2488

Administrative Services Division
(612) 296-2283

DEPARTMENT OF COMMERCE

500 Metro Square Building
St. Paul, Minnesota 55101

January 13, 1981

RECEIVED
JAN 1[illegible]
ATTORNEY GENERAL
ADMINISTRATIVE AGENCIES

Mr. Jerry S. Anderson
Special Assistant Attorney General
G-25 State Administration Building
50 Sherburne Avenue
St. Paul, Minnesota 55155

Re: The proposed adoption, repeal or amendment of rules and forms of the Minnesota Department of Commerce, Securities and Real Estate Division, Governing Minnesota Statutes, Chapter 80A (Regulation of Securities)

Dear Mr. Anderson:

Attached for your review, pursuant to Minnesota Statutes section 15.0412, subdivision 4h (1980), please find the following:

1. The original and three copies of the rules as adopted. One copy reflects changes made in the rules as originally published in the State Register;

2. The original and three copies of the order adopting the rules;

3. One copy of the notice of intent to solicit outside opinion. Attached thereto are copies of all written materials (3) received in response thereto;

4. One copy of the notice of intent to adopt rules without a public hearing (includes the order for notice of intent to adopt rules without a public hearing);

5. One copy of the affidavit of mailing notice of intent to adopt rules without a public hearing (notarized);

6. One copy of the certificate certifying that the mailing list required by Minn. Stat. section 15.0412, subd. 4 was accurate and complete;

7. One photocopy of the relevant pages of the State Register in which the proposed rules appeared, together with the notice of intent to adopt rules without a public hearing (5 State Register pages 915 - 934);

8. One copy of the findings of fact and conclusions setting forth the reasons for changes between the rule as proposed and the rule as adopted;

9. One copy of the statement of need and reasonableness (supporting materials are attached thereto);

10. One copy of all written comments (2) pertaining to the proposed rules. No requests for a public hearing were received by the agency;

11. The certificate of compliance with rulemaking procedures; and

12. The affidavit of mailing notice of submission to the attorney general and the accompanying notice.

Very truly yours,

MARY ALICE BROPHY
Commissioner of Securities and Real Estate

By:

Daniel W. Hardy

DANIEL W. HARDY
Assistant to the Commissioner
(612) 296-5689

MAB:DWH:bp

Amendments as Adopted

SDiv 2006(b) It shall constitute a "manipulative, deceptive or other fraudulent device or contrivance" within the meaning of ~~Section~~ Minn. Stat. S 80A.03 (1978), as amended, 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~~ Minn. Stat. SS 80A.09, 80A.10 or 80A.11 (1978), as amended, 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

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

SDiv 2010 "Successor" for the purpose of ~~Minnesota Statutes 1973, Section~~ Minn. Stat. S 80A.05, Subd. 2 (1978), as amended, 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, 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, or in the case of the acquisition of substantially all of the assets of a licensee, unless the transactions are entered into for the purpose of evading the operation of the licensing requirement.

~~(b) 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 any examination more than three times except as the Commissioner may in his discretion permit for good cause shown.~~

(c) ~~(d)~~ Any broker-dealer, agent or investment adviser whose most recent license has been terminated for a period of ~~one year~~ two years 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 (c) [The existing rule is proposed for repeal and the following language is proposed as a substitute.]

SDiv 2013 (c) The net capital requirements for broker-dealers, as set forth in this Rule, shall be calculated in conformance with 17 C.F.R. section 240-15c3-1, as amended.

SDiv 2014 (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.~~ Any investment adviser who has custody of, or discretionary authority over, any assets of any client shall have first posted with the Commissioner a surety bond in the amount of $25,000, on such form as the Commissioner may prescribe.

SDiv 2014 (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~~ Minn. Stat. S 80A.15, Subdivision 1, Clauses (a), (b), (c), (d) or (e) (1978), as amended. At no time shall the market value of the securities on deposit be less than 105 percent 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. The Commissioner may allow an irrevocable letter of credit in lieu thereof.

SDiv 2014 (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. 2014(c) does not apply to any investment adviser who continuously maintains net capital of not less than $100,000.

SDiv 2015 (d) (1) Every broker-dealer shall keep and preserve any written, printed or other advertisement which is published in connection with the offer or sale of a security or which is reasonably intended to encourage individuals or others to engage the services of the broker-dealer or any of its agents.

(2) The practices deemed deceptive or misleading pursuant to SDiv 2123(c) shall likewise be deemed deceptive or misleading when employed by or on behalf of a broker-dealer.

SDiv 2015 (e) ~~(d)~~ Every broker-dealer shall preserve all records, files, communications and other information 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 (j) (1) Every investment adviser shall keep and preserve any written, printed or other advertisement which is

published in connection with the offer or sale of a security or which is reasonably intended to encourage individuals or others to engage the services of the investment adviser.

(2) The practices deemed deceptive or misleading pursuant to SDiv. 2123(c) shall likewise be deemed deceptive or misleading when employed by or on behalf of an investment adviser.

SDiv 2016 (k) Every investment adviser shall preserve all records, files, communications and other information required by this Rule 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 2017 (a) Every broker-dealer shall, within 90 days following the close of either its fiscal or accounting 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.

SDiv 2018 [Proposed for repeal; number reserved for future use.]

SDiv 2019(b) (1) "Offering circular" means an offering circular ~~complying~~ in compliance with the requirements of ~~Rule 256 and Form 1-A under~~ the Securities Act of 1933 and the rules and forms promulgated thereunder.

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 require as a condition of registration, unless reason for exception can be demonstrated, 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.~~

SDiv 2024 [The existing rule is proposed for repeal and the following language is proposed as a substitute.]

SDiv 2024 So long as a registration is effective, the issuer shall, if possible, notify the Commissioner in writing prior to or simultaneously with the occurrence of any of the following events, but in no event later than 10 days following the occurrence thereof:

(a) A decision to file for bankruptcy, enter receivership or any other similar proceeding;

(b) The cessation of business activities;

(c) A default on any payment of principal, interest, sinking fund installment or other similar payment, for a period of over 30 days, with respect to any indebtedness of the registrant or any of its subsidiaries exceeding five percent of the total assets of the registrant and its consolidated subsidiaries; or

(d) Any other event, occurrence or transaction which may or will have a material adverse effect upon the financial stability of the issuer.

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. Every issuer or its agent shall immediately notify the Commissioner in the event of a sale of securities in excess of the amount registered. Under no circumstances shall the notice be more than 30 days after the date on which the oversale occurred.

SDiv 2025 (b) (a) 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 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. 2132 of these regulations.

(b) (1) 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.

(2) Any issuer filing reports under the Investment Company Act of 1940 may file, in lieu of the report required by paragraph (a) of this section, a current updated prospectus as filed with the Securities and Exchange Commission or a copy of the annual report required to be filed with the Securities and Exchange Commission.

(c) The annual report or prospectus 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~~ SDiv 2027(a) (19) is not reasonably available at such time, such information may be filed on or before the 150th 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.~~ SDiv 2028 to 2109 shall not apply to securities or transactions exempted by ~~Minnesota Statutes, 1973 Supplement, Section~~ Minn. Stat. S 80A.15, Subdivisions 1 or 2 (1978), as amended, 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 Programs SDiv 2081-2089

Subchapter 7 Real Estate Investment Trusts SDiv 2090-2109

Subchapter 8 Commodity Pool Guidelines 4 MCAR SS 1.2140 to 1.2146

SDiv 2029 [The existing rule is proposed for repeal and the following language is proposed as a substitute.]

SDiv 2029 Minimum Investment Required.

(a) Unless an issuer or its predecessors have demonstrated profitable operations for two of the three fiscal years prior to registration, determined in accordance with generally accepted accounting principles, after taxes and excluding extraordinary items, the "fair value of the equity investment" of such issuer shall be at least 10 percent of the first $1 million and 5 percent thereafter of

the "equity investment" which would result from the sale of all 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 irrevocably conveyed to the issuer, and together with an evaluation by a qualified independent appraiser of intangible assets including, but not limited to, patents, licenses, technologies, trademarks, and technical or professional services contributed by the promoters, as adjusted by the retained earnings of the issuer subsequent to the dates of such conveyances, payments or contributions, or

(2) the total shareholders' equity as set forth in a certified balance sheet prepared in accordance with SDiv 2132, less the value assigned to any intangible assets which have not been independently evaluated.

(c) "Equity investment" shall mean the sum of:

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

(2) an amount equal to the net proceeds which would be received by the issuer upon completion of the offering, assuming the maximum aggregate amount of securities registered are sold.

(d) An appraisal or other evaluation used for the purposes of complying with the minimum equity investment may not be reflected in any form, either in the prospectus or in the issuer's financial statements or any footnotes thereto, unless it conforms with generally accepted accounting principles.

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 percent	30 percent
20 percent	40 percent
30 percent	60 percent
40 percent	80 percent
45 percent	90 percent

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. The amount of "cheap stock" allowable, based upon the "fair value of the equity investment" as defined in SDiv 2029(b), shall not exceed three times the first 10 percent of equity investment and two times any further equity investment to a maximum number of shares of cheap stock allowable of 90 percent of the total number of shares to be outstanding after the proposed offering.

SDiv 2030 (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. Cheap stock does not include:

(1) securities which have been outstanding more than three years at the time of the proposed registration, provided that the issuer or its predecessors have been in active, continuous business operation for more than three years immediately prior to the proposed registration;

(2) securities of an (issuer) which (a) had earnings during the fiscal year prior to registration or (b) had earnings during two of the three fiscal years prior to registration, as determined in accordance with generally accepted accounting principles, after taxes and excluding extraordinary income, if such earnings are in an amount equal to 4 percent of the proposed public offering price on all outstanding shares of the same class at the date of application for registration; or

(3) securities previously issued pursuant to a registration under Minn. Stat. Ch. 80A.

SDiv 2031 [The existing rule is proposed for repeal and the following language is proposed as a substitute.]

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

(a) Outstanding options to all employees and directors shall not exceed 20 percent of the to be outstanding common shares of the issuer, provided further that:

(1) the exercise price shall not be less than 85 percent of the fair market value on the date of the grant; and

(2) no such options in excess of 10 percent of the to be outstanding shares are granted to any individual who, immediately before such option is granted, owns stock possessing more than 10 percent of the total combined voting power or value of all classes of stock of the issuer.

(b) No shares shall be issued to employees or directors unless they shall have paid at least 85 percent of fair market value therefore, other than pursuant to the provisions of paragraph (a) of this section, 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 issuer.

(c) The terms of issuance of options granted and shares issued to employees and directors may vary in any manner and to any extent from the requirements and limitations of paragraphs (a) and (b) of this section, if ratified or approved by a majority of the shareholders, excluding officers, directors, employees, and their spouses.

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 or rules promulgated by the United States Securities and Exchange Commission ~~pursuant to Form S-1~~ will be deemed to apply to this regulation.

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 or the following two printed pages 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 or the following two printed pages 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;

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 or the following two printed pages 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 but excluding money market funds or other investment companies whose portfolio holdings consist substantially of debt instruments.

(c) Purchasing restricted securities as herein defined.

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

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

SDiv 2051 [Proposed for repeal; number reserved for future use; relating to the maximum annual expenses paid or incurred by an investment company.]

SDiv 2052 Minimum Capitalization.

An investment company having net assets of less than $1,000,000 or an affiliated investment adviser with less than an aggregate of $100,000,000 under management 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 2057 Closed End Investment Companies.

(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 provicec 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 percent annually (see page ____).

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

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

(6) in relation to ~~65~~ 75 percent of its total assets, to invest more than 5 percent of such assets in any one issuer."

SDiv 2113. [Proposed for repeal; number reserved for future use.]

SDiv 2115 (c) For the purpose of determining the number of sales which have been made, or will have been made upon completion of a proposed distribution under Section 80A.15 Subdivision 2(a), only those sales which would ~~be included within the terms~~ subject to the registration provisions of Chapter 80A, as determined by ~~Section~~ Minn. Stat. § 80A.27, shall be included.

(d) For purposes of this Rule, time shall be computed pursuant to Minn. Stat. § 645.15 (1978), as amended.

SDiv 2117. The terms "financial institution or institutional buyer" contained in ~~Section~~ Minn. Stat. S 80A.15, Subdivision 2(g) (1978), as amended, ~~do not ordinarily include a Small Business Investment Company unless it can be demonstrated that it possesses adequate sophistication with respect to the specific offer and sale~~ include but are not limited to: (1) any corporation with a class of equity securities registered under Section 12(g) of the Securities Exchange Act of 1934, as amended, (2) any single investor who purchases $100,000 or more of an issue with respect to such sale, provided the purchase is for cash and payment is made at the time of the sale, and (3) a Small Business Investment Company.

SDiv 2118 (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 [17 C.F.R. Section 230.146 ~~(1975)~~] ~~if such offering complies in all respects with that Rule~~ or rules promulgated under section 3(b) of the Securities Act of 1933, if such offering is in compliance with any such rules.

SDiv 2118 (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. [17 C.F.R. Section 230.146 ~~[1975]~~].

SDiv 2118 (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. [17 C.F.R. Section 230.146 ~~[1975]~~].

SDiv 2118(g) (2) For purposes of this Rule, "public distribution" means ~~a-public~~ an offering registered under the Securities Act of 1933 or exempted by Regulation A of Section 3(b) of that act, provided, however, that ~~this-Rule-shall-not-apply-to~~ a public distribution does not include exchange offers or ~~offers~~ the exercise of options pursuant to a plan approved, or proposed to be approved by shareholders.

SDiv 2118 (j) The requirement of Minn. Stat. S 80A.15, Subdivision 2(h)(1) is hereby waived in connection with any distribution of securities pursuant to any employee's savings, stock purchase, pension, profit sharing or similar benefit plan, or self-employed person's retirement plan.

SDiv 2118 (k) For the purposes of this Rule, time shall be computed pursuant to Minn. Stat. S 645.15 (1978), as amended.

SDiv 2119. Offers, but not sales ~~of any industrial revenue bond~~ for which a registration statement has been filed under ~~Sections 80A.01 to 80A.31~~ Minn. Stat. Ch. 80A, are hereby exempted from registration pursuant to ~~Section~~ Minn. Stat. S 80A.15, Subdivision 2(i) (1978), as amended, provided, however, that any such written offer may be made only by, or only if accompanied by, the most recent preliminary or the final prospectus on file with the Commissioner.

SDiv 2122. (a) Any offer or sale by an affiliate of the issuer thereof is hereby exempted from registration pursuant to ~~Section~~ Minn. Stat. S 80A.15, Subdivision 2(o) (1978), as amended, if the following conditions are met prior to any such offer or sale:

(1) if the sale is subject to Rule 144 of the Securities and Exchange Commission:

(aa) a registration statement is in effect with respect to securities of the same class of such issuer and

(bb) the sale is made pursuant to Rule 144 promulgated by the Securities and Exchange Commission and

~~(cc) a copy of Form 144 is transmitted to the Commissioner contemporaneous with its transmittal to the Securities and Exchange Commission and~~

(cc) ~~(dd)~~ all annual, ~~quarterly~~ or other reports required by ~~Section~~ Minn. Stat. S 80A.12 (1978), as amended, or any rule thereunder have been filed or distributed during the twelve months preceding such sale (or for such shorter period for which the issuer was required to file such reports), or

(2) if the sale is not subject to Rule 144:

(aa) a registration statement is in effect with respect to securities of the same class of such issuer and

(bb) a statement of the facts called for by Form 144 has been furnished to the Commissioner concurrent with the placing with a broker-dealer of an order to execute a sale (if a broker-dealer is used) or at the time of the offer (if a broker-dealer is not used) and,

(cc) all annual ~~,quarterly,~~ or other reports required by Section 80A.12 or any rule thereunder have been filed or distributed during the twelve months preceding such sale (or for such shorter period for which the issuer was required to file such reports).

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 including that material required to be preserved pursuant to SDiv 2015(d)(1), 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~~ Any such material shall, upon the written request of the Commissioner, be filed with the Commissioner prior to being disseminated.

SDiv 2123 Advertising Material.

(c) Violations. Any person, including any broker-dealer or agent thereof, investment adviser or issuer 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 as required under chapter 80A, and is exempt from registration by section 3(a)(11) of the Securities Act of 1933 as amended ~~or exempted by section 3 thereof~~ shall bear, on the front page of such registration statement or prospectus, the following language in capital letters and boldface type:

THESE SECURITIES HAVE NOT BEEN APPROVED OR DISAPPROVED BY THE MINNESOTA SECURITIES AND REAL ESTATE 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(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.

SDiv 2125(d) (1) No broker-dealer, investment adviser, agent or employee of any of the above 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, amount or frequency in view of the financial resources and character of such account.

SDiv 2125 (e) If a broker-dealer buys for his own account from his customer, or sells for his own account to his customer, he shall buy or sell at a price which is fair, taking into consideration all relevant circumstances, including market conditions with respect to such security at the time of the transaction, the expense involved, and the fact that he is entitled to a profit.

SDiv 2126 Any rescission offer described in Section Minn. Stat. S 80A.23, Subdivision 3 8 (1978), as amended, shall normally be accompanied by a document meeting the requirements of a prospectus for a registration by qualification. Said document shall, in

addition, clearly disclose any material facts concerning the alternatives available to the offeree.

5Div 2135 Incorporation by Reference.

Whenever a reference is made in 5Div 2000 to ~~5Div 2137~~ 4 MCAR S 2151 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 except that any such reference contained in 5Div 2077, 2079, 2089, 2099, 2116, 2113-2119, 2122, 2126 and 2137 shall be to the version as of July 15, 1975~~ December 1, 1980.

Amendments to the Minnesota Securities Act Forms as Adopted

Form 101, "APPLICATION FOR INVESTMENT ADVISER'S LICENSE." [Proposed for repeal.] The following form is proposed as a substitute:

Form ADV, "APPLICATION FOR REGISTRATION AS AN INVESTMENT ADVISER OR TO AMEND SUCH AN APPLICATION UNDER THE INVESTMENT ADVISERS ACT OF 1940", as referred to at 17 C.F.R. S 279.1 (1980), as amended.

Form, "Quarterly Report". [Proposed for repeal.]

Form BD, "APPLICATION FOR BROKER/DEALER'S LICENSE". [Proposed for repeal.] The following form is proposed as a substitute:

Form BD, "UNIFORM APPLICATION FOR REGISTRATION, LICENSE OR MEMBERSHIP AS A BROKER-DEALER OR TO AMEND SUCH AN APPLICATION UNDER THE SECUTITIES EXCHANGE ACT OF 1934, OR UNDER THE LAWS OF THE JURISDICTIONS OR UNDER THE CONSTITUTIONS AND RULES OF THE SELF-REGULATORY ORGANIZATIONS ACCEPTING THIS FORM", as referred to at 17 C.F.R. S 249.501 (1980), as amended.

Rules as Adopted (all new material)

4 MCAR S 1.2127 Amendments "requiring an order of the Commissioner", pursuant to Minn. Stat. S 80A.28, subd. 3, (1978), as amended, shall mean any change in the language of the currently effective "order" of registration or licensing, including, by way of example:

A. A change in the name of the registrant, whether an issuer, broker-dealer or investment adviser;

B. A change in price, if equity securities are involved;

C. A change in interest rate, if debt securities are involved;

D. A change in type or class of security registered.

Subchapter 8: Commodity Pool Guidelines (4 MCAR SS 1.2140 to 1.2146)

4 MCAR S 1.2140 Definitions. As used in these rules, the following terms shall mean:

A. Commissioner. The commissioner of securities and real estate.

B. Adviser. A person who for any consideration engages in the business of advising others, either directly or indirectly, as to the value, purchase, or sale of commodity futures contracts or commodity options.

C. Capital contributions. The total investment in a program by a participant or by all participants, as the case may be.

D. Clearing broker. Any person who engages in the business of effecting transactions in commodities futures contracts for the account of others or for his own account.

E. Commodity futures contract. A contract providing for the delivery or receipt at a future date of a specified amount and grade of a traded commodity at a specified price and delivery point.

F. Net assets. The total assets, less total liabilities, of the program determined on the basis of generally accepted accounting principles. Net assets shall include any unrealized profits or losses on open positions, and any other credit or debit accruing to the program but unpaid or not received by the program.

G. Net asset value per unit. The net assets divided by the number of units outstanding.

H. Net profits. The sum of:

1. The net of any profits and losses realized on all trades closed out during the period,

2. The net of any unrealized profits and losses on open positions as of the end of the period, minus,

3. The net of any unrealized profits or losses on open positions as of the end of the preceding period,

4. All expenses incurred or accrued during the period and

5. Cumulative net realized losses, if any, carried forward from preceding periods.

I. Organization and offering expenses. All expenses incurred by the program in connection with and in preparing a program for registration and subsequently offering and distributing it to the public, including, but not limited to, total underwriting and brokerage discounts and commissions (including fees of the underwriter's attorneys), expenses for printing, engraving and mailing, salaries of employees while engaged in sales activity, charges of transfer agents, registrars, trustees, escrow holders, depositories and experts; and expenses of qualification of the sale of securities under federal and state law, including taxes and fees and accountants' and attorneys' fees.

J. Participant. The holder of a program interest.

K. Person. A natural person, partnership, corporation, association or other legal entity.

L. Program. The limited partnership, joint venture or incorporated organization formed and operated for the purpose of investing in commodity futures contracts.

M. Program interest. A limited partnership or other form of

ownership in a program.

N. Pyramiding. A method of using all or a part of an unrealized profit in a commodity futures contract position to provide margin for additional commodity futures contracts of the same or related commodities.

O. Sponsor. Any person directly or indirectly instrumental in organizing a program or any person who will be responsible for the management of a program. Sponsor shall include an adviser or a clearing broker who pays any portion of the organizational expenses of the program, a general partner, and any other person who regularly performs or selects the persons who perform services for the program. Sponsor does not include wholly independent third parties such as attorneys, accountants, and underwriters whose only compensation is for professional services rendered in connection with the offering of the units. The term "sponsor" shall be deemed to include affiliates of any sponsor otherwise coming within this definition.

P. Valuation date. The date as of which the net assets of the fund are determined.

R. Valuation period. A regular period of time between valuation dates.

4 MCAR S 1.2141 Requirments of sponsors, advisers, and clearing brokers.

A. Experience. Any person providing management, advisory, or clearing services to the program shall have at least three years of relevant experience in the area of tracing commodity futures contracts. Such experience must include the trading of commodity futures contracts for others or must otherwise demonstrate sufficient knowledge of such person to perform the services proposed and to

carry out the program policies and objectives.

B. Financial condition. The financial condition of a sponsor must be commensurate with any financial obligations assumed in the offering and in the management and operation of the program. At a minimum, the net worth shall be the greater of:

1. An amount equal to 5 percent of the participants' capital in all existing programs in which a sponsor or an affiliate has potential liability, plus 5 percent of the total subscriptions in the program being offered, or

2. Fifteen percent of the gross amount of the current offering with respect to offerings of less than $2,500,000. If the offering exceeds $2,500,000, the net worth must be at least 10 percent of the gross amount of the offering, up to $1 million of net worth, but in no case less than $50,000. Net worth of individual sponsors shall be determined exclusive of home, furnishings and automobiles. Audited balance sheets of sponsors shall be furnished except that in the event a sponsor is an individual, an unaudited balance sheet prepared by a certified public accountant and signed and sworn to by such individual sponsor may be accepted for the purpose of determining required net worth. Also, evaluation will be made of contingent liabilities to determine the appropriateness of their inclusion in the computation of net worth.

C. Investment in the program. A sponsor must make a permanent investment in the program equal to the lesser of 3 percent of the public investors' interest or $50,000.

D. Tax ruling or opinion. A program organized in the form of a limited partnership must obtain a favorable tax ruling from the Internal Revenue Service or favorable opinion of qualified tax counsel

in a form acceptable to the commissioner concerning the tax status as a limited partnership. A favorable tax ruling or opinion is one which concludes that the program will be treated as a partnership for tax purposes.

E. Liability and indemnification. The sponsor(s) shall not attempt to pass on to participants the liability imposed upon a sponsor by law except that the program agreement may provide for indemnification of the sponsor(s) under the following circumstances and in the manner and to the extent indicated:

1. In any threatened, pending or completed action, suit, or proceeding to which a sponsor was or is a party or is threatened to be made a party by reason of the fact that he is or was a sponsor of the program (other than an action by or in the right of the program), the program may indemnify such sponsor against expenses, including attorneys' fees, judgments and amounts paid in settlement actually and reasonably incurred by him in connection with such action, suit or proceeding if the sponsor acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the program, and provided that his concuct does not constitute gross negligence, wilful or wanton misconduct, or a breach of his fiduciary obligations to the participants. The termination of any action, suit or proceeding by judgment, order or settlement shall not, of itself, create a presumption that the sponsor did not act in good faith and in a manner which he reasonably believed to be in or not opposed to the best interests of the program;

2. In any threatened, pending or completed action or suit by or in the right of the program, to which a sponsor was or is a party or is threatened to be made a party, involving an alleged cause of action

by a participant or participants for damages arising from the activities of a sponsor in the performance of management of the internal affairs of the program as prescribed by the program agreement or by the law of the state of organization, or both, the program may indemnify such sponsor against expenses, including attorneys' fees, actually and reasonably incurred by him in connection with the defense or settlement of such action or suit if he acted in good faith and in a manner he reasonably believed to be in or not opposed to the best interests of the program as specified in this clause, except that no indemnification shall be made in respect of any claim, issue or matter as to which the sponsor shall have been adjudged to be liable for negligence, misconduct, or breach of fiduciary obligation in the performance of his duty to the program as specified in this clause, unless and only to the extent that the court in which such action or suit was brought shall determine upon application, that, despite the adjudication of liability but in view of all circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses as the court shall deem proper;

3. To the extent that a sponsor has been sussessful on the merits or otherwise in defense of any action, suit or proceeding referred to in E.1. or E.2., or in defense of any claim, issue or matter therein, the program shall indemnify him against the expenses, including attorneys' fees, actually and reasonably incurred by him in connection therewith; and

4. Any indemnification under E.1. or E.2., unless ordered by a court, shall be made by the program only as authorized in the specific case and only upon a determination by independent legal counsel in a written opinion that indemnification of the sponsor is proper in the

circumstances because he has met the applicable standard of conduct set forth in E.1. and E.2.

F. Additional requirements. Any sponsor, adviser, or clearing broker must present evidence that it is or will be in compliance with applicable licensing or registration requirements under the Commodity Exchange Act, as amended.

4 MCAR S 1.2142 Standards.

A. Disclosures. In view of the limited transferability, the relative lack of liquidity, and the high risk of loss of many commodity pool programs, suitability standards related to the risks to be undertaken will be required for the participants, and must be set forth in both the prospectus and a written instrument to be executed by each participant. The prospectus shall set forth the investment objectives of the program, a description of the type of participant who could benefit from the program and the suitability standards to be applied in marketing the program.

B. Sales to appropriate persons. A sponsor and each person selling program interests on behalf of a sponsor shall make every reasonable effort to assure that those persons being offered or sold the interests meet the suitability standards set forth in this section. The following shall be evidence thereof:

1. That the participant has the capacity of understanding the fundamental aspects of the program, which capacity may be evidenced by the following:

a. The nature of employment experience;

b. The education level achieved;

c. Access to advice from qualified sources, such as an attorney, accountant or tax adviser; and

d. Prior experience with investments of a similar nature;

2. That the participant has an apparent understanding:

a. Of the fundamental risks and possible financial hazards of the investment;

b. Of the lack of liquidity of the investment;

c. That the investment will be directed and managed by the sponsor; and

d. Of the tax consequences of the investment;

3. That the participant can bear the financial risks involved.

C. Maintenance of suitability records. A sponsor shall retain for at least three years all records necessary to substantiate the facts that program interests were sold only to participants for whom such securities were suitable. The commissioner may require a sponsor to obtain from the purchaser a letter justifying the suitability of such investment.

D. Minimum Investment. The minimum subscription shall not be less than $2,500 and shall be paid in cash at the time of purchase. Assessments of any kind shall be prohibited.

4 MCAR S 1.2143 Fees, compensation and expenses.

A. Organizational 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 percent of the gross proceeds of the offering.

B. Compensation.

1. Maximum expenses. The aggregate annual expenses of every character paid or incurred by a program, including management and advisory fees based on the net assets of the program but excluding

commodity brokerage commissions, incentive fees, legal, audit and extraordinary expenses, calculated at least quarterly on a basis consistently applied, shall be reasonable but in no event shall exceed one-half of 1 percent of the program's net assets per month; provided a sponsor shall not receive a management fee if he receives any portion of the brokerage commissions under B.3.

The sponsor(s) shall reimburse the program quarterly for the amount by which such aggregate monthly expenses exceed the amounts herein provided, up to an amount not exceeding its management and advisory fees for the period for which reimbrusement is made, prior to publication of the program's quarterly report and shall promptly notify the commissioner if the aggregate expense limitation is exceeded by reason of any extraordinary expenses.

2. Incentive fees. A sponsor or adviser will be entitled to an incentive fee. The total of the incentive fee shall not exceed 15 percent of the net profits of the program, calculated not more often than quarterly on the valuation date, over the highest previous valuation date. For purposes of this calculation, program losses shall be carried forward but shall not be carried back.

3. Brokerage commissions. The program shall seek the best price and services available in its commodity futures brokerage transactions. The program shall not effect any transactions in commodities futures contracts with any clearing broker affiliated directly or indirectly with a sponsor or with any adviser providing the sponsor with research information, recommendations, or other services which might be of value to any sponsor, unless such transactions are effected at competitive brokerage rates. In no event will the program be allowed to enter into any exclusive brokerage

contract. If any person receives any portion of the brokerage commissions from program operations, the adviser may not be affiliated with such person. The commissioner may require the program to file periodic reports concerning all brokerage transactions.

4. Other income. Any interest or other income earned by any portion of the program assets shall accrue solely to the benefit of the program or the management fee shall be reduced by any amount which does not so accrue.

5. Expenses of the program. All expenses of the program shall be billed directly to and paid by the program. Reimbursements (other than for organizational and offering expenses) to any person or affiliate shall not be allowed, except for reimbursement of the actual direct costs to the sponsor or affiliate of legal and audit services used for or by the program. Expenses incurred in connection with administration of the program, including but not limited to salaries, rent, travel expenses and such other items generally falling under the category of overhead, shall not be charged to the program.

4 MCAR S 1.2144 Rights and obligations of participants.

A. Meetings. Meetings of the participants may be called by a sponsor or by participants holding more than 10 percent of the then outstanding units for any matters for which the participants may vote as set forth in a program agreement. Such call for a meeting shall be deemed to have been made upon receipt by a sponsor of a written request from holders of the requisite percentage of units stating the purpose of the meeting. The sponsor shall deposit in the United States Mails within 15 days after receipt of said request, written notice to all participants of the meeting and the purpose of such meeting, which shall be held on a date not less

than 30 nor more than 60 days after the date of mailing of said notice at a reasonable time and place.

B. Voting rights of participants. The program agreement must provide that holders of a majority of the then outstanding units may, without the necessity for concurrence by the sponsor(s), vote to:

1. Amend the program agreement,

2. Dissolve the program,

3. Remove a general partner and elect a new general partner,

4. Elect a new general partner if a general partner elects to withdraw from the program, and

5. Cancel any contract for services with any sponsor or an affiliate without penalty upon 60 days written notice. A general partner shall not withdraw from a partnership without 90 days prior written notice thereof to the participants.

C. Access to program records.

1. The program agreement shall require the maintenance of a list of the names and addresses and interests owned of all participants at the principal office of the program. Such list shall be made available for the review of any participant or his representative at reasonable times, and upon request, either in person or by mail. A participant or his representative shall be furnished a copy of such list upon payment of the cost of reproduction and mailing.

2. The participants and their representatives shall be permitted access to all records of the program, after adequate notice, at any reasonable time. Records shall be maintained and preserved for a period of not less than six years.

D. Annual and periodic reports.

1. The program agreement shall provide for the transmittal to each participant of an annual report, within 120 days after the close of the fiscal year, containing at least the following information:

a. A balance sheet as of the end of its fiscal year and statements of income, participants' equity, and changes in financial position for the year then ended, all of which shall be prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report containing an opinion (without material qualification) of an independent certified public accountant or independent public accountant.

b. A statement showing the total fees, compensation, brokerage commissions and expenses paid by the program, segregated as to type, and stated both in aggregate dollar terms and as a percentage of net assets.

2. Participants shall be furnished with quarterly reports, which may be unaudited, containing the same information required in D.1.a. and D.1.b. within 60 days after the end of the quarter.

3. All participants shall be providec all information necessary for the preparation of the participants' income tax returns by not later than March 15 of each year.

4. The net assets of the program shall be calculated daily and the net asset value per unit shall be made available upon the request of a participant.

4 MCAR S 1.2145 Disclosure and marketing requirements.

A. Minimum program capital. The minimum amount of funds required to activate a program shall be sufficient to accomplish the objectives of the program, including diversification. Any minimum less than $500,000, after deduction of any organizational and offering expenses,

including commissions, will be presumed to be inadequate to diversify. Provision must be made for the return to participants of 100 percent of paid subscriptions in the event that the established minimum to activate the program is not reached. 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.

B. Sales literature. Sales literature, sales presentations (including prepared presentations to prospective participants at group meetings) and advertising used in the offer or sale of program interests shall conform in all applicable respects to the requirements of filing, disclosure and adequacy currently imposed by SDiv 2125 on sales literature, sales presentations and advertising used in the sale of corporate securities.

C. Contents of the prospectus.

1. Information on the cover page. There should be set forth briefly on the cover page, or the following two printed pages of the prospectus, a summary which should include the following: the title and general nature of the program interests being offered; the minimum and maximum aggregate amount of the offering; the minimum and maximum amount of net proceeds; the subscription price; the period of the offering; the maximum amount of any sales or underwriting commissions to be paid (or if none, whether such commissions are to be paid by the sponsor(s)).

2. Sales to appropriate persons. There shall be set forth a description of the type of person who could benefit from the program and the suitability standards to be applied in marketing it.

3. Definitions. Technical terms used in the prospectus should be

defined in a glossary.

4. Risk factors. A participant should be advised in a carefully organized series of short, concise paragraphs, under subcaptions where appropriate, of the risks to be considered before making an investment in a program. The paragraphs should include a cross reference to further information in the prospectus.

5. Business experience. The business experience of the principal officers of all sponsors shall be prominently disclosed in the prospectus. Such disclosure shall indicate their business experience for the past 5 years. Disclosure shall also be made regarding the experience of any commodity trading adviser and any clearing broker who is utilized by the program. The terms of any material contracts entered into by the program shall be summarized in the prospectus.

6. Compensation. All direct and indirect fees and compensation of every type and from every source which may be paid by the program to any person shall be summarized in tabular form in one location in the forepart of the prospectus. A sponsor shall not receive any compensation, direct or indirect, other than that disclosed in the compensation section.

7. Use of proceeds. The prospectus shall state the purposes for which the proceeds of the program are intended to be used and the approximate amount intended to be used for each such purpose.

8. Investment objectives and policies.

a. Describe the investment objectives and policies of the program, indicating which policies may be changed by the sponsor(s) without a vote of the participants.

b. Describe the plan for distribution of income of the program.

9. Prior performance.

a. The previous relevant program experience of any sponsor or adviser shall be disclosed in the propectus for all programs during the past three years which:

(1) Involved a public offering registered under state or federal securities laws;

(2) Involved a private or limited offering.

b. Information on previous programs shall include, but not be limited to, the following:

(1) Identification of the program, including the name and location;

(2) The effective date of the offering, the date it commenced operations and the date of dissolution or termination or, if it is continuing, that fact;

(3) The total amount of units, the gross amount of capital raised by the program, the number of participants, and the dollar amount of investment of the sponsor, if applicable;

(4) Income credited and cash distributed to participants and any sponsor, adviser, or clearing broker;

(5) Compensation and fees to any sponsor, segregated as to type;

(6) Compensation and fees paid to other relevant parties such as advisers and clearing brokers;

(7) The net asset value per unit as of the end of each valuation period previously used;

(8) Such additional or different disclosures of the success or failure of the programs as may be permitted or required by the commissioner.

c. All of the foregoing information shall be set forth on a cumulative basis for each program in tabular form wherever possible and include a brief description of any material differences between a prior program and the program to be offered.

d. The following caveat should be prominently featured in the presentation of the foregoing information: "It should not be assumed that participants in the offering covered by this prospectus will experience returns, if any, comparable to those experienced by participants in prior programs."

e. The foregoing information shall be supported in the application for registration by an affidavit that the performance summary is a fair presentation of the information contained in the audited financial statement or the federal income tax returns of the program or in other reports or data.

10. Conflicts of interest and transactions with affiliates.

a. Any conflicts of interest between the program and any sponsor, adviser, clearing broker or any affiliate thereof, must be fully disclosed. This would include, at a minimum the following:

(1) Any conflicts arising out of involvement with previous programs;

(2) Any conflicts arising out of involvement in the area of activities not related to the management, advising or other services performed for commodity pools;

(3) Any other agreements, arrangement or transactions, proposed or contemplated, that may be a potential conflict of interest;

(4) The sponsor shall also be required to disclose the steps that will be taken to alleviate any real or potential conflict of interest;

(5) If the program pays higher than the minimum commission rates for commodity brokerage transactions, such fact shall be set forth along with a justification.

b. Certain material conflicts of interest are presumed to be sufficient to render the proposed program incapable of accomplishing its stated objectives in the best interest of the participants and shall be controlled as follows:

(1) No loans may be made by the program to any sponsor or any other person;

(2) The funds of a program shall not be commingled with the funds of any other person. Funds used to satisfy margin requirements will not be considered commingling;

(3) No rebates or give ups may be received by any person nor may any person participate in any reciprocal business arrangements which could circumvent these guidelines. Futhermore, the prospectus and program agreement shall contain language prohibiting the above as well as language prohibiting reciprocal business arrangements which would circumvent the restrictions against dealing with affiliates or other interested parties;

(4) The program agreement shall prohibit the commodity trading adviser or any other person acting in such capacity from receiving an advisory fee if they share or participate, directly or indirectly, in any commodity brokerage commissions generated by the program;

(5) The maximum period covered by any contract of the program with any adviser, clearing broker, sponsor or affiliate thereof shall not exceed one year. Any contract must be terminable without penalty upon 60 days written notice by the program, which

provisions shall be set forth in the program agreement;

(6) Any other agreement, arrangement or transactions, proposed or contemplated, may be restricted in the discretion of the commissioner if it would be considered unfair to the participants in the program.

11. Federal tax consequences. The prospectus shall disclose the following tax aspects:

a. Tax treatment of the program;

b. Tax treatment of the participants;

c. Method of allocation of losses or profits and cash distributions;

d. Any other pertinent information applicable to the tax aspects of the investment; and

e. The possibility that the filing of state tax returns will be required in the states in which interests are held.

12. Commodities futures markets. At a minimum, the prospectus should disclose the following characteristics of the commodities markets:

a. That the commodities markets are extremely volatile and the risk of loss is great;

b. The procedures used in trading commodities futures contracts including, but not limited to, the margin requirements on the commodities to be invested in by the program, the exchanges or board of trade on which the program anticipates trading, and a description of the applicable exchange requirements.

13. Licensing and regulation. The prospectus shall disclose any licensing or registration requirements of the program, including those imposed by the Commodity Futures Trading Commission.

14. Prohibitions. The prospectus shall disclose that the program agreement specifically prohibits the following activities:

a. A program shall not engage in pyramiding;

b. A program shall not utilize borrowing;

c. A program shall not enter into an open position during a delivery month;

d. A program shall not permit the investment of its funds deemed "customer's funds" under the Commodity Exchange Act, as amended, in any securities other than as permitted by the Commodity Futures Trading Commission;

e. A program shall not commit more than 15 percent of its equity in the trading account at any time for margin in any one commodity irrespective of the delivery month. For this purpose gold and silver bullion, coins and futures contracts shall be considered one commodity;

f. A program's trading policy shall specifically exclude the purchasing, selling, writing or trading in commodity options or purchasing or selling securities, other than those mentioned in C.14.d.;

g. A program shall not engage in cash commodity transactions unless the cash commodity is fully hedged;

h. A sponsor shall not commit more than two-thirds of the net assets of a program as margin for commodity futures contracts and the balance of such assets shall be retained in cash or cash equivalent to apply as needed for additional margin or for redemption;

i. A sponsor shall not permit the churning of the program's account so as to generate a commission for itself or for the benefit

of any other person.

15. Notification. Each participant shall be notified within seven business days from the date of any decline in the net value per unit to less than 50 percent of the amount on the last valuation date. Included in the notification shall be a description of the participants' voting rights pursuant to 4 MCAR S 1.21438.

16. Material changes. Any material changes in the program's basic investment or trading policies or structure shall require prior written approval by a majority of program interests held by participants. This shall include, specifically, any transfer or withdrawal of any sponsor's required interest in the program.

17. Summary of any limited partnership agreement or other program agreement.

18. Legal proceedings. Briefly describe any legal proceedings to which the program or any person is or was a party which is material to the program and any material legal proceedings between any sponsor and participants in any prior program of the sponsor.

19. Financial information required on application. A sponsor and the program shall provide as an exhibit to the application for registration or where indicated below shall provide as part of the prospectus, the following financial information and financial statements:

a. Balance sheet of the program. As part of the prospectus, a balance sheet of the program as of the end of its most recent fiscal year, prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report without material qualification by an independent certified public accountant or an independent public accountant, and an unaudited balance sheet as of a

date not more than 90 days prior to the date of filing;

b. Balance sheet of a sponsor.

(1) Corporate Sponsor. A balance sheet of a corporate sponsor as of the end of its most recent fiscal year, prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report without material qualification by an independent certified public accountant or an independent public accountant and an unaudited balance sheet as of a date not more than 90 days prior to the date of filing. Such statements shall be included in a prospectus,

(2) Individual Sponsor. A balance sheet for each individual sponsor as of a time not more than 90 days prior to the date of filing an application; such balance sheet may be audited and should conform to generally accepted accounting principles and shall be signed and sworn to by such sponsor. A representation of the amount of such net worth must be included in the prospectus;

c. Statement of income for corporate sponsor. A statement of income for the last fiscal year of a corporate sponsor (or for the life of a corporate sponsor, if less) prepared in accordance with generally accepted accounting principles and accompanied by an auditor's report without material qualification by an independent certified public accountant or independent public accountant, and an unaudited statement for any interim period ending not more than 90 days prior to the date of filing ar application.

4 MCAR S 1.2146 Miscellaneous provisions.

A. Fiduciary duty. The program agreement shall provide that the sponsor(s) shall have fiduciary responsibility for the safekeeping and use of all funds and assets of the program, whether or not in its

immediate possession or control, and that it shall not employ, or permit another to employ, such funds or assets in any manner except for the exclusive benefit of the program.

B. Redemptions. The program shall provide an opportunity at least quarterly for the redemption of program interests at the net asset value as of the valuation dates upon the written request of any participant. The participant must notify a sponsor of his intent to redeem at least 30 days prior to the redemption date. The prospectus and program agreement must indicate the valuation dates for redemption. Such requests must be honored within 30 days following the valuation date, unless the quantity of redemptions would be detrimental to the tax status of the program. In that case, redemptions may be selected by lot, and participants notified within 30 days whether or not their program interests were redeemed. The program agreement may provide for the suspension of redemptions if the effect of substantial redemptions would impair the ability of the program to operate in pursuit of its objectives.

4 MCAR SS 1.2147-1.2149 Reserved for future use.

4 MCAR S 1.2150 Waiver.

A. The requirements of subchapters 4, 5, 6, 7, and 8 may be waived by the commissioner upon proof of substantial compliance with rules, statements of policy or guidelines of national or regional securities regulatory organizations composed of securities administrators of this and other states.

B. Any such waiver shall be based upon a determination by the commissioner that compliance with such rules, statements of policy or guidelines is:

1. consistent with the purposes fairly intended by the policy and provisions of Minn. Stat. SS 80A.01 to 80A.31 (1978), as amended,

2. appropriate for the protection of investors, and

3. promotive of uniformity of regulation.

4 MCAR S 1.2151 A diamond, ruby, emerald, or sapphire constitutes an "investment gem" pursuant to Minn. Stat. S 80A.14(j) (1978), as amended.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
SECURITIES AND REAL ESTATE DIVISION

In the Matter of the Proposed Adoption, Repeal and Amendment of Rules and Forms of the State Department of Commerce, Securities and Real Estate Division Governing Minnesota Statutes, Chapter 80A (Regulation of Securities)

ORDER ADOPTING RULES

Notice of the Commissioner's intent to adopt the above-entitled rules without a public hearing was published in the State Register on December 8, 1980 and was sent by the United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes section 15.0412, subdivision 4 on December 5, 1980. After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving no written requests for a public hearing within the 30-day comment period, reviewing and considering the comments, and determining the need for and reasonableness of the above-captioned rules,

NOW, THEREFORE, IT IS ORDERED that the rules as published in 5 State Register 915 - 934, and as modified by the Findings of Fact and Conclusions filed herewith, are hereby adopted this 14th day of January, 1981 pursuant to authority vested in me by Minnesota Statutes section 80A.25.

STATE OF MINNESOTA

Mary Alice Brophy

MARY ALICE BROPHY
COMMISSIONER OF SECURITIES AND REAL ESTATE

Notice of Rulemaking

STATE OF MINNESOTA

Banking Division
(612) 296-2135

Securities and Real Estate Division
(612) 296-2594

Insurance Division
(612) 296-2488

Administrative Services Division
(612) 296-2283

DEPARTMENT OF COMMERCE

500 Metro Square Building
St. Paul, Minnesota 55101

December 5, 1980

Dear Sir/Madam:

Attached, pursuant to your request to be notified of changes to the rules of this agency, is a copy of the "Notice of Intent to Adopt, Repeal and Amend Rules and Forms relating to the Minnesota Securities Act, without a Public Hearing," which notice also appears in Volume 5, Number 23 (December 8, 1980), of the State Register (commencing at page 915). Immediately following the notice in the State Register (commencing at page 916) are the rules as proposed.

Sincerely,

MARY ALICE BROPHY
Commissioner of Securities and Real Estate

By: Daniel W. Hardy

DANIEL W. HARDY
Assistant to the Commissioner
(612) 296-5689

MAB:DWH:bp

DEPARTMENT OF COMMERCE
SECURITIES AND REAL ESTATE DIVISION

Notice of Intent to Adopt, Repeal and Amend Rules and Forms Relating to the Minnesota Securities Act, Without a Public Hearing

Notice is hereby given that, pursuant to her authority under Minn. Stat. § 80A.25 (1978), the Commissioner of Securities and Real Estate intends to adopt, repeal and amend rules and forms relating to the Minnesota Securities Act (Minn. Stat. ch. 80A). The Commissioner desires that the proposed rules and forms be adopted, repealed and amended without a public hearing in accordance with Minn. Stat. § 15.0412 (1978), as amended by Laws 1980, ch. 615, § 7.

A free copy of the proposed rules and material relating to the proposed forms may be obtained from the Commissioner's office. Those interested in submitting comment pertaining to the proposed rules and forms may do so within 30 days of the publication of this notice in the State Register. Additionally, if during the 30-day comment period, seven or more persons make a written request for a hearing on the proposed rules and forms, the Commissioner will hold a public hearing in accordance with Minn. Stat. § 15.0412, subd. 4 (1978), as amended by Laws 1980, ch. 615, § 6. A request for a copy of the proposed rules and/or material relating to the proposed forms, all comments, any requests for a hearing and all questions regarding the proposed rules and forms, should be directed to:

Mr. Daniel W. Hardy
Assistant to the Commissioner
Securities and Real Estate Division
Department of Commerce
500 Metro Square Building
Saint Paul, Minnesota 55101
Telephone: (612) 296-5689

The proposed rules and forms may be modified by the Commissioner if the modifications are supported by the data and views submitted during the 30-day comment period, provided the modifications do not result in substantial change.

The Commissioner has prepared a Statement of Need and Reasonableness which contains a summary of the evidence justifying both the need for, and the reasonableness of, the proposed rules and forms. The Statement of Need and Reasonableness is available for inspection by the public, during regular business hours, at the above address.

If no hearing is required, the Commissioner will submit to the Attorney General the proposed rules and forms and notice as published in the State Register, the rules and forms as proposed for adoption, any written comments received by the Commissioner during the 30-day comment period, and the Statement of Need and Reasonableness for the rules and forms. On the same day these materials are submitted to the Attorney General, the Commissioner will notify any person who has requested that the Commissioner inform him or her of when these materials have been submitted to the Attorney General. Any person wishing to be so notified should contact Mr. Hardy, at the address listed above.

A copy of the existing Securities and Real Estate Division rules may be obtained from the Department of Administration, Documents Division, 117 University Avenue, Saint Paul, Minnesota 55155, (612) 296-2874.

Finally, Minn. Stat. ch. 10A (1978), as amended, requires each lobbyist to register with the state Ethical Practices Board within five days after he or she commences lobbying. A lobbyist is defined in Minn. Stat. § 10A.01, subd. 11 (1979 Supp.) as any individual:

> (a) Engaged for pay or other consideration, or authorized by another individual or association to spend money, who spends more than five hours in any month or more than $250, not including his own travel expenses and membership dues, in any year, for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials; or
>
> (b) Who spends more then $250, not including his own traveling expenses and membership dues, in any year for the purpose of attempting to influence legislative or administrative action by communicating or urging others to communicate with public officials.

The statute provides certain exceptions. Questions should be directed to the Ethical Practices Board, 41 State Office Building, Saint Paul, Minnesota 55155, telephone: (612) 296-5615.

Dated: November 20, 1980

Mary Alice Brophy
MARY ALICE BROPHY
Commissioner of Securities
and Real Estate

In the Matter of the Proposed Adoption, Repeal and Amendment of Rules and Forms of the State Department of Commerce, Securities and Real Estate Division Governing Minnesota Statutes, Chapter 80A (Regulation of Securities)

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Daniel W. Hardy, being first duly sworn, deposes and says:

That on the 5th day of December, 1980, at the City of St. Paul, County of Ramsey, State of Minnesota he served the attached Notice of Intent to Adopt Rules Without Public Hearing by depositing in the State of Minnesota Central Mail System for first class mailing (or) in the United States mail at said City of St. Paul, a copy thereof, properly enveloped, with postage prepaid, on all persons and associations who have requested that their names be placed on file with the State Department of Commerce for the purpose of receiving notice of the proposed adoption of rules by this agency.

Daniel W. Hardy

DANIEL W. HARDY
Assistant to the Commissioner

Subscribed and sworn to before me this 14th day of January, 1981.

Carol T. Groppoli

Notary Public

CAROL T. GROPPOLI
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
My Comm. Expires Jun.23, 1987

STATE OF MINNESOTA

COUNTY OF RAMSEY

CERTIFICATE

In the Matter of the Proposed Adoption, Repeal and Amendment of Rules and Forms of the State Department of Commerce, Securities and Real Estate Division Governing Minnesota Statutes, Chapter 80A (Regulation of Securities)

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant, to Minn. Stat. § 15.0412, subd. 4, that their names be placed on file with and maintained by the State Department of Commerce for the purpose of receiving notice of the proposed adoption of rules by this agency is accurate and complete as of 12:00 noon the 5th day of December, 1980.

Daniel W. Hardy

DANIEL W. HARDY
Assistant to the Commissioner

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
SECURITIES AND REAL ESTATE DIVISION

In the Matter of the Proposed Adoption, Repeal and Amendment of Rules and Forms of the State Department of Commerce, Securities and Real Estate Division Governing Minnesota Statutes, Chapter 80A (Regulation of Securities)

Written comments relating to the adoption, repeal and amendment of the above-referenced rules and forms were received, during the 30-day comment period, from Mr. John P. Flaten and Mr. Roger H. Frommelt (copies of which are attached hereto).

No further written comments were received by the agency during the 30-day comment period.

STATE OF MINNESOTA

Mary Alice Brophy

MARY ALICE BROPHY
Commissioner of Securities and Real Estate

Dated: January 14, 1981