

Minnesota Attorney General: Administrative Rules Proceedings

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Version 3
August 20, 2018

SF-00006-05 (4/86)

DEPARTMENT : ATTORNEY NERAL

ATE OF MINNESOTA

Office Memorandum

DATE : August 15, 1989

TO : ALAN I. GILBERT
Assistant Attorney General
1100 Bremer Tower

FROM : MARTHA J. CASSERLY
Special Assistant Attorney General
515 Transportation Building

PHONE : 6-6839

SUBJECT : In the Matter of the Adopted Rule Relating To Sales of Securities

The above-refernced rule has been approved as to its legality by the Attorney General on August 14, 1989.

Enclosed is the agency's copy of the approved rule. This office has already filed two copies with the Secretary of State who will forward one copy to the Revisor of Statutes. The fourth is being retained by this division of the Attorney General's Office for its records.

Also enclosed are any petitions, requests, submissions or comments received by the agency and any extra copies of documents which the agency submitted to the Attorney General.

Your next step is to arrange for publication of the Notice of Adoption in the State Register. In a day or two, you should receive from the Revisor's Office three copies of the notice of adoption of your rule. You should submit two copies of the Notice of Adoption to the State Register for publication. A permanent rule without a hearing does not become effective until five days after a notice of adoption is published in the State Register in accordance with Minn. Stat. § 14.27. An emergency rule becomes effective five working days after approval by the Attorney General; however, the agency must publish a notice in the State Register in accordance with Minn. Stat. § 14.34.

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

MJC:bbl
Enclosures

cc: William Brown, Chief Judge
Office of Administrative Hearings
Maryanne Hruby, Exec. Dir.
Legislative Commission to Review
Administrative Rules

~~JEA~~
MJC

RULE REVIEW CHECKLIST

File No. 1617

DATE RECEIVED 8-3-89

REVIEW DATE 8-12-89

DUE DATE 8-17-89

APPROVED 8-14-89 mjc

DISAPPROVED _____

WITHDRAWN _____

Docket No. 05-0009-0126

ADOPTED W/O HEARING ✓

EMERGENCY RULE _____

2 copies to Revisor 8/7/89

REVISOR APPROVED 8-8-89

REVISOR DISAPPROVED _____

FILED W/SEC. OF STATE 8-14-89

RETURNED TO AGENCY _____

✓ Rule as adopted (4 copies)

✓ Notice to Solicit Outside Information/Opinion (if applicable)
9-26-88 Date published in State Register
~~Comments~~

~~Petition for Adoption of a Rule (if applicable)~~

N/A Board's Authorizing Resolution
Date adopted

✓ Proposed Rule
yes Revisor's Certificate

✓ Notice of Intent to Adopt Rule
15.023+80A.25 Statutory Authority
yes Small Business Statement
no Expenditure of public money statement
yes Signature

✓ Statement of Need and Reasonableness (if applicable)
yes Small Business Statement
~~Fees - § 16A.128~~

✓ Affidavit of Mailing Notice of Intent to Adopt Rule
6-22-89 Date (30)/25 days before adoption
~~xxx~~ yes Notice attached
yes Copy of rule or summary attached

✓ Publication in State Register
5-15-89 Date (30)/25 days before adoption

✓ 180-day deadline from:
N/A Effective date of law requiring rule (14.12) (both rules)
7-22-89 end of comment period (§ 14.26) (rules OK without hearing)
~~effective date of statutory authority (§ 14.29) (emergency rules)~~

~~Resolution Adopting~~
~~Date adopted~~

✓ Findings of Fact, Conclusions & Order Adopting
7-24-89 Date

Written requests, submissions or comments

✓ Declaration of attorney
Michelle Owen Name of SAAG representing agency

Notice of Submission to Atty. Gen. (if applicable)

Aff. of Mailing Notice to Atty. Gen. (if applicable)

Department of Commerce

Adopted Permanent Rules Relating to Sales of Securities

Rules as Adopted

2875.0145 REGULATION D.

"Regulation D" as used in Minnesota Statutes, section 80A.15, subdivision 2, paragraph (h), and in this chapter means regulation D promulgated by the Securities and Exchange Commission, Code of Federal Regulations, title 17, sections 230.501 to 230.508, as amended effective April 19, 1989.

2875.0146 RULE 701.

"Rule 701" as used in this chapter means rule 701 promulgated by the Securities and Exchange Commission, Code of Federal Regulations, title 17, section 239.701, effective May 20, 1988.

2875.0150 ISOLATED SALES.

Subpart 1. **Up to ten sales.** Up to ten sales of securities of an issuer in any 12 consecutive months shall be exempted by Minnesota Statutes, section 80A.15, subdivision 2, clause (a), provided, that in the case of sales by an issuer except sales of securities registered under the Securities Act of 1933 or exempted by section 3(b) of that act, the seller reasonably believes that all buyers are purchasing for investment.

Subp. 2. **Computation.** For the purpose of computing the number of sales that have been made, or will have been made upon completion of a proposed offering pursuant to Minnesota Statutes, section 80A.15, subdivision 2, clause (a):

A. to C. [Unchanged.]

D. the sales to any "accredited investor" within the meaning of rule 501(a) of regulation D shall be excluded.

Subp. 3. and 4. [Unchanged.]

2875.0160 RECOGNIZED MANUALS APPROVED BY COMMISSIONER.

"Recognized manuals approved by the commissioner," as that

term is used in Minnesota Statutes 1978, section 80A.15, subdivision 2, clause (b), are limited to the following:

A. Standard & Poor's Corporation Records;

B. Moody's Industrial Manual and Industrial News Reports;

C. Moody's Bank & Finance Manual and Bank & Finance News Reports;

D. Moody's Transportation Manual and Transportation News Reports;

E. Moody's Public Utility Manual and Public Utility News Reports;

F. Moody's OTC Industrial Manual and OTC Industrial News Reports;

G. Moody's International Manual.

Provided that the issuer, as of the date of the balance sheet required by Minnesota Statutes, section 80A.15, subdivision 2, clause (b)(1), had a net worth of at least $250,000 and had at least 200 shareholders.

2875.0170 FINANCIAL INSTITUTION OR INSTITUTIONAL BUYER.

The term "financial institution or institutional buyer" contained in Minnesota Statutes, sections 80A.14, subdivision 4, clause (5), and 80A.15, subdivision 2, paragraph (g), and the term "institutional investors" contained in Minnesota Statutes, section 80A.04, subdivision 3, includes but is not limited to a corporation with a class of equity securities registered under section 12(b) or 12(g) of the Securities Exchange Act of 1934, as amended; and a person who is an "accredited investor" within the meaning of rule 501(a) of regulation D.

2875.0180 PERSONS TO WHOM SALES HAVE BEEN MADE.

Subpart 1. **Computing.** For the purpose of calculating the number of persons to whom sales have been made, or will have been made upon completion of a proposed offering pursuant to Minnesota Statutes, section 80A.15, subdivision 2, clause (h), the calculation shall follow the rules for calculation in rule 501(e) of regulation D.

Clients of an investment adviser, customers of a broker-dealer, or persons with similar relationships shall be considered to be separate purchasers regardless of the amount of discretion given to the investment adviser, broker-dealer, bank trust department, or other person to act on behalf of the client, customer, or trust.

Subp. 2a. **Sales to 35 persons.** The number of persons to whom sales may be made pursuant to the exemption contained in Minnesota Statutes, section 80A.15, subdivision 2, paragraph (h) is increased to 35 persons if the sales are made in compliance with regulation D or rule 701.

Subp. 3. **When exemptions withdrawn.** Exemption withdrawals:

A. The exemption contained in Minnesota Statutes, section 80A.15, subdivision 2, paragraph (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 of regulation D.

B. The exemption contained in Minnesota Statutes, section 80A.15, subdivision 2, paragraph (h) is withdrawn for any security representing an interest in, or 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 of regulation D.

C. to G. [Unchanged.]

Subp. 4. and 5. [Unchanged.]

2875.0400 SCOPE AND APPLICATION.

Subpart 1. **Generally.** Rules are divided into separate areas, based upon the type of security involved. However, parts 2875.3000 to 2875.3120 shall apply to all securities, and should be followed in all instances unless they are inconsistent with another part in the appropriate area for the type of security proposed to be registered. In that instance, the area

requirements will apply. This part and parts 2875.3000 to 2875.7280 shall not apply to securities or transactions exempted by Minnesota Statutes 1978, section 80A.15, subdivision 1 or 2, as amended, nor shall they apply to securities registered by notification.

A. Equity securities regulation, parts 2875.3000 to 2875.3120;

B. Senior securities regulation, parts 2875.3500 to 2875.3540;

C. Investment companies regulation, parts 2875.3900 to 2875.4330;

D. Real estate limited partnerships, parts 2875.4500 to 2875.5280;

E. Oil and gas programs, parts 2875.5600 to 2875.5780;

F. Cattle feeding programs, parts 2875.6100 to 2875.6260;

G. Real estate investment trusts, parts 2875.7100 to 2875.7280; and

H. Commodity pool guidelines, parts 2875.8100 to 2875.8450, and 2875.9900 to 2875.9970.

Subp. 2. **Scope of rules pertaining to real estate limited partnerships.** Rules pertaining to real estate partnerships shall be applied to real estate partnerships and, to the extent practical, to limited partnerships to which no other specific rules apply. Particularly, such nonreal estate limited partnerships shall meet the standards provided in parts 2875.4510 to 2875.4550, 2875.5000 to 2875.5120 and 2875.5140 to 2875.5280. With respect to the remaining rules, parts 2875.4560 to 2875.4610 and part 2875.5135, variance from the established standards may be permitted provided that the variance is justified and provides investor protection equal to that afforded by the rules.

2875.0410 EFFECTIVE DATE OF INCORPORATIONS BY REFERENCE.

Unless otherwise indicated, whenever a reference is made in

this chapter to a federal or state statute, rule, decision, or opinion, the reference shall be deemed to refer to the version of the statute, rule, decision, or opinion as of December 1, 1980.

2875.0960 FINANCIAL STATEMENTS.

Subpart 1. **Content.** Whenever in these rules financial statements of an issuer or other person are required by a particular part or form without further description, the requirement refers to a balance sheet as of a date within 135 days before the date of the application, and profit and loss statements for each of the three fiscal years preceding the date of the balance sheet and for the period, if any, between the close of the last of these fiscal years and the date of the balance sheet. The balance sheet as of a date within 135 days before the date of the application need not be audited. However, if the balance sheet is not audited and the application is for a registration, there shall be filed in addition an audited balance sheet as of the end of the person's last fiscal year. If the last fiscal year ended within 90 days of the date of the application, there shall be filed an audited balance sheet as of the end of the person's next preceding fiscal year. The income statements and statement of changes in financial position shall be audited up to the date of the last audited balance sheet filed, if any.

Subp. 2. **Delays.** If amendments or other delays cause the financial statements described in subpart 1 to become more than 134 days old as of the effective date of the registration statement, then updated financial statements as of a date within 135 days of the effective date shall be filed if the company has no established record of earnings or is currently showing losses or a weak financial condition. If the company has an established record of earnings and is in sound financial condition, a paragraph containing later information as to sales, net income, and financial condition may be added in lieu of updating the financial statements, in the discretion of the

commissioner. However, in no case shall the financial statements be more than six months old as of the effective date of the registration statement. If a delay carries beyond the end of the fiscal year, and by applying due diligence the registrant and accountant can have the audit completed before the effective date, certified statements should be filed as of the end of the fiscal year.

2875.1010 INVESTMENT ADVISORY CONTRACTS.

Subpart 1. [Unchanged.]

Subp. 1a. **Exception.** Subpart 1, item A, does not apply to an investment advisory contract that provides for compensation to the investment adviser on the basis of a share of the capital gains upon, or the capital appreciation of, the funds, or any portion of the funds, of a client if all the conditions in items A to D are satisfied, or if the condition specified in item E is satisfied.

A. to D. [Unchanged.]

E. The client entering into the contract subject to this subpart is a person specified in Minnesota Statutes, section 80A.04, subdivision 3, or other institutional investor as designated by rule or order of the commissioner under Minnesota Statutes, section 80A.04, subdivision 3.

Subp. 2. [Unchanged.]

2875.3030 OPTIONS, WARRANTS, AND CHEAP STOCK TO UNDERWRITERS.

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

A. and B. [Unchanged.]

C. Neither the exercise of the options or warrants, nor the resale, transfer, or assignment (except as provided in item D) of any cheap stock may be accomplished for a period of one year from the effective date of the registration statement.

D. During the one-year period following the effective date of the registration statement, the securities shall be nontransferable except by will, pursuant to the laws of descent

and distribution, or pursuant to the operation of laws, provided, however, the securities may be transferred without payment therefor to:

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

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

(3) employees of the underwriter.

E. to J. [Unchanged.]

2875.3050 COMMISSIONS AND EXPENSES.

Subpart 1. [Unchanged.]

Subp. 1a. **Reasonable selling expenses.** 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:

A. finance, mortgage, and related companies, ten percent;

B. bonds, notes, debentures, and secured issuers, ten percent;

C. common stocks, 15 percent;

D. preferred stocks and other stock senior to common stock, 15 percent;

E. investment companies, ten percent;

F. REITS, ten percent; and

G. investment contracts, ten percent.

Subp. 2. to 4. [Unchanged.]

2875.7100 DEFINITIONS.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Real estate investment trust (REIT).** "Real estate investment trust (REIT)" means a corporation, trust, or association, other than a real estate syndication, that is engaged primarily in investing in equity interests in real estate, including fee ownership and leasehold interests, or in

loans secured by real estate or both.

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED
AUG 14 1989
Secretary of State

STATE OF MINNESOTA
DEPARTMENT OF STATE
FILED

AUG 14 1989

Joan Anderson Growe

Secretary of State

3:20 PM

APPROVED AS TO FORM AND LEGALITY

August 14 19 89

HUBERT H. HUMPHREY, III
ATTORNEY GENERAL

BY M J Cassedy

SPECIAL ASSISTANT ATTORNEY GENERAL

Department of Commerce

Proposed Permanent Rules Relating to Sales of Securities

Rules as Proposed

2875.0145 REGULATION D.

"Regulation D" as used in Minnesota Statutes, section 80A.15, subdivision 2, paragraph (h), and in this chapter means regulation D promulgated by the Securities and Exchange Commission, Code of Federal Regulations, title 17, sections 230.501 to 230.508, as amended effective April 19, 1989.

2875.0146 RULE 701.

"Rule 701" as used in this chapter means rule 701 promulgated by the Securities and Exchange Commission, Code of Federal Regulations, title 17, section 239.701, effective May 20, 1988.

2875.0150 ISOLATED SALES.

Subpart 1. **Up to ~~five~~ ten sales.** Up to ~~five~~ ten sales of securities of an issuer in any 12 consecutive months shall be exempted by Minnesota Statutes, section 80A.15, subdivision 2, clause (a), provided, that in the case of sales by an issuer except sales of securities registered under the Securities Act of 1933 or exempted by section 3(b) of that act, the seller reasonably believes that all buyers are purchasing for investment.

Subp. 2. **Computation.** For the purpose of computing the number of sales that have been made, or will have been made upon completion of a proposed offering pursuant to Minnesota Statutes, section 80A.15, subdivision 2, clause (a):

A. to C. [Unchanged.]

D. the sales to any "accredited investor" within the meaning of ~~Code of Federal Regulations, title 17, section 230.501(a)~~ rule 501(a) of regulation D shall be excluded.

Subp. 3. and 4. [Unchanged.]

Approved by Revisor

2875.0160 RECOGNIZED MANUALS APPROVED BY COMMISSIONER.

"Recognized manuals approved by the commissioner," as that term is used in Minnesota Statutes 1978, section 80A.15, subdivision 2, clause (b), are limited to the following:

A. Standard & Poor's Corporation Records;

B. Moody's Industrial Manual and Industrial News Reports;

C. Moody's Bank & Finance Manual and Bank & Finance News Reports;

D. Moody's Transportation Manual and Transportation News Reports;

E. Moody's Public Utility Manual and Public Utility News Reports;

F. Moody's OTC Industrial Manual and OTC Industrial News Reports;

G. Moody's International Manual.

Provided that the issuer, as of the date of the balance sheet required by Minnesota Statutes, section 80A.15, subdivision 2, clause (b)(1), had a net worth of at least $250,000 and had at least 200 shareholders.

2875.0170 FINANCIAL INSTITUTION OR INSTITUTIONAL BUYER.

The term "financial institution or institutional buyer" contained in Minnesota Statutes, ~~section~~ sections 80A.14, subdivision 4, clause (5), and 80A.15, subdivision 2, paragraph (g), and the term "institutional investors" contained in Minnesota Statutes, section 80A.04, subdivision 3, includes but is not limited to a corporation with a class of equity securities registered under section 12(b) or 12(g) of the Securities Exchange Act of 1934, as amended; and 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)~~ of regulation D.

Approved by Revisor _____

2875.0180 PERSONS TO WHOM SALES HAVE BEEN MADE.

Subpart 1. **Computing.** For the purpose of calculating the number of persons to whom sales have been made, or will have been made upon completion of a proposed offering pursuant to Minnesota Statutes, section 80A.15, subdivision 2, clause (h), the calculation shall follow the rules for calculation in ~~Code of Federal Regulations, title 17, section 230.501(e)~~ rule 501(e) of regulation D.

Clients of an investment adviser, customers of a broker-dealer, or persons with similar relationships shall be considered to be separate purchasers regardless of the amount of discretion given to the investment adviser, broker-dealer, bank trust department, or other person to act on behalf of the client, customer, or trust.

Subp. 2a. **Sales to 35 persons.** The number of persons to whom sales may be made pursuant to the exemption contained in Minnesota Statutes, section 80A.15, subdivision 2, paragraph (h) is increased to 35 persons if the sales are made in compliance with regulation D or rule 701.

Subp. 3. **When exemptions withdrawn.** Exemption withdrawals:

A. The exemption contained in Minnesota Statutes, section 80A.15, subdivision 2, paragraph (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~~ of regulation D.

B. The exemption contained in Minnesota Statutes, section 80A.15, subdivision 2, paragraph (h) is withdrawn for any security representing an interest in, or issued for the purpose of investing in, any animal breeding, animal feeding, animal leasing, or similar venture, unless said security is sold

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by Revisor _____

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~~ of regulation D.

C. to G. [Unchanged.]

Subp. 4. and 5. [Unchanged.]

2875.0400 SCOPE AND APPLICATION.

Subpart 1. **Generally.** Rules are divided into separate areas, based upon the type of security involved. However, parts 2875.3000 to 2875.3120 shall apply to all securities, and should be followed in all instances unless they are inconsistent with another part in the appropriate area for the type of security proposed to be registered. In that instance, the area requirements will apply. This part and parts 2875.3000 to 2875.7280 shall not apply to securities or transactions exempted by Minnesota Statutes 1978, section 80A.15, subdivision 1 or 2, as amended, nor shall they apply to securities registered by notification.

A. Equity securities regulation, parts 2875.3000 to 2875.3120;

B. Senior securities regulation, parts 2875.3500 to 2875.3540;

C. Investment companies regulation, parts 2875.3900 to 2875.4330;

D. Real estate limited partnerships, parts 2875.4500 to 2875.5280;

E. Oil and gas programs, parts 2875.5600 to 2875.5780;

F. Cattle feeding programs, parts 2875.6100 to 2875.6260;

G. Real estate investment trusts, parts 2875.7100 to 2875.7280; and

H. Commodity pool guidelines, parts 2875.8100 to 2875.8450, and 2875.9900 to 2875.9970.

Subp. 2. **Scope of rules pertaining to real estate limited**

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by Revisor _____

partnerships. Rules pertaining to real estate partnerships shall be applied to real estate partnerships and, to the extent practical, to limited partnerships to which no other specific rules apply. Particularly, such nonreal estate limited partnerships shall meet the standards provided in parts 2875.4510 to 2875.4550, 2875.5000 to 2875.5120 and 2875.5140 to 2875.5280. With respect to the remaining rules, parts 2875.4560 to 2875.4610 and part 2875.5135, variance from the established standards may be permitted provided that the variance is justified and provides investor protection equal to that afforded by the rules.

2875.0410 EFFECTIVE DATE OF INCORPORATIONS BY REFERENCE.

Unless otherwise indicated, whenever a reference is made in this chapter to a federal or state statute, rule, decision, or opinion, ~~such~~ the reference shall be deemed to refer to the version of the statute, rule, decision, or opinion as of December 1, 1980.

2875.0960 FINANCIAL STATEMENTS.

Subpart 1. **Content.** Whenever in these rules financial statements of an issuer or other person are required by a particular part or form without further description, ~~such~~ the requirement refers to a balance sheet as of a date within 90 135 days ~~prior to~~ before the date of the application, and profit and loss statements for each of the three fiscal years preceding the date of the balance sheet and for the period, if any, between the close of the last of ~~such~~ these fiscal years and the date of the balance sheet. The balance sheet as of a date within 90 135 days ~~prior to~~ before the date of the application need not be audited. However, if the balance sheet is not audited and the application is for a registration, there shall be filed in addition an audited balance sheet as of the end of the person's last fiscal year ~~unless such~~. If the last fiscal year ended within 90 days of the date of the application ~~in which case~~, there shall be filed an audited balance sheet as of the end of the person's next preceding fiscal year. The income statements

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by Revisor _____

and statement of changes in financial position shall be audited up to the date of the last audited balance sheet filed, if any.

Subp. 2. **Delays.** If amendments or other delays cause the financial statements described in subpart 1 to become more than ~~four-months~~ 134 days old as of the effective date of the registration statement, then updated financial statements as of a date within ~~four-months~~ 135 days of the effective date shall be filed if the company has no established record of earnings or is currently showing losses or a weak financial condition. If the company has an established record of earnings and is in sound financial condition, a paragraph containing later information as to sales, net income, and financial condition may be added in lieu of updating the financial statements, in the discretion of the commissioner. However, in no case shall the financial statements be more than six months old as of the effective date of the registration statement. If a delay carries beyond the end of the fiscal year, and by applying due diligence the registrant and accountant can have the audit completed ~~prior to~~ before the effective date, certified statements should be filed as of the end of the fiscal year.

2875.1010 INVESTMENT ADVISORY CONTRACTS.

Subpart 1. [Unchanged.]

Subp. 1a. **Exception.** Subpart 1, item A, does not apply to an investment advisory contract that provides for compensation to the investment adviser on the basis of a share of the capital gains upon, or the capital appreciation of, the funds, or any portion of the funds, of a client if all the conditions in items A to D are satisfied, or if the condition specified in item E is satisfied.

A. to D. [Unchanged.]

E. The client entering into the contract subject to this subpart is a person specified in Minnesota Statutes, section 80A.04, subdivision 3, or other institutional investor as designated by rule or order of the commissioner under Minnesota Statutes, section 80A.04, subdivision 3.

Approved
by Revisor _____

Subp. 2. [Unchanged.]

2875.3030 OPTIONS, WARRANTS, AND CHEAP STOCK TO UNDERWRITERS.

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

A. and B. [Unchanged.]

C. Neither the exercise of the options or warrants, nor the resale, transfer, or assignment (except as provided in item D) of any cheap stock may be accomplished for a period of one year from the ~~completion of the public offering~~ effective date of the registration statement.

D. During the one-year period following the effective date of the registration statement, the securities shall be nontransferable except by will, pursuant to the laws of descent and distribution, or pursuant to the operation of laws, provided, however, the securities may be transferred without payment therefor to:

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

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

(3) employees of the underwriter.

E. to J. [Unchanged.]

2875.3050 COMMISSIONS AND EXPENSES.

Subpart 1. [Unchanged.]

Subp. 1a. **Reasonable selling expenses.** 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:

A. finance, mortgage, and related companies, ten percent;

B. bonds, notes, debentures, and secured issuers, ten percent;

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by Revisor _____

C. common stocks, 15 percent;

D. preferred stocks and other stock senior to common stock, ~~ten~~ 15 percent;

E. investment companies, ten percent;

F. REITS, ten percent; and

G. investment contracts, ten percent.

Subp. 2. to 4. [Unchanged.]

2875.7100 DEFINITIONS.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Real estate investment trust (REIT).** "Real estate investment trust (REIT)" means ~~an unincorporated~~ a corporation, trust, or association ~~which intends to comply with sections 856, 857, and 858 of the Internal Revenue Code of 1954, as amended~~, other than a real estate syndication, that is engaged primarily in investing in equity interests in real estate, including fee ownership and leasehold interests, or in loans secured by real estate or both.

Approved
by Revisor _____

Office of the Revisor of Statutes

Administrative Rules

TITLE: Proposed Permanent Rules Relating to Sales of Securities

AGENCY: Department of Commerce

MINNESOTA RULES: Chapter 2875

The attached rules are approved for publication
in the State Register

Paul M. Marinac
Assistant Deputy Revisor

Proposed Rules

Pursuant to Minn. Stat. §§ 14.22, 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 25 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 the modifications are supported by the data and views submitted.

If, during the 30-day comment period, 25 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 §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register.*

Pursuant to Minn. Stat. §§ 14.29 and 14.30, agencies may propose emergency rules under certain circumstances. Proposed emergency rules are published in the *State Register* and, for at least 25 days thereafter, interested persons may submit data and views in writing to the proposing agency.

Department of Commerce

Proposed Permanent Rules Relating to Sales of Securities

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Department of Commerce intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedures Act for adopted rules without a public hearing in *Minnesota Statutes*, section 14.22-14.28. Authority for the adoption of these rules is contained in *Minnesota Statutes*. Section 45.023 and 80A.25.

All persons have 30 days to submit comments in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substantial change.

Any person may make a written request for a public hearing within the 30 days comment period. If 25 or more persons submit a written request for a public hearing within the 30 day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule addressed, the reason for the request, and any change proposed. If a public hearing is required, the Department will proceed pursuant to *Minnesota Statutes*, sections 14.13 to 14.20.

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

Patricia L. Peterson
Staff Attorney
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101
(612) 296-2284

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Patricia Peterson.

Pursuant to *Minnesota Statutes*, Section 14.115, subdivision 2, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rule, must submit the written request to Patricia Peterson.

Michael A. Hatch
Commissioner of Commerce

Rules as Proposed

2875.0145 REGULATION D.

"Regulation D" as used in *Minnesota Statutes*, section 80A.15, subdivision 2, paragraph (h), and in this chapter means regulation D promulgated by the Securities and Exchange Commission, Code of Federal Regulations, title 17, sections 230.501 to 230.508, as amended effective April 19, 1989.

2875.0146 RULE 701.

"Rule 701" as used in this chapter means rule 701 promulgated by the Securities and Exchange Commission, Code of Federal Regulations, title 17, section 239.701, effective May 20, 1988.

2875.0150 ISOLATED SALES.

Subpart 1. **Up to ~~five~~ ten sales.** Up to ~~five~~ ten sales of securities of an issuer in any 12 consecutive months shall be exempted by *Minnesota Statutes*, section 80A.15, subdivision 2, clause (a), provided, that in the case of sales by an issuer except sales of securities registered under the Securities Act of 1933 or exempted by section 3(b) of that act, the seller reasonably believes that all buyers are purchasing for investment.

Subp. 2. **Computation.** For the purpose of computing the number of sales that have been made, or will have been made upon completion of a proposed offering pursuant to *Minnesota Statutes*, section 80A.15, subdivision 2, clause (a):

A. to C. [Unchanged.]

D. the sales to any "accredited investor" within the meaning of ~~Code of Federal Regulations, title 17, section 230.501(a)~~ rule 501(a) of regulation D shall be excluded.

Subp. 3. and 4. [Unchanged.]

2875.0160 RECOGNIZED MANUALS APPROVED BY COMMISSIONER.

"Recognized manuals approved by the commissioner," as that term is used in *Minnesota Statutes* 1978, section 80A.15, subdivision 2, clause (b), are limited to the following:

A. Standard & Poor's Corporation Records;

B. Moody's Industrial Manual and Industrial News Reports;

C. Moody's Bank & Finance Manual and Bank & Finance News Reports;

D. Moody's Transportation Manual and Transportation News Reports;

E. Moody's Public Utility Manual and Public Utility News Reports;

F. Moody's OTC Industrial Manual and OTC Industrial News Reports;

G. Moody's International Manual.

Provided that the issuer, as of the date of the balance sheet required by *Minnesota Statutes*, section 80A.15, subdivision 2, clause (b)(1), had a net worth of at least $250,000 and had at least 200 shareholders.

2875.0170 FINANCIAL INSTITUTION OR INSTITUTIONAL BUYER.

The term "financial institution or institutional buyer" contained in *Minnesota Statutes*, ~~section~~ sections 80A.14, subdivision 4, clause (5), and 80A.15, subdivision 2, paragraph (g), and the term "institutional investors" contained in *Minnesota Statutes*, section 80A.04, subdivision 3, includes but is not limited to a corporation with a class of equity securities registered under section 12(b) or 12(g) of the Securities Exchange Act of 1934, as amended; and 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)~~ of regulation D.

2875.0180 PERSONS TO WHOM SALES HAVE BEEN MADE.

Subpart 1. **Computing.** For the purpose of calculating the number of persons to whom sales have been made, or will have been made upon completion of a proposed offering pursuant to *Minnesota Statutes*, section 80A.15, subdivision 2, clause (h), the calculation shall follow the rules for calculation in ~~Code of Federal Regulations, title 17, section 230.501(e)~~ rule 501(e) of regulation D.

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.

Clients of an investment adviser, customers of a broker-dealer, or persons with similar relationships shall be considered to be separate purchasers regardless of the amount of discretion given to the investment adviser, broker-dealer, bank trust department, or other person to act on behalf of the client, customer, or trust.

Subp. 2a. **Sales to 35 persons.** The number of persons to whom sales may be made pursuant to the exemption contained in *Minnesota Statutes*, section 80A.15, subdivision 2, paragraph (h) is increased to 35 persons if the sales are made in compliance with regulation D or rule 701.

Subp. 3. **When exemptions withdrawn.** Exemption withdrawals:

A. The exemption contained in *Minnesota Statutes*, section 80A.15, subdivision 2, paragraph (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~~ of regulation D.

B. The exemption contained in *Minnesota Statutes*, section 80A.15, subdivision 2, paragraph (h) is withdrawn for any security representing an interest in, or 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~~ of regulation D.

C. to G. [Unchanged.]

Subp. 4. and 5. [Unchanged.]

2875.0400 SCOPE AND APPLICATION.

Subpart 1. **Generally.** Rules are divided into separate areas, based upon the type of security involved. However, parts 2875.3000 to 2875.3120 shall apply to all securities, and should be followed in all instances unless they are inconsistent with another part in the appropriate area for the type of security proposed to be registered. In that instance, the area requirements will apply. This part and parts 2875.3000 to 2875.7280 shall not apply to securities or transactions exempted by *Minnesota Statutes* 1978, section 80A.15, subdivision 1 or 2, as amended, nor shall they apply to securities registered by notification.

A. Equity securities regulation, parts 2875.3000 to 2875.3120;

B. Senior securities regulation, parts 2875.3500 to 2875.3540;

C. Investment companies regulation, parts 2875.3900 to 2875.4330;

D. Real estate limited partnerships, parts 2875.4500 to 2875.5280;

E. Oil and gas programs, parts 2875.5600 to 2875.5780;

F. Cattle feeding programs, parts 2875.6100 to 2875.6260;

G. Real estate investment trusts, parts 2875.7100 to 2875.7280; and

H. Commodity pool guidelines, parts 2875.8100 to 2875.8450, and 2875.9900 to 2875.9970.

Subp. 2. **Scope of rules pertaining to real estate limited partnerships.** Rules pertaining to real estate partnerships shall be applied to real estate partnerships and, to the extent practical, to limited partnerships to which no other specific rules apply. Particularly, such nonreal estate limited partnerships shall meet the standards provided in parts 2875.4510 to 2875.4550, 2875.5000 to 2875.5120 and 2875.5140 to 2875.5280. With respect to the remaining rules, parts 2875.4560 to 2875.4610 and part 2875.5135, variance from the established standards may be permitted provided that the variance is justified and provides investor protection equal to that afforded by the rules.

2875.0410 EFFECTIVE DATE OF INCORPORATIONS BY REFERENCE.

Unless otherwise indicated, whenever a reference is made in this chapter to a federal or state statute, rule, decision, or opinion, ~~such~~ the reference shall be deemed to refer to the version of the statute, rule, decision, or opinion as of December 1, 1980.

2875.0960 FINANCIAL STATEMENTS.

Subpart 1. **Content.** Whenever in these rules financial statements of an issuer or other person are ~~r~~required by a particular part or form without further description, ~~such~~ the requirement refers to a balance sheet as of a date within ~~90~~ 135 days ~~prior to~~ before the date of the application, and profit and loss statements for each of the three fiscal years preceding the date of the balance sheet and for the period, if any, between the close of the last of ~~such~~ these fiscal years and the date of the balance sheet. The balance sheet as of a date within ~~90~~ 135 days ~~prior to~~ before the date of the application need not be audited. However, if the balance sheet is not audited and the application is for a registration, there shall be filed in addition an audited balance sheet as of the end of the person's last fiscal year ~~unless such~~. If the last fiscal year ended within 90 days of the date of the application ~~in which case~~, there shall be

filed an audited balance sheet as of the end of the person's next preceding fiscal year. The income statements and statement of changes in financial position shall be audited up to the date of the last audited balance sheet filed, if any.

Subp. 2. **Delays.** If amendments or other delays cause the financial statements described in subpart 1 to become more than ~~four months~~ 134 days old as of the effective date of the registration statement, then updated financial statements as of a date within ~~four months~~ 135 days of the effective date shall be filed if the company has no established record of earnings or is currently showing losses or a weak financial condition. If the company has an established record of earnings and is in sound financial condition, a paragraph containing later information as to sales, net income, and financial condition may be added in lieu of updating the financial statements, in the discretion of the commissioner. However, in no case shall the financial statements be more than six months old as of the effective date of the registration statement. If a delay carries beyond the end of the fiscal year, and by applying due diligence the registrant and accountant can have the audit completed ~~prior to~~ before the effective date, certified statements should be filed as of the end of the fiscal year.

2875.1010 INVESTMENT ADVISORY CONTRACTS.

Subpart 1. [Unchanged.]

Subp. 1a. **Exception.** Subpart 1, item A, does not apply to an investment advisory contract that provides for compensation to the investment adviser on the basis of a share of the capital gains upon, or the capital appreciation of, the funds, or any portion of the funds, of a client if all the conditions in items A to D are satisfied, or if the condition specified in item E is satisfied.

A. to D. [Unchanged.]

E. The client entering into the contract subject to this subpart is a person specified in *Minnesota Statutes*, section 80A.04, subdivision 3, or other institutional investor as designated by rule or order of the commissioner under *Minnesota Statutes*, section 80A.04, subdivision 3.

Subp. 2. [Unchanged.]

2875.3030 OPTIONS, WARRANTS, AND CHEAP STOCK TO UNDERWRITERS.

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

A. and B. [Unchanged.]

C. Neither the exercise of the options or warrants, nor the resale, transfer, or assignment (except as provided in item D) of any cheap stock may be accomplished for a period of one year from the ~~completion of the public offering~~ effective date of the registration statement.

D. During the one-year period following the effective date of the registration statement, the securities shall be nontransferable except by will, pursuant to the laws of descent and distribution, or pursuant to the operation of laws, provided, however, the securities may be transferred without payment therefor to:

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

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

(3) employees of the underwriter.

E. to J. [Unchanged.]

2875.3050 COMMISSIONS AND EXPENSES.

Subpart 1. [Unchanged.]

Subp. 1a. **Reasonable selling expenses.** 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:

A. finance, mortgage, and related companies, ten percent;

B. bonds, notes, debentures, and secured issuers, ten percent;

C. common stocks, 15 percent;

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.

D. preferred stocks and other stock senior to common stock, ~~ten~~ 15 percent;

E. investment companies, ten percent;

F. REITS, ten percent; and

G. investment contracts, ten percent.

Subp. 2. to 4. [Unchanged.]

2875.7100 DEFINITIONS.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Real estate investment trust (REIT).** "Real estate investment trust (REIT)" means ~~an unincorporated~~ a corporation, trust, or association ~~which intends to comply with sections 856, 857, and 858 of the Internal Revenue Code of 1954, as amended,~~ other than a real estate syndication, that is engaged primarily in investing in equity interests in real estate, including fee ownership and leasehold interests, or in loans secured by real estate or both.

Pollution Control Agency

Proposed Permanent Rules Relating to Motor Vehicle Inspection and Testing Program

Notice of Intent to Adopt Rules Without a Public Hearing

NOTICE IS HEREBY GIVEN that the Minnesota Pollution Control Agency (Agency) intends to adopt the above-entitled rule without a public hearing following the procedures set forth in the Administrative Procedure Act for adopting rules without a public hearing in *Minnesota Statutes*, sections 14.22 to 14.28 (1988). The Agency's authority to adopt the rule is set forth in *Minnesota Statutes*, section 116.62, subd. 2 (1988).

All persons have until 4:30 p.m. on June 21, 1989, to submit comments in support of or in opposition to the proposed rules or any part or subpart of the rules. Comment is encouraged. Each comment should identify the portion of the proposed rules addressed, the reason for the comment, and any change proposed.

Any person may make a written request for a public hearing on the rules within the comment period. If 25 or more persons submit a written request for a public hearing within the comment period, a public hearing will be held unless a sufficient number withdraw their requests in writing. Any person requesting a public hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rules addressed, the reason for the request, and any change proposed. If a public hearing is required, the Agency will proceed pursuant to *Minnesota Statutes*, sections 14.131 to 14.20 (1988).

Comments or written requests for a public hearing must be submitted to:

Mr. David Kelso
Minnesota Pollution Control Agency
520 Lafayette Road North
St. Paul, Minnesota 55155
(612) 297-5488

The proposed rules may be modified if the modifications are supported by data and views submitted to the Agency and do not result in a substantial change in the proposed rule as noticed.

The proposed rules, if adopted, will implement a motor vehicle Inspection/Maintenance program required by *Minnesota Statutes*, sections 116.60 to 116.65 (1988) for the Twin Cities metropolitan area. The program requires that subject motor vehicles comply with certain emission and testing standards set forth in the rules. A fee not to exceed $10.00 (established by *Minnesota Statutes*, section 116.64) will be assessed for the inspection, and repairs could be required to attain compliance. The purpose of the rule is to bring the metropolitan area into compliance with the national ambient air quality standard for carbon monoxide. The proposed rules are published below. One free copy of the rules is available upon request from David Kelso at the address and telephone number stated above.

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 rule has been prepared and is available from David Kelso upon request.

You are hereby advised, pursuant to *Minnesota Statutes*, section 14.115 (1988), "Small business considerations in rulemaking," that the proposed rules will not adversely affect small businesses. The Agency in proposing the rule considered the feasibility of establishing lesser requirements for inspection of vehicles owned by small businesses but concluded that, because air pollutant

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of Rules Relating to Sales of Securities.

Notice of Intent to adopt Rules Without a Public Hearing.

Notice is hereby given that the Department of Commerce intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedures Act for adopted rules without a public hearing in Minnesota Statutes, section 14.22-14.28. Authority for the adoption of these rules is contained in Minnesota Statutes, Section 45.023 and 80A.25.

All persons have 30 days to submit comments in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substantial change.

Any person may make a written request for a public hearing within the 30 days comment period. If 25 or more persons submit a written request for a public hearing within the 30 day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule adddressed, the reason for the request, and any change proposed. If a public hearing is required, the Department will proceed pursuant to Minnesota Statutes, sections 14.13 to 14.20.

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

Patricia L. Peterson
Staff Attorney
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101
(612) 296-2284

A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Patricia Peterson.

Pursuant to Minnesota Statutes Section 14.115, subdivision 2, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rule, must submit the written request to Patricia Peterson.

Michael A. Hatch
Commissioner of Commerce

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of Rules Relating to Sales of Securities.

Notice of Intent to Adopt Rules Without a Public Hearing.

Notice is hereby given that the Department of Commerce intends to adopt the above-entitled rules without a public hearing following the procedures set forth in the Administrative Procedures Act for adopted rules without a public hearing in Minnesota Statutes, section 14.22-14.28. Authority for the adoption of these rules is contained in Minnesota Statutes, Section 45.023 and 80A.25.

All persons have 30 days to submit comments in support of or in opposition to the proposed rule or any part or subpart of the rule. Comment is encouraged. Each comment should identify the portion of the proposed rule addressed, the reason for the comment, and any change proposed. The proposed rules may be modified if the modifications are supported by the data and views submitted to the Department and do not result in a substantial change.

Any person may make a written request for a public hearing within the 30 days comment period. If 25 or more persons submit a written request for a public hearing within the 30 day comment period, a public hearing will be held unless a sufficient number withdraw their request in writing. Any person requesting a hearing should state his or her name and address, and is encouraged to identify the portion of the proposed rule adddressed, the reason for the request, and any change proposed. If a public hearing is required, the Department will proceed pursuant to Minnesota Statutes, sections 14.13 to 14.20.

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500 Metro Square Building
St. Paul, MN 55101
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A Statement of Need and Reasonableness that describes the need for and reasonableness of each provision of the proposed rule and identifies the data and information relied upon to support the proposed rules has been prepared and is available upon request from Patricia Peterson.

Pursuant to Minnesota Statutes Section 14.115, subdivision 2, the impact on small business has been considered in the promulgation of the rules. Anyone wishing to present evidence or argument as to the rules' effect on small business may do so. The Department's position regarding the impact of the rules on small business is set forth in the Statement of Need and Reasonableness.

If no hearing is required, upon adoption of the rule, the rule and the required supporting documents will be submitted to the Attorney General for review as to legality and form to the extent the form relates to legality. Any person may request notification of the date of submission to the Attorney General. 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 adopted rule, must submit the written request to Patricia Peterson.

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Michael A. Hatch
Commissioner of Commerce

Department of Commerce

Proposed Permanent Rules Relating to Sales of Securities

Rules as Proposed

2875.0145 REGULATION D.

"Regulation D" as used in Minnesota Statutes, section 80A.15, subdivision 2, paragraph (h), and in this chapter means regulation D promulgated by the Securities and Exchange Commission, Code of Federal Regulations, title 17, sections 230.501 to 230.508, as amended effective April 19, 1989.

2875.0146 RULE 701.

"Rule 701" as used in this chapter means rule 701 promulgated by the Securities and Exchange Commission, Code of Federal Regulations, title 17, section 239.701, effective May 20, 1988.

2875.0150 ISOLATED SALES.

Subpart 1. **Up to ~~five~~ ten sales.** Up to ~~five~~ ten sales of securities of an issuer in any 12 consecutive months shall be exempted by Minnesota Statutes, section 80A.15, subdivision 2, clause (a), provided, that in the case of sales by an issuer except sales of securities registered under the Securities Act of 1933 or exempted by section 3(b) of that act, the seller reasonably believes that all buyers are purchasing for investment.

Subp. 2. **Computation.** For the purpose of computing the number of sales that have been made, or will have been made upon completion of a proposed offering pursuant to Minnesota Statutes, section 80A.15, subdivision 2, clause (a):

A. to C. [Unchanged.]

D. the sales to any "accredited investor" within the meaning of ~~Code of Federal Regulations, title 17, section 230.501(a)~~ rule 501(a) of regulation D shall be excluded.

Subp. 3. and 4. [Unchanged.]

Approved by Revisor

2875.0160 RECOGNIZED MANUALS APPROVED BY COMMISSIONER.

"Recognized manuals approved by the commissioner," as that term is used in Minnesota Statutes 1978, section 80A.15, subdivision 2, clause (b), are limited to the following:

A. Standard & Poor's Corporation Records;

B. Moody's Industrial Manual and Industrial News Reports;

C. Moody's Bank & Finance Manual and Bank & Finance News Reports;

D. Moody's Transportation Manual and Transportation News Reports;

E. Moody's Public Utility Manual and Public Utility News Reports;

F. Moody's OTC Industrial Manual and OTC Industrial News Reports;

G. Moody's International Manual.

Provided that the issuer, as of the date of the balance sheet required by Minnesota Statutes, section 80A.15, subdivision 2, clause (b)(1), had a net worth of at least $250,000 and had at least 200 shareholders.

2875.0170 FINANCIAL INSTITUTION OR INSTITUTIONAL BUYER.

The term "financial institution or institutional buyer" contained in Minnesota Statutes, ~~section~~ sections 80A.14, subdivision 4, clause (5), and 80A.15, subdivision 2, paragraph (g), and the term "institutional investors" contained in Minnesota Statutes, section 80A.04, subdivision 3, includes but is not limited to a corporation with a class of equity securities registered under section 12(b) or 12(g) of the Securities Exchange Act of 1934, as amended; and 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)~~ of regulation D.

Approved by Revisor _____

2875.0180 PERSONS TO WHOM SALES HAVE BEEN MADE.

Subpart 1. **Computing.** For the purpose of calculating the number of persons to whom sales have been made, or will have been made upon completion of a proposed offering pursuant to Minnesota Statutes, section 80A.15, subdivision 2, clause (h), the calculation shall follow the rules for calculation in ~~Code of Federal Regulations, title 17, section 230.501(e)~~ rule 501(e) of regulation D.

Clients of an investment adviser, customers of a broker-dealer, or persons with similar relationships shall be considered to be separate purchasers regardless of the amount of discretion given to the investment adviser, broker-dealer, bank trust department, or other person to act on behalf of the client, customer, or trust.

Subp. 2a. **Sales to 35 persons.** The number of persons to whom sales may be made pursuant to the exemption contained in Minnesota Statutes, section 80A.15, subdivision 2, paragraph (h) is increased to 35 persons if the sales are made in compliance with regulation D or rule 701.

Subp. 3. **When exemptions withdrawn.** Exemption withdrawals:

A. The exemption contained in Minnesota Statutes, section 80A.15, subdivision 2, paragraph (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~~ of regulation D.

B. The exemption contained in Minnesota Statutes, section 80A.15, subdivision 2, paragraph (h) is withdrawn for any security representing an interest in, or issued for the purpose of investing in, any animal breeding, animal feeding, animal leasing, or similar venture, unless said security is sold

Approved by Revisor _____

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~~ of regulation D.

C. to G. [Unchanged.]

Subp. 4. and 5. [Unchanged.]

2875.0400 SCOPE AND APPLICATION.

Subpart 1. Generally. Rules are divided into separate areas, based upon the type of security involved. However, parts 2875.3000 to 2875.3120 shall apply to all securities, and should be followed in all instances unless they are inconsistent with another part in the appropriate area for the type of security proposed to be registered. In that instance, the area requirements will apply. This part and parts 2875.3000 to 2875.7280 shall not apply to securities or transactions exempted by Minnesota Statutes 1978, section 80A.15, subdivision 1 or 2, as amended, nor shall they apply to securities registered by notification.

A. Equity securities regulation, parts 2875.3000 to 2875.3120;

B. Senior securities regulation, parts 2875.3500 to 2875.3540;

C. Investment companies regulation, parts 2875.3900 to 2875.4330;

D. Real estate limited partnerships, parts 2875.4500 to 2875.5280;

E. Oil and gas programs, parts 2875.5600 to 2875.5780;

F. Cattle feeding programs, parts 2875.6100 to 2875.6260;

G. Real estate investment trusts, parts 2875.7100 to 2875.7280; and

H. Commodity pool guidelines, parts 2875.8100 to 2875.8450, and 2875.9900 to 2875.9970.

Subp. 2. Scope of rules pertaining to real estate limited

Approved by Revisor _____

partnerships. Rules pertaining to real estate partnerships shall be applied to real estate partnerships and, to the extent practical, to limited partnerships to which no other specific rules apply. Particularly, such nonreal estate limited partnerships shall meet the standards provided in parts 2875.4510 to 2875.4550, 2875.5000 to 2875.5120 and 2875.5140 to 2875.5280. With respect to the remaining rules, parts 2875.4560 to 2875.4610 and part 2875.5135, variance from the established standards may be permitted provided that the variance is justified and provides investor protection equal to that afforded by the rules.

2875.0410 EFFECTIVE DATE OF INCORPORATIONS BY REFERENCE.

Unless otherwise indicated, whenever a reference is made in this chapter to a federal or state statute, rule, decision, or opinion, ~~such~~ the reference shall be deemed to refer to the version of the statute, rule, decision, or opinion as of December 1, 1980.

2875.0960 FINANCIAL STATEMENTS.

Subpart 1. Content. Whenever in these rules financial statements of an issuer or other person are required by a particular part or form without further description, ~~such~~ the requirement refers to a balance sheet as of a date within 90 135 days ~~prior to~~ before the date of the application, and profit and loss statements for each of the three fiscal years preceding the date of the balance sheet and for the period, if any, between the close of the last of ~~such~~ these fiscal years and the date of the balance sheet. The balance sheet as of a date within 90 135 days ~~prior to~~ before the date of the application need not be audited. However, if the balance sheet is not audited and the application is for a registration, there shall be filed in addition an audited balance sheet as of the end of the person's last fiscal year ~~unless such~~. If the last fiscal year ended within 90 days of the date of the application ~~in which case~~, there shall be filed an audited balance sheet as of the end of the person's next preceding fiscal year. The income statements

Approved by Revisor _____

and statement of changes in financial position shall be audited up to the date of the last audited balance sheet filed, if any.

Subp. 2. **Delays.** If amendments or other delays cause the financial statements described in subpart 1 to become more than ~~four-months~~ 134 days old as of the effective date of the registration statement, then updated financial statements as of a date within ~~four-months~~ 135 days of the effective date shall be filed if the company has no established record of earnings or is currently showing losses or a weak financial condition. If the company has an established record of earnings and is in sound financial condition, a paragraph containing later information as to sales, net income, and financial condition may be added in lieu of updating the financial statements, in the discretion of the commissioner. However, in no case shall the financial statements be more than six months old as of the effective date of the registration statement. If a delay carries beyond the end of the fiscal year, and by applying due diligence the registrant and accountant can have the audit completed ~~prior to~~ before the effective date, certified statements should be filed as of the end of the fiscal year.

2875.1010 INVESTMENT ADVISORY CONTRACTS.

Subpart 1. [Unchanged.]

Subp. 1a. **Exception.** Subpart 1, item A, does not apply to an investment advisory contract that provides for compensation to the investment adviser on the basis of a share of the capital gains upon, or the capital appreciation of, the funds, or any portion of the funds, of a client if all the conditions in items A to D are satisfied, or if the condition specified in item E is satisfied.

A. to D. [Unchanged.]

E. The client entering into the contract subject to this subpart is a person specified in Minnesota Statutes, section 80A.04, subdivision 3, or other institutional investor as designated by rule or order of the commissioner under Minnesota Statutes, section 80A.04, subdivision 3.

Approved by Revisor _____

Subp. 2. [Unchanged.]

2875.3030 OPTIONS, WARRANTS, AND CHEAP STOCK TO UNDERWRITERS.

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

A. and B. [Unchanged.]

C. Neither the exercise of the options or warrants, nor the resale, transfer, or assignment (except as provided in item D) of any cheap stock may be accomplished for a period of one year from the ~~completion of the public offering~~ effective date of the registration statement.

D. During the one-year period following the effective date of the registration statement, the securities shall be nontransferable except by will, pursuant to the laws of descent and distribution, or pursuant to the operation of laws, provided, however, the securities may be transferred without payment therefor to:

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

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

(3) employees of the underwriter.

E. to J. [Unchanged.]

2875.3050 COMMISSIONS AND EXPENSES.

Subpart 1. [Unchanged.]

Subp. 1a. **Reasonable selling expenses.** 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:

A. finance, mortgage, and related companies, ten percent;

B. bonds, notes, debentures, and secured issuers, ten percent;

Approved by Revisor _____

C. common stocks, 15 percent;

D. preferred stocks and other stock senior to common stock, ~~ten~~ 15 percent;

E. investment companies, ten percent;

F. REITS, ten percent; and

G. investment contracts, ten percent.

Subp. 2. to 4. [Unchanged.]

2875.7100 DEFINITIONS.

Subpart 1. to 3. [Unchanged.]

Subp. 4. **Real estate investment trust (REIT).** "Real estate investment trust (REIT)" means ~~an unincorporated~~ a corporation, trust, or association ~~which intends to comply with sections 856, 857, and 858 of the Internal Revenue Code of 1954, as amended~~, other than a real estate syndication, that is engaged primarily in investing in equity interests in real estate, including fee ownership and leasehold interests, or in loans secured by real estate or both.

Approved by Revisor _____

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

IN THE MATTER OF THE PROPOSED AMENDMENTS TO RULES REGARDING THE SCOPE AND APPLICATION OF SECURITIES RULES AND CERTAIN EXEMPTIONS FROM REGISTRATION	)	STATEMENT OF NEED AND REASONABLENESS

STATEMENT OF AUTHORITY

Minnesota Statutes, Section 80A.25, subdivision 1 provides that:

> The Commissioner may from time to time make, amend, and rescind such rules ... as are necessary to carry out the provisions of Sections 80A.01 to 80A.31, including but not limited to rules and forms governing the conduct of business by broker-dealers, agents and investment advisers, registration statements, applications, and reports, and defining any terms, whether or not used in Sections 80A.01 to 80A.31, insofar as the definitions are not inconsistent with the provisions of Sections 80A.01 to 80A.31.

Additional rulemaking authority provided in Minnesota Statutes Section 45.023 authorizes the Commissioner to "adopt, amend, suspend, or repeal rules ... whenever necessary or proper in discharging the Commissioner's official responsibilities."

The Commissioner finds the proposed rules to be necessary or for the protection of investors and consistent with the purposes fairly intended by the policies and provisions of Chapters 45 and 80A. The Commissioner further finds that the proposed amendments are consistent with the statutory policy set forth in Minnesota Statutes 80A.31.

FACTS ESTABLISHING NEED AND REASONABLENESS

BACKGROUND

Minnesota Statutes 80A.25, subdivision 2 provides that "in prescribing rules and forms the commissioner may cooperate with securities administrators of other states and the Securities and Exchange Commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statements, application, and reports wherever practicable." (Underlining provided.) Minnesota Statutes 80A.31 states that "Sections 80A.01 to 80A.31 shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it and to coordinate the interpretation of Sections 80A.01 to 80A.31 with the related federal regulation." (Underlining provided.)

These rules are being proposed in keeping with the statutes' stated general purpose of uniformity of regulation of the Securities laws. Within the past fourteen months, the Securities and Exchange Commission has twice amended Regulation D, the rules which govern

the limited offer and sale of securities without gistration under the Securities Act of 1933. The first amendment became effective April 11, 1988 and the second on April 19, 1989. The Minnesota Securities rules refer to Regulation D in several places. In order to maintain consistency with the federal law, the Minnesota rules must be amended to reflect the current status of Regulation D.

The Department is proposing changes to other rules to reflect additional changes in the federal law. The part dealing with isolated sales is being amended to conform to the amended statute, pursuant to which it was promulgated. The amendment to the Real Estate Investment Trust (REIT) rules comports with a change the Internal Revenue Service has made in their treatment of REITs. Certain amendments are proposed to reflect changes made by the SEC in filing requirements while other rules require amendment in order to bring greater consistency to the application of Minnesota Securities Laws and to adapt to the realities of the regulated industries.

RULE PART 2875.0145

This part defines "Regulation D" as used in Minnesota Statutes 80A.15, subdivision 2(h) as Regulation D promulgated by the Securities and Exchange Commission, Code of Federal Regulations, Title 17, Sections 230.501 to 230.508, as amended April 19, 1989.

Minnesota Statutes 80A.15, subdivision 2(h) provides an

exemption from Minnesota's securities regulation requirements for "limited offerings." It allows an issuer to make sales to 25 persons in Minnesota (or 35 if the sales are made in compliance with Regulation D) if the purchasers are purchasing for investment and no compensation, other than reasonable and customary broker-dealer commissions, is paid for soliciting any prospective buyer in Minnesota. An issuer making sales pursuant to Minnesota Statutes 80A.15, subdivision 2(h) is required to file a "Statement of the Issuer" with the Department of Commerce but the filing is not subject to the type of merit review which occurs when a registration application is made pursuant to Minnesota Statutes 80A.10 and 80A.11.

Although several changes were made to Regulation D by the April 11, 1988 amendment and the April 19, 1989 amendment the changes which are most important when taking advantage of Minnesota's exemption are as follows:

1. The $500,000 ceiling for Rule 504 offering was raised to $1,000,000 if at least $500,000 of the offering is registered at the state level. Also, the amendment allows general solicitation in states where there is no registration procedure if the offering is also made in a registration state.

2. Where the offering is of $2,000,000 or less, the disclosure requirements are the same as those under

Regulation A although the issuer must provide investors with a certified balance sheet, dated within 120 days the commencement of the offering.

Since the reference to Regulation D in Minnesota Statutes 80A.15, 2(h) is not tied to a specific cite, this amendment clarifies that sales under the statute must be made in compliance with the new Regulation D. The change is necessary to carry out the legislature's intent that Minnesota's exemption coordinate with the federal law.

Rule Part 2875.0146

This part defines "Rule 701" as used in Minnesota Rules, Chapter 2875 as Rule 701 promulgated by the Securities and Exchange Commission, Code of Federal Regulations, title 17, section 239.701, which became effective on May 20, 1988.

Rule 701, promulgated pursuant to Section 3(b) of the 1933 Act provides an exemption from registration for offers and sales of securities of certain employee benefit plans and compensation contracts.

Rule Part 2875.0150

The legislature amended Minnesota Statutes 80A.15 2(a) to provide that 10 sales rather than 5 sales could be made under

the exemption. However, Part 2875.0150, promulgated pursuant to Minnesota Statutes 80A.15, 2(a), refers to 5 sales and has never been amended. The proposed amendment to Minnesota Rule 2875.0150, Subpart 1 merely reflects the current provisions of Minnesota Statutes 80A.15 2(a).

The current reference to Rule 501(a) of Regulation D found in Subpart 2 is tied to a specific cite in the Code of Federal Regulations. The amendment to this subpart would replace this specific cite with "Rule 501(a) of Regulation D and would make the Minnesota rule consistent with the new federal Regulation D. The SEC revisions to Regulation D, which took effect on April 11, 1988, added to the definition of accredited investor, savings and loan associations, credit unions, broker-dealers, and certain trusts, partnerships and corporations with over $5 million in total assets. The revisions permit a joint as well as an individual income test for natural persons and eliminate the $150,00 purchaser of securities from the definition. The amendment to the definition of "accredited investor" which became effective on April 19,1989 added those plans established and maintained by the governments of states and their political subdivisions, as well as their agencies and instrumentalities for the benefit of their employees, that have total assets in excess of $5 million.

The Commissioner concurs in the SEC's view, as reflected its current definition of "accredited investor", that the above investors possess the requisite sophistication to make registration unnecessary.

Rule Part 2875.0160

This proposal adds Moody's International Manual to those currently recognized by the Commissioner.

Minnesota Statutes 80A.15, subdivision 2(b) (the "manual exemption") exempts from registration:

> nonissuer distributions of outstanding securities if (1) either Moody's, Fitch's, or Standard & Poor's Securities Manuals, or other recognized manuals approved by the commissioner contains the names of the issuer's officers and directors, a balance sheet of the issuer as of a date not more than 18 months prior to the date of the sale, and a profit and loss statement for the fiscal year preceding the date of the balance sheet, and (2) the issuer or its predecessor has been in active, continuous business operation for the five-year period next preceding the date of sale, and (3) if the security has a fixed maturity or fixed interest or dividend provision, the issuer has not, within the three preceding fiscal years, defaulted in payment of principal, interest, or dividends on the securities.

Part 2875.0160 sets forth the manuals which are recognized by the Commissioner. Moody's International Manual was first published in 1981. Prior to that time, international companies were listed in Moody's Industrial Manual. These companies are now listed in Moody's International Manual a manual which has not been recognized by the Commissioner. Consequently, transactions in the securities of international companies which were once exempt pursuant to Minnesota Statutes 80A.15 2(b) are now subject to registration.

Minnesota Statutes 80A.15 2(b) gives the Commissioner authority

to recognize other manuals beyond those listed in the statute. The Commissioner, in adding Moody's International Manual to this part, is exercising that authority.

Rule Part 2875.0170

The terms financial institution or institutional buyer/investor are used, in Minnesota Statutes 80A.04, subdivision 3, 80A.14, subdivision 4, and 80A.15, subdivision 2(g). However, this part defines the term only for the purposes of Minnesota Statutes 80A.15, subdivision 2(g). The amendment extends the definition to Minnesota Statutes 80A.14, subdivision 3 and 80A.14, subdivision 4 clause (5), resulting in greater uniformity and fairness in the application of standards to licenses and registrants.

Minnesota Statutes 80A.04 provides that it is unlawful to transact business in this state as an investment adviser unless licensed as an investment adviser or broker-dealer unless that persons only Minnesota clients are:

> investment companies as defined in the Investment Company Act of 1940, other investment advisers, broker-dealers, banks, trust companies, savings and loan associations, insurance companies, employee benefit plans, corporations with a class of equity securities registered under Section 12(g) of the Securities Exchange Act of 1934, small business investment companies, and government agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional investors as are designated by rule or order of the commissioner.

The term, institutional investor has not been defined by rule or order for purposes of this statute. In order to achieve

consistency in the st tes, this part proposes t t the definition used for purposes of Minn. Stat. 80A.15, subd. 2(g) will apply to Minn. Stat. 80A.04, subd. 3.

Minn. Stat. 80A.14, subd. 4, clause (5) excludes from the "broker-dealer" definition:

> a person who has no place of business in this state if that person effects transactions in this state exclusively with or through (i) the issuers of the securities involved in the transactions, (ii) other broker-dealers, or (iii) banks, savings institutions, trust companies, insurance companies, investment companies as defined in the Investment Company Act of 1940, pension or profit sharing trusts, or other financial institutions or institutional buyers, or to broker-dealers, whether the purchaser is acting for itself or in some fiduciary capacity;

The terms "financial institutions or institutional buyers" are not defined in the rules. Again, in order to achieve uniformity, the amendment will include all accredited investors within the terms "financial institutions and institutional buyers."

Rule Part 2875.0180

Subpart 1 provides that when calculating the number of persons to whom sales have been made or will be made, the rules for calculation are those found in Rule 501(e). The reference is to a Federal Register cite and the amendment removes the specific cite, making it clear that the current 501(e) applies.

The amendment to Subpart 2 provides that if sales are made in compliance with rule 701, the number of sales made pursuant

to the exemption contained in Minnesota Statutes 80A.15, 2(h) is increased from 25 to 35 persons. The proposed amendment will offer parallel treatment to offerings made in compliance with Regulation D and Rule 701.

Minnesota Statutes 80A.15, subdivision 2(h) gives the commissioner authority "by rule or order as to any security or transaction or any type of security or transaction, withdraw or further condition this exemption, or increase the number of offers and sales permitted, or waive the conditions in clause (1), (2) or (3) with or without the substitution of a limitation or remuneration." Subpart 2a is being proposed pursuant to this authority. The Rule 701 exemption is available only for offers and sales of an issuer's securities pursuant to a written compensatory benefit plan established by the issuer for the participation of employees, directors, general partners, trustees (where the issuer is a business trust), officers, or consultants or advisers. The amount of securities offered and sold in reliance on Rule 701 is limited.

The offerees in a 701 offering are presumed to have knowledge regarding the issuer which other investors would not. Beyond that, the Federal rule requires that all participants be given a copy of the plan. Since the offerees possess adequate information about the issuer and the securities by virtue of their employment relationship with the issuer and the disclosure provided in the written plan, and since only 35 sales can be made in Minnesota, registration is not necessary.

The proposed changes to Subparts 3A and B merely remove the Code of Federal Regulations cite for Regulation D.

Rule Part 2875.0400

The amendment to Subpart 1 is a technical one which assigns letters to the various securities programs listed in the rule.

Proposed Subpart 2 provides that the real estate limited partnership rules shall apply to other limited partnerships to which no other specific rules apply. Under the proposed rule, non real estate limited partnerships must comply with Minnesota Securities Rules regarding sponsors, minimum investments, sales and leases to the program, completion bonds, and other rules relating to the rights of limited partners. The rule would allow for variance from parts 2875.4560 to 2875.4610, dealing with commissions and expenses and part 2875.5135, dealing with nonspecified property programs if the variance is justified and the investor receives protection equal to that provided by the rules.

There are no catch all provisions for the review of limited partnerships in the Minnesota Securities Rules. Therefore, in order to provide for a consistent review of limited partnership filings where there are no specific rules, proposed Subpart 2 requires non real estate limited partnerships to comply with

the real estate limited partnership rules. This results in greater fairness to registrants and provides equal protection to investors buying into real estate and nonreal estate limited partnerships.

Rule Part 2875.0410

This proposed amendment makes it clear that where a specific date is mentioned in reference to a statute, date, rule, decision, or opinion, that date applies rather than the general reference to December 1, 1980.

The amendment is a technical one, made necessary by the change in references to Regulation D.

Rule Part 2875.0960

The proposed change to Subpart 1 of the above rule requires that securities registrants file a balance sheet not more than 135 days old at the time of their application for registration. Currently the balance sheet cannot be more 90 days old.

Regulation S-X, an SEC regulation, provides that registrants must file a balance sheet as of a date within 135 days of the date of filing. Because the current Minnesota rule limits the age of the balance sheet to 90 days at the date of filing, issuers

are essentially prevented from filing an application for registration during the period after their most recent quarter has ended but before quarterly financial statements have been prepared. During this time, the balance sheet of the previous quarter is over 90 days old but new financial statements, which sometimes take weeks to prepare, are not available. Issuers should not be prohibted from filing registration statements so long as the balance sheet included is less than 135 days old. The amendment provides adequate protection for investors and also facilitates compliance by making the rule consistent with the SEC Rule.

The proposed change to Subpart 2 of the regulation requires the filing of updated financials if the financial statements initially filed become more than 134 days old as of the effective date of the registration statement.

The current law has a four month limitation. Regulations S-X requires the filing of updated financials if the financial statements initially filed are as of a date 135 days or more prior to the anticipated effective date. Assuming that "four months old" is approximately 120 days, the proposed change would permit financial statements that are 15 days older than currently allowed. This difference would not materially affect the quality of financial information provided to investors. The change would, however, make Minnesota's requirements consistent with those of the SEC thereby, facilitating compliance by registrants and helping registrants avoid inadvertent violation of the rule.

Rule Part 2875.1010

The proposed amendment to Subpart 1a would add an exception to the application of Subpart 1. Subpart 1 provides that it is unlawful for an investment adviser to enter into investment advisory contracts where compensation is based upon the profits accuring from recommended transactions or upon capital gains or capital appreciation of the funds.

Minnesota Statutes 80A.05, subdivision 1 gives the Commissioner specific authority to adopt rules setting forth the conditions under which an investment adviser may receive performance based compensation. The amendment which the Commissioner is proposing pursuant to that authority would allow compensation "on the basis of a share of the capital gains upon, or the capital appreciation of, the funds, or any portion of the funds" if the client is one of those listed in Minnesota Statutes 80A.04, subdivision 3.

The legislature has determined that those clients listed in Minnesota Statutes 80A.04, subdivision 3 are considered to be sophisticated investors capable of bearing the risks associated with investment adviser contracts and that therefore, licensure is not necessary. Since an investment adviser is not required to be licensed to transact business with the clients listed in Minnesota Statutes 80A.04, subdivision 3, it is consistent

to remove the prohibition against performance based compensation where these clients are involved. Further, this proposal is consistent with federal law which provides that exempt advisers are not subject to the Investment Adviser Act restrictions on the charging of a performance fee.

Rule Part 2875.3030

This amendment to Item C would change the prohibition on the transfer of cheap stock from one year from the completion of the offering to one year from the effective date of the registration statement.

Minnesota' current rule provides that underwriters may not exercise options or warrants or transfer any cheap stock received in connection with the offering for a period of one year from the completion of the public offering. The completion of the public offering is deemed to be the closing date of the offering. The National Association of Securities Dealers (NASD), however, restricts the transfer or exercise of securities issued to the underwriter as compensation for a period of one year from the effective date of the offering. Revision of the Minnesota Rule is appropriate in order to promote uniformity. This change would have no material effect on most firm underwritings where the closing typically occurs within two weeks of the effective date of the offering.

The proposed change to Item D of Part 2875.3030 allows transfers to underwriters for compensation after one year. It is intended to make Minnesota's rule regarding transferability consistent with the NASD rule. The NASD rule prohibits transfer of securities received as underwriter's compensation except to members of the underwriting group or their officers or partners during the first year after the effective date. Thereafter, the underwriter may transfer securities received as compensation provided the securities are either registered or an applicable exemption is available under federal and state securities law.

Rule Part 2875.3050

This amendment would raise the selling expense limit for preferred stock from 10% to 15%.

The current rule allows selling expenses of 10% for preferred stock and 15% for common stock. Offerings of preferred stock or other equity senior to common are important financing alternatives which require no less effort and expense by underwriters than offerings of common stock. The current ten percent expense limitation for preferred stocks has, in some cases, prevented companies from undertaking an offering of preferred stock when such an offering would have been in the company's best interests. Given that preferred stock often carries liquidation or dividend preferences which may reduce the risk of investing in preferred

stock as compared to common, there appears to be no compelling public policy justifying this discrimination against preferred stock.

Rule Part 2875.7100

This amendment would include corporations in the Real Estate Investment Trust definition.

Prior to 1976, the Internal Revenue Service definition of REITs did not include corporations. The federal law was amended in 1976. The amended definition is taken from the REIT Guidelines of the North American Securities Administrators Association, Inc. (NASAA). Therefore, the amendment will make Minnesota law consistent with federal law and also with those states which rely on the NASAA Guidelines.

Small Business Considerations

Minnesota Section 14.115 requires that the impact of proposed rules on small business be considered in the rule making process. Subdivision 2 of that section specifies a number of methods for reducing the impact of the rules. The Department has considered these methods in the preparation of the rules.

Clause (a) through (c) involve the establishment of less stringent or simplified standards for small businesses. Each

of these methods for reducing the impact of the rule on small businesses has been considered. The rules which are being proposed will simplify compliance with securities regulation since Minnesota law will conform to federal law. The rules will, in fact, make it easier for small businesses to raise capital in Minnesota. Any further relaxation of these rules for small businesses pursuant to Minnesota Statutes 14.115, subdivision 2, clause (c) through (d) would destroy uniformity between the federal law and the state law and would weaken the statute's goal of investor protection to an unacceptable level.

Clause (d) is not applicable to this rule since performance, design or operational standards are not involved.

Exemption of small businesses under clause (e) is not feasible and would be contrary to statutory objectives of investor protection.

In proposing these rules the Department met with the Executive Council of the Business Law Section of the Minnesota State Bar Association. These attorneys represent many small businesses including small corporations, investment advisers and broker-dealers. These attorneys have stated that the proposed rules will decrease legal costs and ease the regulatory burden on their clients.

The Department fully considered the impact of these rules on small businesses. The Department has concluded that the overall effect of the rules will be the easing of regulation on small business.

In the Matter of the Proposed Rules
Relating to Sales of Securities

STATE OF MINNESOTA)
) ss
COUNTY OF RAMSEY)

AFFIDAVIT OF
MAILING

Dolores Anitzberger, being first duly sworn, deposes and says:

I hereby certify that the list of persons, associations, and other interested groups who have requested, pursuant to Minnesota Statutes, section 14.14, subd. 1a, that their names be placed on file with and maintained by the Department of Commerce for the purpose of receiving notice of the proposed adoption of rules is accurate and complete as of 12:00 P.M. this 22nd day of June 1989.

That on the 22nd day of June 1989, at the City of St. Paul County of Ramsey, State of Minnesota, the attached Notice of Intent to Adopt Rules Without a Public Hearing was served by depositing in the State of Minnesota Central Mail System for United States mailing as said City of St. Paul, a copy properly prepared with first-class postage prepaid, on all persons and associations who have requested that their names be placed on file with the Minnesota Department of Commerce for the purpose of receiving notice of the proposed adoption of rules by the department.

Dolores Anitzberger

Subscribed and sworn to before me
this 22nd day of June, 1989.

Cynthia L. Claason
Notary Public

CYNTHIA L. CLAASON
NOTARY PUBLIC-MINNESOTA
RAMSEY COUNTY
MY COMMISSION EXPIRES FEBRUARY 11, 1992

beyond 180 days for any particular class, must file a petition to intervene with the administrative law judge at least ten days before the hearing date. If no notice to intervene is filed for a class then the class is activated beyond the 180-day period without further action.

Subd. 3. CONTESTED CASE; REPORT. The hearing and all matters after the hearing are a contested case under chapter 14. Within 45 days from the commencement of the hearing and within 15 days of the completion of the hearing the administrative law judge shall submit a report to the commissioner of commerce. The parties, or the administrative law judge, if the parties cannot agree, shall adjust all time requirements under the contested case procedure to conform with the 45-day requirement.

Subd. 4. DECISION. The commissioner shall make a decision within ten days of the receipt of the administrative law judge's report.

Subd. 5. WAIVER OR MODIFICATION. If all parties to the proceeding agree, any of the requirements of this section may be waived or modified.

Subd. 6. CASE PRESENTATION. The department of commerce, upon request by small businesses as defined by section 14.115, subdivision 1, shall assist small businesses in any specific class requesting continuation of coverage beyond the 180-day period, in coordinating the class and presenting the case in the contested hearing.

Department of Commerce

Notice to Solicit Outside Opinion Regarding Proposed Amendments to Rules Regarding the Scope and Application of Securities Rules and Certain Exemptions from Registration Including the Impact of the Rules on Small Business

NOTICE IS HEREBY GIVEN that the Department of Commerce is seeking information or opinions from persons outside the agency in preparing to amend current rules to enhance uniformity with regulations promulgated by the Securities and Exchange Commission and to modify the scope of rules pertaining to real estate limited partnerships. Promulgation of these rules is authorized by *Minnesota Statutes* 80A.25 and 45.023.

Outside opinion is also being solicited as to how these rules will affect small businesses as defined by *Minnesota Statutes* 14.115, subdivision 1.

The Department of Commerce requests information and comments concerning the subject matter of these rules. Interested or affected persons or groups may submit statements of information or comment orally or in writing to:

Kristine L. Eiden
Department of Commerce
500 Metro Square Building
St. Paul, MN 55101
(612) 296-6325

Oral statements will be received during regular business hours over the telephone at (612) 296-6325.

All statements of information and comment shall be accepted until November 2, 1988. Any written material received by the Department of Commerce shall become part of the record in the event that the rules are promulgated.

Michael A. Hatch
Commissioner of Commerce

Minnesota Department of Education

Management Effectiveness Division

Announcement of the Availability of Tape Format for Integrated Data Base

The Minnesota Department of Education (MDE) announced that the tape format for the essential data elements included in the statewide Integrated Data Base (IDB) is available upon request.

This document specifies the only acceptable tape layout/format which can be used to submit IDB data from the ESV Regions to the MDE, as well as, the only authorized file format for transfer of district data to the ESV Regional Computer Centers as related to *Minnesota Statutes*, Section 121.932, Subdivision 5. The tape format will be distributed upon written request only. Requests for this document should be sent to Mark Manning, Minnesota Department of Education, 848 Capitol Square Building, 550 Cedar Street, St. Paul, Minnesota, 55101.

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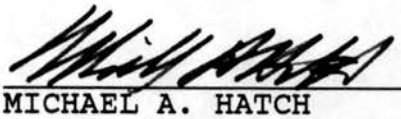

MICHAEL A. HATCH
Commissioner of Commerce

STATE OF MINNESOTA
DEPARTMENT OF COMMERCE

In the Matter of the Proposed Adoption of the Rules of the State Department of Commerce Governing Sales of Securities

FINDINGS OF FACT, CONCLUSIONS, AND ORDER ADOPTING RULE WITHOUT PUBLIC HEARING

Notice of the Department of Commerce's intent to adopt the above-entitled rule was published in the State Register on May 15, 1989 and was sent by United States mail to all persons on the list maintained by the agency pursuant to Minnesota Statutes, sections 14.14, subdivision 1a and 14.22 on June 22, 1989. The Statement of Need and Reasonableness was prepared before the notice of intent to adopt a rule without a public hearing was mailed to all persons on the rulemaking mailing list and published in the State Register and was available to the public.

All persons were given the opportunity to submit comment on the rule for 30 days after notice of proposed rulemaking. No requests for a public hearing on the rule was received by the agency.

Based on the comments and evidence in the record before the agency, I find that the above-captioned rule is needed and reasonable.

NOW, THEREFORE, IT IS ORDERED that the rule identified as Proposed Amendments to Rules Regarding the Scope and Application of Securities Rules and Certain Exemptions from Registration Including the Impact of the Rules on Small Business are adopted this 25th day of July, 1989, pursuant to authority vested in Minnesota Statutes, section 80A.25, subd. 1 and section 45.023.

MICHAEL A. HATCH
Commissioner of Commerce

In the Matter of the Adoption
of the Rules of the State
Department of Commerce Governing
the Scope and Application of
Securities Rules and Certain
Exemptions from Registration

DECLARATION OF
COUNSEL

I, Michele M. Owen, Special Assistant Attorney General, do hereby declare that I have examined the above-captioned rule, and the supporting rulemaking records, and that, based on my examination, the Administrative Procedure Act and Minnesota Rules, chapter 2010 have been followed. For Attorney General billing purposes, the four-digit docket client code is 0126.

Dated: July 31, 1989

Michele M. Owen

MICHELE M. OWEN
Special Assistant
Attorney General

.cx5

SF-00006-05 (4/86)

STATE OF MINNESOTA

Office Memorandum

DEPARTMENT : of Commerce

DATE : July 25, 1989

TO : Al Gilbert

FROM : Heidi Almquist Strommen

PHONE : 297-3238

SUBJECT : Rules relating to the sales of securities

Enclosed are copies of the following materials regarding the above-captioned rules:

1. Notice of Intent to Solicit Outside Opinion as published in State Register (2010.0300 A)

2. Copy of the Proposed Rules with Revisor's Certificate (2010.0300 D)

3. Notice of Intent to Adopt Rule Without Public Hearing (2010.0300 E)

4. Statement of Need and Reasonableness (2010.0300 F)

5. Affidavit of Mailing Notice of Intent to Adopt Rule Without Public Hearing (2010.0300 G)

6. Copy of Notice of Intent to Adopt Rule Without Public Hearing and Rules as published in the State Register (2010.0300 H)

7. Four copies of Rule as adopted (2010.0300 I)

8. Findings of Fact, Conclusions & Order Adopting Rule (2010.0300 K)

RECEIVED
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ATTORNEY GENERAL'S OFFICE
7TH FLOOR TOWER