

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

Our File No. 401

RULE REVIEW CHECKLIST

DATE RULE RECEIVED 9-29-83
DATE FOR REVIEW 10-10-83
DATE DUE 10-13-83

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

Approved _____ Disapproved _____ Returned to Agency _____

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

Date filed w/Secretary of State _____ Revisor approved 9/30/83 disapproved _____

✓ Rule as Adopted

✓ Rule as Proposed

✓ Order Adopting 8.29.83 Date

✓ Notice of Intent to Solicit Outside Opinion SR 1.17.83

✓ Order for rulemaking
N/A date of Hearing

N/A Certificate of Board's Authorizing Resolution

✓ Notice of rulemaking
✓ Sufficiency O.K. after correct of error by errata notice

✓ Affidavit of Mailing Notice or rulemaking
✓ 2.11.83 At least 30 days prior to ~~hearing~~/adoption
2.25.83 errata notice

✓ Mailing list Certificate

✓ Publication in State Register
✓ 2.14.83 At least 30/~~20~~ days prior to ~~hearing~~/adoption
2.28.83 errata notice

N/A Hearing Examiner's Report

↓ 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

↓ Certificate of Board's Resolution Adopting Rules

↓ Order Approving Incorporation by Reference

✓ Statement of Need and Reasonableness Very brief

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

three versions of this document are supplied. None correspond to date this rule was submitted to A.G.

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO : PAUL MARINAC
Assistant Revisor

DATE: 10/28/83

FROM : LARRY D. STARNS
Special Assistant
Attorney General

PHONE: 297-3493

SUBJECT: Final Draft of Amendment to Rules 5Div 2117 and 5Div 2118

Attached is the signed copy of the above-referenced rule. Please forgive the oversight on my part.

LDS/ls
enc.
cc: Richard G. Gomsrud

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT of Commerce

Office Memorandum

TO: Larry Starns
Attorney General's Office

DATE: 10/20/83

FROM: Richard G. Gomsrud
General Counsel

PHONE:

SUBJECT: Revisor's Office Form

Dear Larry:

Thank you for your assistance in regard to our rules. I am enclosing a copy of the Revisor's Office form which I have been advised you had previously received. In any case, it is my understanding that they would like you to make your notation of acceptance on this form not the one with my hand printed corrections. If there are any problems, please advise.

dd
Enc.

SF-00006-03

STATE OF MINNESOTA

DEPARTMENT of Commerce

Office Memorandum

TO: LARRY STARNS
Attorney General's Office

DATE: 9/29/83

FROM: Richard G. Gomsrud
Staff Attorney

PHONE: 296-5689

SUBJECT:

Dear Larry, enclosed please find a working copy of the rule as I have amended it. The amendments are made pursuant to our previous discussions and I would hope that the Revisor's office would have a final copy to you shortly. In the interim I am enclosing the following for your review:

(1) one copy of the rule which reflects the changes made since the publication in the State Register;

(2) an original and three copies of the Order adopting the rule;

(3) a Notice of Intent to Solicit Outside Opinion and the material received in regard to the same;

(4) an order or notice of intent to adopt the rule without public hearing;

(5) an affidavit of mailing notice of intent to adopt the rule without public hearing;

(6) the mailing list certicate;

(7) the rule as proposed;

(8) Findings of Fact and Conclusions;

(9) Statement of Need and Reasonableness; and

(10) the affidavit of mailing notice of submission to the Attorney General.

The original 3 copies of the Rule as Adopted should be forthcoming from the Revisor's office very soon to complete the required document.

I believe the foregoing covers all of the items required to be submitted to you. I presume you will prepare and execute the certificate of compliance. If you have any problems about this at all, I would appreciate hearing about it immediately and I also would appreciate it if anything can be done to make this approval as speedy as possible and this matter submitted to the Revisor at the earliest possible time. If you will be unable to accomplish this within the next week, I'd appreciate hearing from you in that regard.

RGG:dd
Enc.

Please call me to confirm acceptance or any problems RGG - This is somewhat of a rush

SF-00006-02

STATE OF MINNESOTA

DEPARTMENT ATTORNEY GENERAL

Office Memorandum

TO: Michael A. Hatch, Commissioner

DATE: 10/13/83

Attn: RICHARD G. GOMSRUD
Staff Attorney

FROM: LARRY D. STARNS
Special Assistant
Attorney General

LDS

PHONE: 297-3493

SUBJECT: In the Matter of the Proposed Amendment of Rules SDiv 2117 and SDiv 2118 of the Securities and Real Estate Division, Which Rules Implement and Interpret the Provisions of Minn. Stat. § 80A.15, Subd. 2(g) and 2(h) (1982) Governing Exempt Transactions; Correcting a Cross Reference in Rule SDiv 2021 (c) (4) and Clarifying Rule SDiv 2034(a).

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. Please 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 stamps of the Attorney General and Secretary of State;

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

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

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

Encs.
LDS/1
cc: Ms. Kathy Burek
Mr. Duane Harves

Department of Commerce

Securities and Real Estate Division

Adopted Amendment of Rules SDiv 2117 and SDiv 2118 which Implement and Interpret the Provisions of Minn. Stat. S 80A.15, subdivisions 2(g), and 2(h) Governing Exempt Transactions; Correcting a Cross Reference in Rule SDiv 2021(c)(4) and Clarifying Rule SDiv 2034(a)

Rules as Adopted

SDiv 2021.

(a) and (b) [Unchanged.]

(c) (1)-(3) [Unchanged.]

(4) When~~,-upon-proposal-of-merger-and-consolidation-or other-organic-change~~, a depositor exercised his rights under Minnesota Statutes, section 302A.471, or until January 1, 1984, under Minnesota Statutes, sections 301.44 or 310.40, if, in the opinion of the commissioner, the proposed manner of sale of the escrowed shares does not tend to work fraud or inequity on other shareholders, present or proposed.

SDiv 2034 Commissions and Expenses.

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

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

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

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

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

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

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

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

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

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

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

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

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

(ff) REITS.....10%

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

(b) and (c) [Unchanged.]

SDiv 2117.

Clarification of the term "financial institution or institutional buyer." The term "financial institution or institutional buyer" contained in Minnesota Statutes, section 80A.15, subdivision 2, clause (g), includes but is not limited to: (1) a corporation with a class of equity securities registered under Section 12(g) of the Securities Exchange Act of 1934, as amended, and (2) a person who is an "accredited investor" within the meaning of rule 501(a) adopted by the Securities Exchange Commission in Federal Register, volume 47, page 11262, to be codified as Code of Federal Regulations, title 17, section 230.501 (a).

SDiv 2118.

(a) [Unchanged.]

(b) The limitation of 25 purchasers, other than those designated in (g), contained in Minnesota Statutes, section 80A.15, subdivision 2, clause (h) is waived in connection with any distribution resulting in sales to not more than 35 persons in this state, other than those designated in Minnesota Statutes, section 80A.15, subdivision 2, paragraph (g), in connection with any offering being made in compliance with rule 506 adopted by the Securities and Exchange Commission in Federal Register, volume 47, page 11266, to be codified as Code of Federal Regulations, title 17, section 230.506 or rules adopted under section 3(b) of the Securities Act of 1933, other than an exempt offering under Regulation A, if the offering is in compliance with these rules.

(c) The exemption contained in Minnesota Statutes, section 80A.15, subdivision 2, clause (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 the security is sold in compliance with rule 506 adopted by the Securities and Exchange Commission in Federal Register, volume 47, page 11266, to be codified as Code of Federal Regulations, title 17, section 230.506.

(d) The exemption contained in Minnesota Statutes, section 80A.15, subdivision 2, clause (h) is withdrawn for any security representing an interest in, or ~~formed~~ issued 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 506 adopted by the Securities and Exchange Commission in Federal Register, volume 47, page 11266, to be codified as Code of Federal Regulations, title 17, section 230.506.

(e)-(k) [Unchanged.]

(l) The following factors should be considered in determining whether offers and sales should be integrated for purposes of the exemptions contained in Minnesota Statutes, section 80A.15, subdivision 2, clause (h) and SDiv 2118; whether:

(1) the sales are part of the single plan of financing;

(2) the sales involve issuance of the same class of securities;

(3) the sales have been made at or about the same time;

(4) the same type of consideration is received; and

(5) the sales are made for the same general purposes.

AG copy

Department of Commerce

Securities and Real Estate Division

Adopted Amendment of Rules SDiv 2117 and SDiv 2118 which Implement and Interpret the Provisions of Minn. Stat. S 80A.15, subdivisions 2(g), and 2(h) Governing Exempt Transactions; Correcting a Cross Reference in Rule SDiv 2021(c)(4) and Clarifying Rule SDiv 2034(a)

Rules as Adopted

SDiv 2021.

(a) and (b) [Unchanged.]

(c) (1)-(3) [Unchanged.]

(4) When, ~~upon proposal of merger and consolidation or other organic change~~, a depositor exercised his rights under Minnesota Statutes, section 302A.471, or, until January 1, 1984, under Minnesota Statutes § 301.44 or Minnesota Statutes § 310.40, if, in the opinion of the commissioner, the proposed manner of sale of the escrowed shares does not tend to work fraud or inequity on other shareholders, present or proposed.

SDiv 2034 Commissions and Expenses.

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

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

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

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

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

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

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

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

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

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

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

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

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

(ff) REITS.....10%

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

(b) and (c) [Unchanged.]

SDiv 2117.

Clarification of the term "financial institution or

institutional buyer." The term "financial institution or institutional buyer" contained in Minnesota Statutes, section 80A.15, subdivision 2, clause (g), includes but is not limited to: (1) a corporation with a class of equity securities registered under Section 12(g) of the Securities Exchange Act of 1934, as amended, and (2) a person who is an "accredited investor" within the meaning of Rule 501(a) adopted by the Securities Exchange Commission in Federal Register, volume 47, page 11262, to be codified as Code of Federal Regulations, title 17, section 230.501 (a).

SDiv 2118.

(a) [Unchanged.]

(b) The limitation of 25 purchasers (other than those designated in clause g) contained in Minnesota Statutes, section 80A.15, subdivision 2, clause (h) is waived in connection with any distribution resulting in sales to not more than 35 persons in this state (other than those designated in Minnesota Statutes, section 80A.15, subdivision 2, clause g) in connection with any offering being made in compliance with rule 506 adopted by the Securities and Exchange Commission in Federal Register, volume 47, page 11266, to be codified as Code of Federal Regulations, title 17, section 230.506 or rules adopted under section 3(b) of the Securities Act of 1933, (other than an exempt offering under Regulation A) if the offering is in compliance with these rules.

(c) The exemption contained in Minnesota Statutes, section 80A.15, subdivision 2, clause (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 the security is sold in compliance with rule 506 adopted by the Securities and Exchange Commission in Federal Register, volume 47, page 11266, to be codified as Code of Federal Regulations, title 17, section 230.506.

(d) The exemption contained in Minnesota Statutes, section 80A.15, subdivision 2, clause (h) is withdrawn for any security representing an interest in, or ~~formed~~ issued 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 506 adopted by the Securities and Exchange

Commission in Federal Register, volume 47, page 11266, to be codified as Code of Federal Regulations, title 17, section 230.506.

(e)-(k) [Unchanged.]

(l) The following factors should be considered in determining whether offers and sales should be integrated for purposes of the exemptions contained in Minnesota Statutes, section 80A.15, subdivision 2, clause (h) and SDiv 2118; whether:

(1) the sales are part of the single plan of financing;

(2) the sales involve issuance of the same class of securities;

(3) the sales have been made at or about the same time;

(4) the same type of consideration is received; and

(5) the sales are made for the same general purposes.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
OCT 1 4 1983
Joan Anderson Growe
Secretary of State

3:50
P.M.

October 13, 1983

JOSEPH E. FOY, III
ASSISTANT ATTORNEY GENERAL

BY: Joseph E. Foy, III
SPECIAL ASSISTANT ATTORNEY GENERAL

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Amendment of Rules SDiv 2117and SDiv 2118 of the Securities and Real Estate Division, Which Rules Implement and Interpret the Provisions of Minn. Stat. § 80A.15, Subdivisions 2(g) and 2(h) (1982) Governing Exempt Transactions; Correcting a Cross Reference in Rule SDiv 2021(c)(4) and Clarifying Rule SDiv 2034(a)

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 February 14, 1983 at 7 S.R. 1170 and proper notice as required by Minnesota Statute § 14.22 was served upon all persons, associations, and other interested groups registered with the State Department of Commerce for that purpose.

After affording interested and affected persons an opportunity to submit comments for 30 days after Notice, receiving fewer than seven written requests for a public hearing within the 30 day comment period, reviewing and considering the comments, making reasonable and non-substantive changes in the rules as published due to comments received and determining the need and reasonableness of the above captioned rules.

NOW, THEREFORE, IT IS ORDERED that the rules published at 7 State Register 1170 and as modified as set forth in the attached copy of said rules is hereby adopted this 29th day of August, 1983 pursuant to the authority vested in me by Minnesota Statutes section 80A.25.

Dated: August 29, 1983

MICHAEL A. HATCH
Commissioner of Commerce
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101
Telephone: (612) 296-2594

All statements of information and comment shall be accepted until February 16, 1983. Any written material received by the State of Minnesota shall become part of the record in the event that the rules are promulgated.

Sandra J. Hale
Commissioner of Administration

Department of Commerce

Notice of Intent to Solicit Outside Opinion Concerning Amendments to Rules Exempting Certain Transactions from the Registration Provisions of the Minnesota Securities Act (Minn. Stat. Ch. 80A)

Notice is hereby given that the Securities and Real Estate Division of the Minnesota Department of Commerce has begun to consider amendments to rules SDiv 2117 and SDiv 2118, which interpret and implement the provisions of Minn. Stat. § 80A.15, subdivisions 2(g) and 2(h) regarding exemptions from registration for offers and sales to certain individuals and entities as well as for sales made pursuant to private placements.

The intent of any proposed rules is to achieve substantial uniformity with Securities and Exchange Commission regulation D (17 C.F.R. Sections 230.501 to 230.506) governing private placements.

In order to adequately determine the nature and utility of such rules, the Securities and Real Estate Division hereby requests information and comments from all interested individuals or groups concerning the subject matter of the proposed amendments to the rules.

All interested or affected persons or groups are requested to participate. Statements of information and comment may be made orally or in writing by contacting:

Daniel W. Hardy
Assistant to the Commissioner
Securities and Real Estate Division
500 Metro Square Building
St. Paul, Minnesota 55101
phone (612) 296-5689

State Board of Education
Department of Education
Instruction Division

Notice of Intent to Solicit Outside Opinions Regarding Proposed Changes in the Rule Governing Administration of the General Educational Development Testing Program and Issuance of Equivalency Certificates

Notice is hereby given that the State Department of Education is seeking information and opinions from outside the agency in preparing to promulgate a new rule governing the General Educational Development Testing Program, and issuance of Equivalency Certificates.

The promulgation of this rule is authorized by Minnesota Statutes § 121.11, subd. 12, which requires the State Board of Education to make and enforce such rules and regulations as may be appropriate for administration and enforcement thereof.

The State Department of Education requests information and comments concerning the subject matter of this rule. Interested or affected persons or groups may submit statements of information or comments orally or in writing. Written statements should be addressed to:

Donald A. Peterson, Administrator
G.E.D. Testing Program
Minnesota Department of Education
641 Capitol Square Building
St. Paul, MN 55101

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
SECURITIES AND REAL ESTATE DIVISION

In the Matter of the Proposed Amendment of Rules SDiv 2117 and SDiv 2118 of the Securities and Real Estate Division, Which Rules Implement and Interpret the Provisions of Minn. Stat. §80A.15, Subdivisions 2(g) and 2(h) Governing Exempt Transactions; Correcting a Cross Reference in Rule SDiv 2021(c)(4) and Clarifying Rule SDiv 2034(a)

ORDER FOR NOTICE OF INTENT TO AMEND RULES WITHOUT A PUBLIC HEARING

IT IS ORDERED this 27th day of January 1983 that Notice of Intent to Amend Rules Without A Public Hearing in the above-entitled matter be given to all persons who have registered their names with the State Department of Commerce, Securities and Real Estate Division for that purpose and be published in the State Register.

STATE OF MINNESOTA
Department of Commerce
Securities and Real Estate Division

MICHAEL A. HATCH
Commissioner of Securities and Real Estate

Sent to S.R.
2/22/83
DAH

Published 2/28/83
in S.R.

ERRATA

The Notice of Intent to Amend Rules without a Public Hearing which was published by the Securities and Real Estate Division of the Department of Commerce on February 14, 1983 at 7S.R. 1170 should be amended to correct a typographical error in the third paragraph.

The first sentence of that paragraph should read: "Unless seven or more persons submit written requests for a public hearing on the proposed amendments within the 30-day comment period, a public hearing will not be held."

The 30-day comment period shall commence February 29, 1983.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
SECURITIES AND REAL ESTATE DIVISION

In the Matter of the Proposed Amendment of Rules SDiv 2117 and SDiv 2118 of the Securities and Real Estate Division, Which Rules Implement and Interpret the Provisions of Minn. Stat. §80A.15, Subdivisions 2(g) and 2(h) Governing Exempt Transactions; Correcting a Cross Reference in Rule SDiv 2021(c)(4) and Clarifying Rule SDiv 2034(a)

NOTICE OF INTENT TO AMEND RULES WITHOUT A PUBLIC HEARING

Notice is hereby given that the Securities and Real Estate Division proposes to amend the above-entitled rules without a public hearing. The Commissioner has determined that the proposed amendment of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes sections 14.21 to 14.28 (1982).

Persons interested in these amendments shall have 30 days to submit comments on the proposed amendments. The proposed amendments may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed amendments within the 30-day comment period, a public hearing will be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes sections 14.13 to 14.20 (1982).

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Daniel W. Hardy
Assistant to the Commissioner
Securities and Real Estate Division
500 Metro Square Building
St. Paul, Minnesota 55101
phone (612) 296-5689

Authority for the adoption of these rules is contained in Minnesota Statutes section 80A.25. Additionally, a Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Mr. Hardy upon request.

Upon adoption of the final rules without a public hearing, the proposed amendments, this Notice, the Statement of Need and Reasonableness, all written comments received, and the final Rules as Adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Mr. Hardy.

A copy of the proposed rules is attached to this Notice.

Copies of this Notice and the proposed rules are available and may be obtained by contacting Mr. Hardy.

State of Minnesota
Department of Commerce
Securities and Real Estate Division

MICHAEL A. HATCH
Commissioner of Securities and Real Estate

Date: January 27, 1983

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
SECURITIES AND REAL ESTATE DIVISION

In the Matter of the Proposed Amendment of Rules SDiv 2117 and SDiv 2118 of the Securities and Real Estate Division, Which Rules Implement and Interpret the Provisions of Minn. Stat. § 80A.15, Subdivisions 2(g) and 2(h) Governing Exempt Transactions; Correcting a Cross Reference in Rule SDiv 2021(c)(4) and Clarifying Rule SDiv 2034(a)

NOTICE OF INTENT TO AMEND RULES WITHOUT A PUBLIC HEARING

ERRATA

The Notice of Intent to Amend Rules without a Public Hearing in the above matter, which notice was published by the Securities and Real Estate Division of the Minnesota Department of Commerce on February 14, 1983 at 7 State Register 1170, should be amended to correct a typographical error in the third paragraph. A copy of this notice and a copy of the proposed amendments were mailed to you on February 11, 1983.

The first sentence of the third paragraph should read: "Unless seven or more persons submit written requests for a public hearing on the proposed amendments within the 30-day comment period, a public hearing will not be held."

The 30-day comment period shall commence February 29, 1983.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
SECURITIES AND REAL ESTATE DIVISION

In the Matter of the Proposed Amendment of Rules SDiv 2117 and SDiv 2118 of the Securities and Real Estate Division, Which Rules Implement and Interpret the Provisions of Minn. Stat. §80A.15, Subdivisions 2(g) and 2(h) Governing Exempt Transactions; Correcting a Cross Reference in Rule SDiv 2021(c)(4) and Clarifying Rule SDiv 2034

AFFIDAVIT OF MAILING

STATE OF MINNESOTA)
) ss.
COUNTY OF RAMSEY)

Daniel W. Hardy, being first duly sworn, deposes and says:

That on the twenty-fifth day of February, 1983, at the City of St. Paul, County of Ramsey, State of Minnesota, he served the attached errata notice by depositing in the State of Minnesota Central Mailing System for first class mailing 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 of Securities and Real Estate
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

Subscribed and sworn to before me this 25th day of February, 1983.

Samuel F. Johnson

SAMUEL F. JOHNSON
NOTARY PUBLIC—MINNESOTA
HENNEPIN COUNTY
My Commission Expires Sept. 29, 1985

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
SECURITIES AND REAL ESTATE DIVISION

CERTIFICATE

In the Matter of the Proposed Amendment of Rules SDiv 2117 and SDiv 2118 of the Securities and Real Estate Division, Which Rules Implement and Interpret the Provisions of Minn. Stat. §80A.15, Subdivisions 2(g) and 2(h) Governing Exempt Transactions; Correcting a Cross Reference in Rule SDiv 2021(c)(4) and Clarifying Rule SDiv 2034(a)

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minn. Stat. §14.22, subdivision 1, 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 4:00 p.m., this 11th day of February, 1983.

DANIEL W. HARDY
Assistant to the Commissioner of Securitie
and Real Estate
Department of Commerce
500 Metro Square Building
St. Paul, Minnesota 55101

General - Mailing

Kathleen P. Burek
Exec. Dir. LCRAR
Rm. 430, State Office Bldg.
St. Paul, Mn. 55155

Jean Dawson
Minn. Government Report
B-12 Press Room, State Capitol
St. Paul, Mn. 55155

Michael D. Johnson
Frundt, Frundt, & Johnson
117 W. 5th St.
Blue Earth, Mn. 56013

Peter S. Popovich
Peterson, Popovich, Knutson & Flynn
345 Cedar Bldg., Suite 800
St. Paul, Mn. 55101

State Bond and Mortgage Co.
David A. Peterson
100 No. Minn. St.
New Ulm, Mn. 56073

Charles A. Schaffer
Dept. of Energy Planning & Develop.
480 Cedar St.
St. Paul, Mn.

Conrad M. Fredin
811 First National Bank Bldg.
Duluth, Mn. 55802

B. J. Barto, Plant Mgr.
Midland Glass Co. Inc.
P O Box 69
Shakopee, Mn 55379

Sam Ruhle
Office of Admin. Hearings
400 Summit Bank Bldg. 310 4th Ave. S.
Minneapolis, Mn. 55415

John S. Jackson
General Counsel -
Minn. Bankers Assn.
332 Baker Bldg.
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Ltr 2/11/83

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214 Northwest 2nd St.
*** Pipestone, Mn. 56164

M. Anne 2/8/83
Pkt 2/11/83 4:00 P.M.

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* Blue Sky Statutes & Regulations
** Uniform Conveyancing Blanks only
*** Real Estate Rules only.

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 20 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Commerce
Securities and Real Estate Division

Proposed Amendment of Rules SDiv 2117 and SDiv 2118 which Implement and Interpret the Provisions of Minn. Stat. § 80A.15, subdivisions 2(g), and 2(h) Governing Exempt Transactions; Correcting a Cross Reference in Rule SDiv 2021(c)(4) and Clarifying Rule SDiv 2034(a)

Notice of Intent to Amend Rules without a Public Hearing

Notice is hereby given that the Securities and Real Estate Division proposes to amend the above-entitled rules without a public hearing. The commissioner has determined that the proposed amendment of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes sections 14.21 to 14.28 (1982).

Persons interested in these amendments shall have 30 days to submit comments on the proposed amendments. The proposed amendments may be modified if the modifications are supported by the data and views submitted to the agency and do not result in a substantial change in the proposed language.

Unless seven or more persons submit written requests for a public hearing on the proposed amendments within the 30-day comment period, a public hearing will be held. In the event a public hearing is required, the agency will proceed according to the provisions of Minnesota Statutes sections 14.15 to 14.20 (1982).

Persons who wish to submit comments or a written request for a public hearing should submit such comments or request to:

Daniel W. Hardy
Assistant to the Commissioner
Securities and Real Estate Division
500 Metro Square Building
St. Paul, Minnesota 55101
Phone (612) 296-5689

Authority for the adoption of these rules is contained in Minnesota Statutes section 80A.25. Additionally, a statement of need and reasonableness that describes the need for and reasonableness of each provision of the proposed rules and identifies the data and information relied upon to support the proposed rules has been prepared and is available from Mr. Hardy upon request.

Upon adoption of the final rules without a public hearing, the proposed amendments, this notice, the statement of need and reasonableness, all written comments received, and the final rules as adopted will be delivered to the Attorney General for review as to form and legality, including the issue of substantial change. Persons who wish to be advised of the submission of this material to the Attorney General, or who wish to receive a copy of the final rules as proposed for adoption, should submit a written statement of such request to Mr. Hardy.

A copy of the proposed rules follows this notice.

Copies of this notice and the proposed rules are available and may be obtained by contacting Mr. Hardy.

January 27, 1983

Michael A. Hatch
Commissioner of Securities and Real Estate
Department of Commerce

Rules as Proposed

SDiv 2021.

(a) and (b) [Unchanged.]

(c) (1)-(3) [Unchanged.]

(4) When, upon proposal of merger and consolidation or other organic change, a depositor exercised his rights under ~~Minnesota Statutes, Sec. 301.40 (1971)~~ or Minnesota Statutes, ~~Sec. 301.44 (1971)~~ section 302A.471, ~~provided that~~ if, in the opinion of the commissioner, the proposed manner of sale of the escrowed shares does not tend to work fraud or inequity on other shareholders, present or proposed.

SDiv 2034 Commissions and Expenses.

(a) Selling expenses in connection with an offering of securities (whether such offering is sold entirely or partially within Minnesota) shall include underwriting discounts or commissions; the value of options or warrants excluding overallotment options to acquire securities granted or proposed to be granted in connection with the offering to an underwriter, or its partners, officers, directors or shareholders, or otherwise as such underwriter may lawfully direct; finder's fees paid or to be paid in connection with the offering, whether such fees are paid by the issuer or an affiliate of the issuer; the value of the difference between the fair value at the time of issuance and the price paid for securities of the issuer issued within two years prior to the offering or proposed to be issued to an underwriter or any of its partners, officers, directors or shareholders, to the extent such sales or issuances may be deemed by the Commissioner to have been in lieu of commissions, or material in the selection of an underwriter by the issuer, or otherwise directly or indirectly connected with the offering; and all other expenses directly or indirectly incurred in connection with the offering, including nonaccountable expenses of the underwriter, but excluding, however,

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

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

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

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

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

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

(aa) Finance, mortgage and related companies 10%

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

(cc) Common stocks 15%

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

(ee) Investment companies 10%

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.

(ff) REITS 10%

(gg) Investment contracts 10%

(b) and (c) [Unchanged.]

SDiv 2117

Clarification of the term "financial institution or institutional buyer." The ~~terms~~ term "financial institution or institutional buyer" contained in ~~Minn. Stat.~~ § Minnesota Statutes, section 80A.15, subdivision 2, clause (g) ~~(1978),~~ ~~as amended,~~ ~~include~~ includes but ~~are~~ is not limited to: (1) ~~any~~ a corporation with a class of equity securities registered under Section 12(g) of the Securities Exchange Act of 1934, as amended, and (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~~ a person who is an "accredited investor" within the meaning of *Federal Register*, volume 47, page 11262, to be codified as Code of Federal Regulations, title 17, section 230.501 (a).

SDiv 2118:

(a) [Unchanged.]

(b) The limitation of 25 purchasers contained in Minnesota Statutes, section 80A.15, subdivision 2, clause (h) is waived in connection with any 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~~ 506 adopted by the Securities and Exchange Commission ~~[17 C.F.R. section 230.146]~~ *Federal Register*, volume 47, page 11266, to be codified as Code of Federal Regulations, title 17, section 230.506 or rules ~~promulgated~~ adopted under section 3(b) of the Securities Act of 1933, if ~~such~~ the offering is in compliance with ~~any such~~ these rules.

(c) The exemption contained in Minnesota Statutes, section 80A.15, subdivision 2, clause (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 the security is sold in compliance with rule ~~146 promulgated~~ 506 adopted by the Securities and Exchange Commission ~~[17 C.F.R. section 230.146]~~ in *Federal Register*, volume 47, page 11266, to be codified as Code of Federal Regulations, title 17, section 230.506.

(d) The exemption contained in Minnesota Statutes, section 80A.15, subdivision 2, clause (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~~ 506 adopted by the Securities and Exchange Commission ~~[17 C.F.R. Section 230.146]~~ in *Federal Register*, volume 47, page 11266, to be codified as Code of Federal Regulations, title 17, section 230.506.

(e)-(k) [Unchanged.]

(l) The following factors should be considered in determining whether offers and sales should be integrated for purposes of the exemptions contained in Minnesota Statutes, section 80A.15, subdivision 2, clause (h) and SDiv 2118; whether:

(1) the sales are part of the single plan of financing;

(2) the sales involve issuance of the same class of securities;

(3) the sales have been made at or about the same time;

(4) the same type of consideration is received; and

(5) the sales are made for the same general purposes.

Department of Revenue
Income Tax Division

Proposed Repeal of Numerous Income Tax Rules of the Department of Revenue

Notice of Intent to Repeal Rules without a Public Hearing

Notice is hereby given that the Department of Revenue proposes to repeal numerous existing income tax rules without a public hearing. The commissioner of revenue has determined that the proposed repeal of these rules will be noncontroversial in nature and has elected to follow the procedures set forth in Minnesota Statutes, Sections 14.21 to 14.28.

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Amendment of Rules SDiv 2117 and SDiv 2118 of the Securities and Real Estate Division, Which Rules Implement and Interpret the Provisions of Minn. Stat. § 80A.15, Subdivisions 2(g) and 2(h) (1982) Governing Exempt Transactions; Correcting a Cross Reference in Rule SDiv 2021(c)(4) and Clarifying the Rule SDiv 2034(a)

FINDINGS OF FACT

AND CONCLUSIONS

After proper notice required by Minnesota Statutes § 14.22 was published in the State Register and given by United States mail to all persons, associations and other interested groups registered with the Department of Commerce, Securities and Real Estate Division for that purpose, and after affording interested persons an opportunity to present comments and having considered all of the evidence herein, I find and conclude as follows:

That the proposed rules as published at 7 State Register 1170-1172 (1983) should be adopted as modified in the following manner:

(1) SDiv 2021 previously read "When, upon proposal of merger and consolidation or other organic change, a depositor exercised his rights under Minnesota Statutes, Section 302A.471, if, in the opinion of the Commissioner, the proposed manner of sale the escrowed shares does not tend to work fraud or inequity on other share holders, present or proposed." At the request of the Securities Section of the Hennepin County Bar Association this language has been changed for the purpose of clarity required because of statutory changes in the cited sections. The language pertaining

to merger and consolidation or other organic change is and has been deleted an additional clause added to make it clear that certain statutory sections, which will terminate on January 1, 1984, will continue to be dealt with under this Section until that date.

(2) SDiv 2117. The original proposed definition of the term "financial institution or institutional buyer" includes "a person who is an 'accredited investor' within the meaning of Federal Register, Volume 47, page 11262,..." At the request of the Securities Section of the Hennepin County Bar Association this definition has been expanded to be "a person who is an 'accredited investor' within the meaning of Rule 501(a) adopted by the Securities Exchange Commission in Federal Register, Volume 47, page 11262,..." The substituted language more clearly identifies the source of the definition of an accredited investor and therefore has greater clarity.

(3) SDiv 2118(b) has been modified at the request of the Securities Section of the Hennepin County Bar Association in several points. All modifications are for the purpose of additional clarity and precision. The first sentence of the proposed rule contains the language "The limitation of 25 purchasers contained in Minnesota Statutes, Section 80A.15,..." For purposes of clarity a parenthetical clause (other than those designated in clause g) is inserted after the words 25 purchasers to assure that there is no question that the purchasers designated in clause g are not to be used in calculating the 25 purchasers. Later in the same sentence there is language speaking of "35 persons in this State in connection with any offering being made in compliance with Rule 506 adopted by the Securities and Exchange Commission Federal Register, Volume 47, page 11262,..." In the part of that sentence following the word "State", and before the words "in connection", the clause (other than

those designated in Minnesota Statutes, Section 80A.15 Subdivision 2, clause g) was inserted for clarity. In addition between the words "Exchange Commission" and "Federal Register" the word "in" had been omitted and was inserted.

In the same sentence the clause (other than an exempt offering under Regulation A) was inserted after the words "the Securities Act of 1933" and before the final clause, "if the offering is in compliance with these rules." This language was inserted for the sake of clarity and precision at the request of the Securities Section of the Hennepin County Bar Association.

(4) In paragraph d of SDiv 2218 certain language describing "any security representing an interest in, or formed for the purpose of investing in,..." was brought to our attention as being inaccurate by the Securities Section of the Hennepin County Bar Association. Corporations are formed, securities are issued. Accordingly the word formed was changed to issued.

All of the foregoing modifications were for the purpose of clarification and did not result in substantial change.

State of Minnesota
Department of Commerce

August 29, 1983

MICHAEL A. HATCH
Commissioner of Commerce

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE
SECURITIES AND REAL ESTATE DIVISION

In the Matter of the Proposed Amendment of Rules SDiv 2117 and SDiv 2118 of the Securities and Real Estate Division, Which Rules Implement and Interpret the Provisions of Minn. Stat. §80A.15, Subdivisions 2(g) and 2(h) (1982) Governing Exempt Transactions; Correcting a Cross Reference in Rule SDiv 2021(c)(4) and Clarifying Rule SDiv 2034(a)

STATEMENT OF NEED AND REASONABLENESS

Notice is hereby given that, pursuant to his authority under Minn. Stat. Section 80A.25 (1982), the Commissioner of Securities and Real Estate intends to amend Rules SDiv 2117 and SDiv 2118 relating to the Minnesota Securities Act (Minn. Stat. Chapter 80A). The Commissioner has determined that the proposed amendments are noncontroversial in nature and desires that they be adopted without a public hearing in accordance with Minn. Stat. Sections 14.21 to 14.28 (1982). Furthermore, the Commissioner has determined that the proposed amendments are in the public interest and are consistent with the purposes fairly intended by the policy and provisions of Minn. Stat. Chapter 80A.

The need for and reasonableness of the proposed amendments are as follows:

SDiv 2021(c)(4)

Amended to revise a cross reference to a re-codified section of Minnesota Statutes.

SDiv 2034(a)(5)

Amended for purposes of clarification.

SDiv 2117 and SDiv 2218

Rules SDiv 2117 and 2118 implement and interpret the provisions of Minn. Stat. §80A.15, subdivisions 2(g) and 2(h) governing transactions which are exempt from registration.

The Commissioner has determined that it is desirable, in light of express statutory policy "to coordinate the interpretation of [the Minnesota Securities Act] with the related federal regulation",[1]

[1]Minnesota Statutes &80A.31 (1982)

to amend SDiv 2117 and 2118 by incorporating therein the provisions of Securities and Exchange Commission Regulation D.[2]

The Securities and Exchange Commission adopted Regulation D in order to assist small business capital formation and to reduce the burdens imposed by the federal securities laws as applied to small business.

The Commissioner believes that this coordination of regulation will further statutory policy and will achieve a uniform system of state-federal limited offering exemptions that facilitates capital formation consistent with the protection of investors.

[2]C.F.R., title 17, sections 230.501 to 230.506

STATE OF MINNESOTA
Department of Commerce
Securities and Real Estate Division

MICHAEL A. HATCH
Commissioner of Securities and Real Estat

Date: February 11, 1983
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