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State of Minnesota
HOUSE OF REPRESENTATIVES

**EIGHTY-FIFTH
SESSION**

HOUSE FILE No. 3306

February 21, 2008

Authored by Tillberry

The bill was read for the first time and referred to the Committee on Commerce and Labor

March 3, 2008

Committee Recommendation and Adoption of Report:

To Pass

Read Second Time

March 10, 2008

By motion, re-referred to the Committee on Taxes

April 7, 2008

Committee Recommendation and Adoption of Report:

To Pass

Read Second Time

1.1 A bill for an act
1.2 relating to securities; modifying the Minnesota Securities Act; regulating
1.3 registrations, filings, and fees; making various technical changes; amending
1.4 Minnesota Statutes 2006, sections 80A.40; 80A.41; 80A.46; 80A.50; 80A.52;
1.5 80A.54; 80A.55; 80A.56; 80A.57; 80A.58; 80A.60; 80A.65, subdivision 2,
1.6 by adding a subdivision; 80A.66; 80A.67; 80A.76; 80A.82; 80A.83; 80A.85;
1.7 80A.87.

1.8 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF MINNESOTA:

1.9 Section 1. Minnesota Statutes 2006, section 80A.40, is amended to read:

1.10 **80A.40 SECTION 101; SHORT TITLE.**

1.11 This chapter may be cited as the Uniform Minnesota Securities Act (~~2002~~).

1.12 Sec. 2. Minnesota Statutes 2006, section 80A.41, is amended to read:

1.13 **80A.41 SECTION 102; DEFINITIONS.**

1.14 In this chapter, unless the context otherwise requires:

1.15 (1) "Accredited investor" means an accredited investor as the term is defined in Rule
1.16 501(a) of Regulation D adopted pursuant to the Securities Act of 1933.

1.17 ~~(1)~~ (2) "Administrator" means the commissioner of commerce.

1.18 ~~(2)~~ (3) "Agent" means an individual, other than a broker-dealer, who represents
1.19 a broker-dealer in effecting or attempting to effect purchases or sales of securities or
1.20 represents an issuer in effecting or attempting to effect purchases or sales of the issuer's
1.21 securities. But a partner, officer, or director of a broker-dealer or issuer, or an individual
1.22 having a similar status or performing similar functions is an agent only if the individual
1.23 otherwise comes within the term. The term does not include an individual excluded by
1.24 rule adopted or order issued under this chapter.

2.1 ~~(3)~~ (4) "Bank" means:

2.2 (A) a banking institution organized under the laws of the United States;

2.3 (B) a member bank of the Federal Reserve System;

2.4 (C) any other banking institution, whether incorporated or not, doing business
2.5 under the laws of a state or of the United States, a substantial portion of the business
2.6 of which consists of receiving deposits or exercising fiduciary powers similar to those
2.7 permitted to be exercised by national banks under the authority of the Comptroller of the
2.8 Currency pursuant to Section 1 of Public Law 87-722 (12 U.S.C. Section 92a), and which
2.9 is supervised and examined by a state or federal agency having supervision over banks,
2.10 and which is not operated for the purpose of evading this chapter; and

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

2.13 ~~(4)~~ (5) "Broker-dealer" means a person engaged in the business of effecting
2.14 transactions in securities for the account of others or for the person's own account. The
2.15 term does not include:

2.16 (A) an agent;

2.17 (B) an issuer;

2.18 (C) a depository institution; provided such activities are conducted in accordance
2.19 with such rules as may be adopted by the administrator;

2.20 (D) an international banking institution; or

2.21 (E) a person excluded by rule adopted or order issued under this chapter.

2.22 ~~(5)~~ (6) "Depository institution" means:

2.23 (A) a bank; or

2.24 (B) a savings institution, trust company, credit union, or similar institution that
2.25 is organized or chartered under the laws of a state or of the United States, authorized
2.26 to receive deposits, and supervised and examined by an official or agency of a state or
2.27 the United States if its deposits or share accounts are insured to the maximum amount
2.28 authorized by statute by the Federal Deposit Insurance Corporation, the National Credit
2.29 Union Share Insurance Fund, or a successor authorized by federal law. The term does
2.30 not include:

2.31 (i) an insurance company or other organization primarily engaged in the business
2.32 of insurance;

2.33 (ii) a Morris Plan bank; or

2.34 (iii) an industrial loan company that is not an "insured depository institution" as
2.35 defined in section 3(c)(2) of the Federal Deposit Insurance Act, United States Code, title
2.36 12, section 1813(c)(2), or any successor federal statute.

3.1 ~~(6)~~ (7) "Federal covered investment adviser" means a person registered under the
3.2 Investment Advisers Act of 1940.

3.3 ~~(7)~~ (8) "Federal covered security" means a security that is, or upon completion of a
3.4 transaction will be, a covered security under Section 18(b) of the Securities Act of 1933
3.5 (15 U.S.C. Section 77r(b)) or rules or regulations adopted pursuant to that provision.

3.6 ~~(8)~~ (9) "Filing" means the receipt under this chapter of a record by the administrator
3.7 or a designee of the administrator.

3.8 ~~(9)~~ (10) "Fraud," "deceit," and "defraud" are not limited to common law deceit.

3.9 ~~(10)~~ (11) "Guaranteed" means guaranteed as to payment of all principal and all
3.10 interest.

3.11 ~~(11)~~ (12) "Institutional investor" means any of the following, whether acting for
3.12 itself or for others in a fiduciary capacity:

3.13 (A) a depository institution or international banking institution;

3.14 (B) an insurance company;

3.15 (C) a separate account of an insurance company;

3.16 (D) an investment company as defined in the Investment Company Act of 1940;

3.17 (E) a broker-dealer registered under the Securities Exchange Act of 1934;

3.18 (F) an employee pension, profit-sharing, or benefit plan if the plan has total assets
3.19 in excess of \$10,000,000 or its investment decisions are made by a named fiduciary, as
3.20 defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer
3.21 registered under the Securities Exchange Act of 1934, an investment adviser registered
3.22 or exempt from registration under the Investment Advisers Act of 1940, an investment
3.23 adviser registered under this chapter, a depository institution, or an insurance company;

3.24 (G) a plan established and maintained by a state, a political subdivision of a state, or
3.25 an agency or instrumentality of a state or a political subdivision of a state for the benefit
3.26 of its employees, if the plan has total assets in excess of \$10,000,000 or its investment
3.27 decisions are made by a duly designated public official or by a named fiduciary, as
3.28 defined in the Employee Retirement Income Security Act of 1974, that is a broker-dealer
3.29 registered under the Securities Exchange Act of 1934, an investment adviser registered
3.30 or exempt from registration under the Investment Advisers Act of 1940, an investment
3.31 adviser registered under this chapter, a depository institution, or an insurance company;

3.32 (H) a trust, if it has total assets in excess of \$10,000,000, its trustee is a depository
3.33 institution, and its participants are exclusively plans of the types identified in subparagraph
3.34 (F) or (G), regardless of the size of their assets, except a trust that includes as participants
3.35 self-directed individual retirement accounts or similar self-directed plans;

4.1 (I) an organization described in Section 501(c)(3) of the Internal Revenue Code (26
4.2 U.S.C. Section 501(c)(3)), corporation, Massachusetts trust or similar business trust,
4.3 limited liability company, or partnership, not formed for the specific purpose of acquiring
4.4 the securities offered, with total assets in excess of \$10,000,000;

4.5 (J) a small business investment company licensed by the Small Business
4.6 Administration under Section 301(c) of the Small Business Investment Act of 1958 (15
4.7 U.S.C. Section 681(c)) with total assets in excess of \$10,000,000;

4.8 (K) a private business development company as defined in Section 202(a)(22) of
4.9 the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(22)) with total assets
4.10 in excess of \$10,000,000;

4.11 (L) a federal covered investment adviser acting for its own account;

4.12 (M) a "qualified institutional buyer" as defined in Rule 144A(a)(1), other than Rule
4.13 144A(a)(1)(i)(H), adopted under the Securities Act of 1933 (17 C.F.R. 230.144A);

4.14 (N) a "major U.S. institutional investor" as defined in Rule 15a-6(b)(4)(i) adopted
4.15 under the Securities Exchange Act of 1934 (17 C.F.R. 240.15a-6);

4.16 (O) any other person, other than an individual, of institutional character with total
4.17 assets in excess of \$10,000,000 not organized for the specific purpose of evading this
4.18 chapter; or

4.19 (P) any other person specified by rule adopted or order issued under this chapter;

4.20 ~~(12)~~ (13) "Insurance company" means a company organized as an insurance
4.21 company whose primary business is writing insurance or reinsuring risks underwritten by
4.22 insurance companies and which is subject to supervision by the insurance commissioner
4.23 or a similar official or agency of a state.

4.24 ~~(13)~~ (14) "Insured" means insured as to payment of all principal and all interest.

4.25 ~~(14)~~ (15) "International banking institution" means an international financial
4.26 institution of which the United States is a member and whose securities are exempt from
4.27 registration under the Securities Act of 1933.

4.28 ~~(15)~~ (16) "Investment adviser" means a person that, for compensation, engages in
4.29 the business of advising others, either directly or through publications or writings, as to the
4.30 value of securities or the advisability of investing in, purchasing, or selling securities or
4.31 that, for compensation and as a part of a regular business, issues or promulgates analyses
4.32 or reports concerning securities. The term includes a financial planner or other person
4.33 that, as an integral component of other financially related services, provides investment
4.34 advice to others for compensation as part of a business or that holds itself out as providing
4.35 investment advice to others for compensation. The term does not include:

4.36 (A) an investment adviser representative;

5.1 (B) a lawyer, accountant, engineer, or teacher whose performance of investment
5.2 advice is solely incidental to the practice of the person's profession;

5.3 (C) a broker-dealer or its agents whose performance of investment advice is solely
5.4 incidental to the conduct of business as a broker-dealer and that does not receive special
5.5 compensation for the investment advice;

5.6 (D) a publisher of a bona fide newspaper, news magazine, or business or financial
5.7 publication of general and regular circulation;

5.8 (E) a federal covered investment adviser;

5.9 (F) a bank or savings institution;

5.10 (G) any other person that is excluded by the Investment Advisers Act of 1940 from
5.11 the definition of investment adviser; or

5.12 (H) any other person excluded by rule adopted or order issued under this chapter.

5.13 ~~(16)~~ (17) "Investment adviser representative" means an individual employed by or
5.14 associated with an investment adviser or federal covered investment adviser and who
5.15 makes any recommendations or otherwise gives investment advice regarding securities,
5.16 manages accounts or portfolios of clients, determines which recommendation or advice
5.17 regarding securities should be given, provides investment advice or holds herself or
5.18 himself out as providing investment advice, receives compensation to solicit, offer, or
5.19 negotiate for the sale of or for selling investment advice, or supervises employees who
5.20 perform any of the foregoing. The term does not include an individual who:

5.21 (A) performs only clerical or ministerial acts;

5.22 (B) is an agent whose performance of investment advice is solely incidental to
5.23 the individual acting as an agent and who does not receive special compensation for
5.24 investment advisory services;

5.25 (C) is employed by or associated with a federal covered investment adviser, unless
5.26 the individual has a "place of business" in this state as that term is defined by rule adopted
5.27 under Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-3a)
5.28 and is

5.29 (i) an "investment adviser representative" as that term is defined by rule adopted
5.30 under Section 203A of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-3a); or

5.31 (ii) not a "supervised person" as that term is defined in Section 202(a)(25) of the
5.32 Investment Advisers Act of 1940 (15 U.S.C. Section 80b-2(a)(25)); or

5.33 (D) is excluded by rule adopted or order issued under this chapter.

5.34 ~~(17)~~ (18) "Issuer" means a person that issues or proposes to issue a security, subject
5.35 to the following:

6.1 (A) The issuer of a voting trust certificate, collateral trust certificate, certificate of
6.2 deposit for a security, or share in an investment company without a board of directors or
6.3 individuals performing similar functions is the person performing the acts and assuming
6.4 the duties of depositor or manager pursuant to the trust or other agreement or instrument
6.5 under which the security is issued.

6.6 (B) The issuer of an equipment trust certificate or similar security serving the same
6.7 purpose is the person by which the property is or will be used or to which the property
6.8 or equipment is or will be leased or conditionally sold or that is otherwise contractually
6.9 responsible for assuring payment of the certificate.

6.10 (C) The issuer of a fractional undivided interest in an oil, gas, or other mineral lease
6.11 or in payments out of production under a lease, right, or royalty is the owner of an interest
6.12 in the lease or in payments out of production under a lease, right, or royalty, whether
6.13 whole or fractional, that creates fractional interests for the purpose of sale.

6.14 ~~(18)~~ (19) "Nonissuer transaction" or "nonissuer distribution" means a transaction or
6.15 distribution not directly or indirectly for the benefit of the issuer.

6.16 ~~(19)~~ (20) "Offer to purchase" includes an attempt or offer to obtain, or solicitation of
6.17 an offer to sell, a security or interest in a security for value. The term does not include a
6.18 tender offer that is subject to Section 14(d) of the Securities Exchange Act of 1934 (15
6.19 U.S.C. Section 78n(d)).

6.20 ~~(20)~~ (21) "Person" means an individual; corporation; business trust; estate;
6.21 trust; partnership; limited liability company; association; joint venture; government;
6.22 governmental subdivision, agency, or instrumentality; public corporation; or any other
6.23 legal or commercial entity.

6.24 ~~(21)~~ (22) "Place of business" of a broker-dealer, an investment adviser, or a federal
6.25 covered investment adviser means:

6.26 (A) an office at which the broker-dealer, investment adviser, or federal covered
6.27 investment adviser regularly provides brokerage or investment advice or solicits, meets
6.28 with, or otherwise communicates with customers or clients; or

6.29 (B) any other location that is held out to the general public as a location at which
6.30 the broker-dealer, investment adviser, or federal covered investment adviser provides
6.31 brokerage or investment advice or solicits, meets with, or otherwise communicates with
6.32 customers or clients.

6.33 ~~(22)~~ (23) "Predecessor Act" means Minnesota Statutes 2002, sections 80A.01
6.34 to 80A.31.

6.35 ~~(23)~~ (24) "Price amendment" means the amendment to a registration statement
6.36 filed under the Securities Act of 1933 or, if an amendment is not filed, the prospectus or

7.1 prospectus supplement filed under the Securities Act of 1933 that includes a statement of
7.2 the offering price, underwriting and selling discounts or commissions, amount of proceeds,
7.3 conversion rates, call prices, and other matters dependent upon the offering price.

7.4 ~~(24)~~ (25) "Principal place of business" of a broker-dealer or an investment adviser
7.5 means the executive office of the broker-dealer or investment adviser from which the
7.6 officers, partners, or managers of the broker-dealer or investment adviser direct, control,
7.7 and coordinate the activities of the broker-dealer or investment adviser.

7.8 ~~(24a)~~ (26) "Purchaser" does not include:

7.9 (A) any relative, spouse, or relative of the spouse of a purchaser who has the same
7.10 principal residence as the purchaser;

7.11 (B) any trust or estate in which a purchaser and any of the persons related to him as
7.12 specified in Regulation D, Rule 501(e)(1)(i) or (e)(1)(ii) collectively have more than 50
7.13 percent of the beneficial interest (excluding contingent interests);

7.14 (C) any corporation or other organization of which a purchaser and any of the
7.15 persons related to the purchaser as specified in Regulation D, Rule 501(e)(1)(i) or
7.16 (e)(1)(ii) collectively are beneficial owners of more than 50 percent of the equity securities
7.17 (excluding directors' qualifying shares) or equity interests; and

7.18 (D) any accredited investor ~~as defined by Regulation D, Rule 501(3)~~.

7.19 A corporation, partnership, or other entity must be counted as one purchaser. If,
7.20 however, that entity is organized for the specific purpose of acquiring the securities offered
7.21 and is not an accredited investor, then each beneficial owner of equity securities or equity
7.22 interests in the entity shall count as a separate purchaser for all provisions of Regulation
7.23 D, except to the extent provided in Regulation D, Rule 501(e)(1).

7.24 A noncontributory employee benefit plan within the meaning of Title I of the
7.25 Employee Retirement Income Security Act of 1974 shall be counted as one purchaser
7.26 where the trustee makes all investment decisions for the plan.

7.27 ~~(25)~~ (27) "Record," except in the phrases "of record," "official record," and "public
7.28 record," means information that is inscribed on a tangible medium or that is stored in an
7.29 electronic or other medium and is retrievable in perceivable form.

7.30 ~~(26)~~ (28) "Sale" includes every contract of sale, contract to sell, or disposition of,
7.31 a security or interest in a security for value, and "offer to sell" includes every attempt
7.32 or offer to dispose of, or solicitation of an offer to purchase, a security or interest in a
7.33 security for value.

7.34 (A) A security given or delivered with, or as a bonus on account of, any purchase of
7.35 securities or any other thing is considered to constitute part of the subject of the purchase
7.36 and to have been offered and sold for value.

8.1 (B) A gift of assessable stock is considered to involve an offer and sale.

8.2 (C) A sale or offer of a warrant or right to purchase or subscribe to another security
8.3 of the same or another issuer and a sale or offer of a security that gives the holder a present
8.4 or future right or privilege to convert the security into another security of the same or
8.5 another issuer, are each considered to include an offer of the other security.

8.6 ~~(27)~~ (29) "Securities and Exchange Commission" means the United States Securities
8.7 and Exchange Commission.

8.8 ~~(28)~~ (30) "Security" means a note; stock; treasury stock; security future; bond;
8.9 debenture; evidence of indebtedness; certificate of interest or participation in a
8.10 profit-sharing agreement; collateral trust certificate; preorganization certificate or
8.11 subscription; transferable share; investment contract; voting trust certificate; certificate of
8.12 deposit for a security; fractional undivided interest in oil, gas, or other mineral rights; put,
8.13 call, straddle, option, or privilege on a security, certificate of deposit, or group or index of
8.14 securities, including an interest therein or based on the value thereof; put, call, straddle,
8.15 option, or privilege entered into on a national securities exchange relating to foreign
8.16 currency; or, in general, an interest or instrument commonly known as a "security"; or
8.17 a certificate of interest or participation in, temporary or interim certificate for, receipt
8.18 for, guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing.

8.19 The term:

8.20 (A) includes both a certificated and an uncertificated security;

8.21 (B) does not include an insurance or endowment policy or annuity contract under
8.22 which an insurance company promises to pay a fixed or variable sum of money either in a
8.23 lump sum or periodically for life or other specified period;

8.24 (C) does not include an interest in a contributory or noncontributory pension or
8.25 welfare plan subject to the Employee Retirement Income Security Act of 1974;

8.26 ~~(D) includes as an "investment contract" an investment in a common enterprise with
8.27 the expectation of profits to be derived primarily from the efforts of a person other than
8.28 the investor and a "common enterprise" means an enterprise in which the fortunes of the
8.29 investor are interwoven with those of either the person offering the investment, a third
8.30 party, or other investors;~~

8.31 ~~(E)~~ includes as an "investment contract," among other contracts, an interest in
8.32 a limited partnership and a limited liability company and an investment in a viatical
8.33 settlement or similar agreement; and

8.34 ~~(F)~~ (E) does not include any equity interest of a closely held corporation or other
8.35 entity with not more than 35 holders of the equity interest of such entity offered or sold
8.36 pursuant to a transaction in which 100 percent of the equity interest of such entity is

9.1 sold as a means to effect the sale of the business of the entity if the transaction has
 9.2 been negotiated on behalf of all purchasers and if all purchasers have access to inside
 9.3 information regarding the entity before consummating the transaction.

9.4 ~~(29)~~ (31) "Self-regulatory organization" means a national securities exchange
 9.5 registered under the Securities Exchange Act of 1934, a national securities association of
 9.6 broker-dealers registered under the Securities Exchange Act of 1934, a clearing agency
 9.7 registered under the Securities Exchange Act of 1934, or the Municipal Securities
 9.8 Rulemaking Board established under the Securities Exchange Act of 1934.

9.9 ~~(30)~~ (32) "Sign" means, with present intent to authenticate or adopt a record:

9.10 (A) to execute or adopt a tangible symbol; or

9.11 (B) to attach or logically associate with the record an electronic symbol, sound,
 9.12 or process.

9.13 ~~(31)~~ (33) "State" means a state of the United States, the District of Columbia, Puerto
 9.14 Rico, the United States Virgin Islands, or any territory or insular possession subject to the
 9.15 jurisdiction of the United States.

9.16 ~~(32)~~ (34) "Associated with" with respect to a person means any partner, officer,
 9.17 director, or manager of such person or any person occupying a similar status or performing
 9.18 similar functions or any person directly or indirectly controlling, controlled by, or in
 9.19 common control with, such person, but does not include a person whose primary duties
 9.20 are ministerial or clerical.

9.21 Sec. 3. Minnesota Statutes 2006, section 80A.46, is amended to read:

9.22 **80A.46 SECTION 202; EXEMPT TRANSACTIONS.**

9.23 The following transactions are exempt from the requirements of sections 80A.49
 9.24 through 80A.54 and 80A.71:

9.25 (1) isolated nonissuer transactions, consisting of sale to not more than ten purchasers
 9.26 in Minnesota during any period of 12 consecutive months, whether effected by or through
 9.27 a broker-dealer or not;

9.28 (2) a nonissuer transaction by or through a broker-dealer registered, or exempt from
 9.29 registration under this chapter, and a resale transaction by a sponsor of a unit investment
 9.30 trust registered under the Investment Company Act of 1940, in a security of a class that
 9.31 has been outstanding in the hands of the public for at least 90 days, if, at the date of
 9.32 the transaction:

9.33 (A) the issuer of the security is engaged in business, the issuer is not in the
 9.34 organizational stage or in bankruptcy or receivership, and the issuer is not a blank check,
 9.35 blind pool, or shell company that has no specific business plan or purpose or has indicated

10.1 that its primary business plan is to engage in a merger or combination of the business with,
10.2 or an acquisition of, an unidentified person;

10.3 (B) the security is sold at a price reasonably related to its current market price;

10.4 (C) the security does not constitute the whole or part of an unsold allotment to, or
10.5 a subscription or participation by, the broker-dealer as an underwriter of the security
10.6 or a redistribution;

10.7 (D) a nationally recognized securities manual or its electronic equivalent designated
10.8 by rule adopted or order issued under this chapter or a record filed with the Securities and
10.9 Exchange Commission that is publicly available contains:

10.10 (i) a description of the business and operations of the issuer;

10.11 (ii) the names of the issuer's executive officers and the names of the issuer's
10.12 directors, if any;

10.13 (iii) an audited balance sheet of the issuer as of a date within 18 months before the
10.14 date of the transaction or, in the case of a reorganization or merger when the parties to
10.15 the reorganization or merger each had an audited balance sheet, a pro forma balance
10.16 sheet for the combined organization; and

10.17 (iv) an audited income statement for each of the issuer's two immediately previous
10.18 fiscal years or for the period of existence of the issuer, whichever is shorter, or, in the case
10.19 of a reorganization or merger when each party to the reorganization or merger had audited
10.20 income statements, a pro forma income statement; and

10.21 (E) any one of the following requirements is met:

10.22 (i) the issuer of the security has a class of equity securities listed on a national
10.23 securities exchange registered under Section 6 of the Securities Exchange Act of 1934
10.24 or designated for trading on the National Association of Securities Dealers Automated
10.25 Quotation System;

10.26 (ii) the issuer of the security is a unit investment trust registered under the Investment
10.27 Company Act of 1940;

10.28 (iii) the issuer of the security, including its predecessors, has been engaged in
10.29 continuous business for at least three years; or

10.30 (iv) the issuer of the security has total assets of at least \$2,000,000 based on an
10.31 audited balance sheet as of a date within 18 months before the date of the transaction or, in
10.32 the case of a reorganization or merger when the parties to the reorganization or merger
10.33 each had such an audited balance sheet, a pro forma balance sheet for the combined
10.34 organization;

10.35 (3) a nonissuer transaction by or through a broker-dealer registered or exempt from
10.36 registration under this chapter in a security of a foreign issuer that is a margin security

11.1 defined in regulations or rules adopted by the Board of Governors of the Federal Reserve
11.2 System;

11.3 (4) a nonissuer transaction by or through a broker-dealer registered or exempt
11.4 from registration under this chapter in an outstanding security if the guarantor of the
11.5 security files reports with the Securities and Exchange Commission under the reporting
11.6 requirements of Section 13 or 15(d) of the Securities Exchange Act of 1934 (15 U.S.C.
11.7 Sections 78m or 78o(d));

11.8 (5) a nonissuer transaction by or through a broker-dealer registered or exempt from
11.9 registration under this chapter in a security that:

11.10 (A) is rated at the time of the transaction by a nationally recognized statistical rating
11.11 organization in one of its four highest rating categories; or

11.12 (B) has a fixed maturity or a fixed interest or dividend, if:

11.13 (i) a default has not occurred during the current fiscal year or within the three
11.14 previous fiscal years or during the existence of the issuer and any predecessor if less than
11.15 three fiscal years, in the payment of principal, interest, or dividends on the security; and

11.16 (ii) the issuer is engaged in business, is not in the organizational stage or in
11.17 bankruptcy or receivership, and is not and has not been within the previous 12 months a
11.18 blank check, blind pool, or shell company that has no specific business plan or purpose or
11.19 has indicated that its primary business plan is to engage in a merger or combination of the
11.20 business with, or an acquisition of, an unidentified person;

11.21 (6) a nonissuer transaction by or through a broker-dealer registered or exempt from
11.22 registration under this chapter effecting an unsolicited order or offer to purchase;

11.23 (7) a nonissuer transaction executed by a bona fide pledgee without the purpose
11.24 of evading this chapter;

11.25 (8) a nonissuer transaction by a federal covered investment adviser with investments
11.26 under management in excess of \$100,000,000 acting in the exercise of discretionary
11.27 authority in a signed record for the account of others;

11.28 (9) a transaction in a security, whether or not the security or transaction is otherwise
11.29 exempt, in exchange for one or more bona fide outstanding securities, claims, or property
11.30 interests, or partly in such exchange and partly for cash, if the terms and conditions of
11.31 the issuance and exchange or the delivery and exchange and the fairness of the terms and
11.32 conditions have been approved by the administrator after a hearing;

11.33 (10) a transaction between the issuer or other person on whose behalf the offering is
11.34 made and an underwriter, or among underwriters;

11.35 (11) a transaction in a note, bond, debenture, or other evidence of indebtedness
11.36 secured by a mortgage or other security agreement if:

- 12.1 (A) the note, bond, debenture, or other evidence of indebtedness is offered and sold
12.2 with the mortgage or other security agreement as a unit;
- 12.3 (B) a general solicitation or general advertisement of the transaction is not made; and
12.4 (C) a commission or other remuneration is not paid or given, directly or indirectly, to
12.5 a person not registered under this chapter as a broker-dealer or as an agent;
- 12.6 (12) a transaction by an executor, administrator of an estate, sheriff, marshal,
12.7 receiver, trustee in bankruptcy, guardian, or conservator;
- 12.8 (13) a sale or offer to sell to:
12.9 (A) an institutional investor;
12.10 (B) an accredited investor ~~as that term is defined in Regulation D, Rule 501(a);~~
12.11 (C) a federal covered investment adviser; or
12.12 (D) any other person exempted by rule adopted or order issued under this chapter;
- 12.13 (14) a sale or an offer to sell securities by an issuer, if the transaction is part of
12.14 a single issue in which:
12.15 (A) not more than 35 purchasers are present in this state during any 12 consecutive
12.16 months, other than those designated in paragraph (13);
12.17 (B) a general solicitation or general advertising is not made in connection with
12.18 the offer to sell or sale of the securities;
12.19 (C) a commission or other remuneration is not paid or given, directly or indirectly, to
12.20 a person other than a broker-dealer registered under this chapter or an agent registered
12.21 under this chapter for soliciting a prospective purchaser in this state; and
12.22 (D) the issuer reasonably believes that all the purchasers in this state, other than
12.23 those designated in paragraph (13), are purchasing for investment.
- 12.24 Any issuer selling to purchasers in this state in reliance on this clause (14) exemption
12.25 must provide to the administrator notice of the transaction by filing a statement of issuer
12.26 form as adopted by rule. Notice must be filed at least ten days in advance of any sale or
12.27 such shorter period as permitted by the administrator. However, an issuer who makes sales
12.28 to ten or fewer purchasers in Minnesota during any period of 12 consecutive months is not
12.29 required to provide this notice;
- 12.30 (15) a transaction under an offer to existing security holders of the issuer, including
12.31 persons that at the date of the transaction are holders of convertible securities, options,
12.32 or warrants, if a commission or other remuneration, other than a standby commission, is
12.33 not paid or given, directly or indirectly, for soliciting a security holder in this state; The
12.34 person making the offer and effecting the transaction must provide to the administrator
12.35 notice of the transaction by filing a written description of the transaction. Notice must be

13.1 filed at least ten days in advance of any transaction or such shorter period as permitted by
13.2 the administrator;

13.3 (16) an offer to sell, but not a sale, of a security not exempt from registration under
13.4 the Securities Act of 1933 if:

13.5 (A) a registration or offering statement or similar record as required under the
13.6 Securities Act of 1933 has been filed, but is not effective, or the offer is made in compliance
13.7 with Rule 165 adopted under the Securities Act of 1933 (17 C.F.R. 230.165); and

13.8 (B) a stop order of which the offeror is aware has not been issued against the offeror
13.9 by the administrator or the Securities and Exchange Commission, and an audit, inspection,
13.10 or proceeding that is public and that may culminate in a stop order is not known by the
13.11 offeror to be pending;

13.12 (17) an offer to sell, but not a sale, of a security exempt from registration under the
13.13 Securities Act of 1933 if:

13.14 (A) a registration statement has been filed under this chapter, but is not effective;

13.15 (B) a solicitation of interest is provided in a record to offerees in compliance with a
13.16 rule adopted by the administrator under this chapter; and

13.17 (C) a stop order of which the offeror is aware has not been issued by the administrator
13.18 under this chapter and an audit, inspection, or proceeding that may culminate in a stop
13.19 order is not known by the offeror to be pending;

13.20 (18) a transaction involving the distribution of the securities of an issuer to the
13.21 security holders of another person in connection with a merger, consolidation, exchange
13.22 of securities, sale of assets, or other reorganization to which the issuer, or its parent
13.23 or subsidiary and the other person, or its parent or subsidiary, are parties. The person
13.24 distributing the issuer's securities must provide to the administrator notice of the
13.25 transaction by filing a written description of the transaction along with a consent to service
13.26 of process complying with section 80A.88. Notice must be filed at least ten days in
13.27 advance of any transaction or such shorter period as permitted by the administrator;

13.28 (19) a rescission offer, sale, or purchase under section 80A.77;

13.29 (20) an offer or sale of a security to a person not a resident of this state and not
13.30 present in this state if the offer or sale does not constitute a violation of the laws of the
13.31 state or foreign jurisdiction in which the offeree or purchaser is present and is not part of
13.32 an unlawful plan or scheme to evade this chapter;

13.33 (21) employees' stock purchase, savings, option, profit-sharing, pension, or
13.34 similar employees' benefit plan, including any securities, plan interests, and guarantees
13.35 issued under a compensatory benefit plan or compensation contract, contained in a
13.36 record, established by the issuer, its parents, its majority-owned subsidiaries, or the

14.1 majority-owned subsidiaries of the issuer's parent for the participation of their employees
14.2 including offers or sales of such securities to:

14.3 (A) directors; general partners; trustees, if the issuer is a business trust; officers;
14.4 consultants; and advisors;

14.5 (B) family members who acquire such securities from those persons through gifts or
14.6 domestic relations orders;

14.7 (C) former employees, directors, general partners, trustees, officers, consultants, and
14.8 advisors if those individuals were employed by or providing services to the issuer when
14.9 the securities were offered; and

14.10 (D) insurance agents who are exclusive insurance agents of the issuer, or the issuer's
14.11 subsidiaries or parents, or who derive more than 50 percent of their annual income from
14.12 those organizations.

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

14.18 (22) a transaction involving:

14.19 (A) a stock dividend or equivalent equity distribution, whether the corporation or
14.20 other business organization distributing the dividend or equivalent equity distribution is
14.21 the issuer or not, if nothing of value is given by stockholders or other equity holders for
14.22 the dividend or equivalent equity distribution other than the surrender of a right to a cash
14.23 or property dividend if each stockholder or other equity holder may elect to take the
14.24 dividend or equivalent equity distribution in cash, property, or stock;

14.25 (B) an act incident to a judicially approved reorganization in which a security is
14.26 issued in exchange for one or more outstanding securities, claims, or property interests, or
14.27 partly in such exchange and partly for cash; or

14.28 (C) the solicitation of tenders of securities by an offeror in a tender offer in
14.29 compliance with Rule 162 adopted under the Securities Act of 1933 (17 C.F.R. 230.162);

14.30 (23) a nonissuer transaction in an outstanding security by or through a broker-dealer
14.31 registered or exempt from registration under this chapter, if the issuer is a reporting
14.32 issuer in a foreign jurisdiction designated by this paragraph or by rule adopted or order
14.33 issued under this chapter; has been subject to continuous reporting requirements in the
14.34 foreign jurisdiction for not less than 180 days before the transaction; and the security is
14.35 listed on the foreign jurisdiction's securities exchange that has been designated by this
14.36 paragraph or by rule adopted or order issued under this chapter, or is a security of the same

15.1 issuer that is of senior or substantially equal rank to the listed security or is a warrant or
15.2 right to purchase or subscribe to any of the foregoing. For purposes of this paragraph,
15.3 Canada, together with its provinces and territories, is a designated foreign jurisdiction
15.4 and The Toronto Stock Exchange, Inc., is a designated securities exchange. After an
15.5 administrative hearing in compliance with chapter 14, the administrator, by rule adopted
15.6 or order issued under this chapter, may revoke the designation of a securities exchange
15.7 under this paragraph, if the administrator finds that revocation is necessary or appropriate
15.8 in the public interest and for the protection of investors;

15.9 (24) any transaction effected by or through a Canadian broker-dealer exempted from
15.10 broker-dealer registration pursuant to section 80A.56(b)(3); or

15.11 (25)(A) the offer and sale by a cooperative organized under chapter 308A, or
15.12 under the laws of another state, of its securities when the securities are offered and sold
15.13 only to its members, or when the purchase of the securities is necessary or incidental to
15.14 establishing membership in the cooperative, or when the securities are issued as patronage
15.15 dividends. This paragraph applies to a cooperative organized under chapter 308A, or under
15.16 the laws of another state, only if the cooperative has filed with the administrator a consent
15.17 to service of process under section 80A.88 and has, not less than ten days before the
15.18 issuance or delivery, furnished the administrator with a written general description of the
15.19 transaction and any other information that the administrator requires by rule or otherwise;

15.20 (B) the offer and sale by a cooperative organized under chapter 308B of its securities
15.21 when the securities are offered and sold to its existing members or when the purchase of the
15.22 securities is necessary or incidental to establishing patron membership in the cooperative,
15.23 or when such securities are issued as patronage dividends. The administrator has the
15.24 power to define "patron membership" for purposes of this paragraph. This paragraph
15.25 applies to securities, other than securities issued as patronage dividends, only when:

15.26 (i) the issuer, before the completion of the sale of the securities, provides each
15.27 offeree or purchaser disclosure materials that, to the extent material to an understanding of
15.28 the issuer, its business, and the securities being offered, substantially meet the disclosure
15.29 conditions and limitations found in rule 502(b) of Regulation D promulgated by the
15.30 Securities and Exchange Commission, Code of Federal Regulations, title 17, section
15.31 230.502; and

15.32 (ii) within 15 days after the completion of the first sale in each offering completed in
15.33 reliance upon this exemption, the cooperative has filed with the administrator a consent to
15.34 service of process under section 80A.88 (or has previously filed such a consent), and has
15.35 furnished the administrator with a written general description of the transaction and any
15.36 other information that the administrator requires by rule or otherwise; and

16.1 (C) a cooperative may, at or about the same time as offers or sales are being
16.2 completed in reliance upon the exemptions from registration found in this subpart and as
16.3 part of a common plan of financing, offer or sell its securities in reliance upon any other
16.4 exemption from registration available under this chapter. The offer or sale of securities in
16.5 reliance upon the exemptions found in this subpart will not be considered or deemed a part
16.6 of or be integrated with any offer or sale of securities conducted by the cooperative in
16.7 reliance upon any other exemption from registration available under this chapter, nor will
16.8 offers or sales of securities by the cooperative in reliance upon any other exemption from
16.9 registration available under this chapter be considered or deemed a part of or be integrated
16.10 with any offer or sale conducted by the cooperative in reliance upon this paragraph.

16.11 Sec. 4. Minnesota Statutes 2006, section 80A.50, is amended to read:

16.12 **80A.50 SECTION 302; FEDERAL COVERED SECURITIES; SMALL**
16.13 **CORPORATE OFFERING REGISTRATION.**

16.14 (a) **Federal covered securities.**

16.15 (1) **Required filing of records.** With respect to a federal covered security, as defined
16.16 in Section 18(b)(2) of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(2)), that is not
16.17 otherwise exempt under sections 80A.45 through 80A.47, a rule adopted or order issued
16.18 under this chapter may require the filing of any or all of the following records:

16.19 (A) before the initial offer of a federal covered security in this state, all records
16.20 that are part of a federal registration statement filed with the Securities and Exchange
16.21 Commission under the Securities Act of 1933 and a consent to service of process
16.22 complying with section 80A.88 signed by the issuer;

16.23 (B) after the initial offer of the federal covered security in this state, all records that
16.24 are part of an amendment to a federal registration statement filed with the Securities and
16.25 Exchange Commission under the Securities Act of 1933; and

16.26 (C) to the extent necessary or appropriate to compute fees, a report of the value of
16.27 the federal covered securities sold or offered to persons present in this state, if the sales
16.28 data are not included in records filed with the Securities and Exchange Commission.

16.29 (2) **Notice filing effectiveness and renewal.** A notice filing under subsection (a) is
16.30 effective for one year commencing on the later of the notice filing or the effectiveness of
16.31 the offering filed with the Securities and Exchange Commission. On or before expiration,
16.32 the issuer may renew a notice filing by filing a copy of those records filed by the issuer
16.33 with the Securities and Exchange Commission that are required by rule or order under
16.34 this chapter to be filed. A previously filed consent to service of process complying with

17.1 section 80A.88 may be incorporated by reference in a renewal. A renewed notice filing
17.2 becomes effective upon the expiration of the filing being renewed.

17.3 (3) **Notice filings for federal covered securities under section 18(b)(4)(D).** With
17.4 respect to a security that is a federal covered security under Section 18(b)(4)(D) of the
17.5 Securities Act of 1933 (15 U.S.C. Section 77r(b)(4)(D)), a rule under this chapter may
17.6 require a notice filing by or on behalf of an issuer to include a copy of Form D, including
17.7 the Appendix, as promulgated by the Securities and Exchange Commission, and a consent
17.8 to service of process complying with section 80A.88 signed by the issuer not later than 15
17.9 days after the first sale of the federal covered security in this state.

17.10 (4) **Stop orders.** Except with respect to a federal security under Section 18(b)(1)
17.11 of the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)), if the administrator finds
17.12 that there is a failure to comply with a notice or fee requirement of this section, the
17.13 administrator may issue a stop order suspending the offer and sale of a federal covered
17.14 security in this state. If the deficiency is corrected, the stop order is void as of the time of
17.15 its issuance and no penalty may be imposed by the administrator.

17.16 (b) **Small corporation offering registration.**

17.17 (1) **Registration required.** A security meeting the conditions set forth in this section
17.18 may be registered as set forth in this section.

17.19 (2) **Availability.** Registration under this section is available only to the issuer of
17.20 securities and not to an affiliate of the issuer or to any other person for resale of the issuer's
17.21 securities. The issuer must be organized under the laws of one of the states or possessions
17.22 of the United States. The securities offered must be exempt from registration under the
17.23 Securities Act of 1933 pursuant to Rule 504 of Regulation D (15 U.S.C. Section 77c).

17.24 (3) **Disqualification.** Registration under this section is not available to any of the
17.25 following issuers:

17.26 (A) an issuer subject to the reporting requirements of Section 13 or 15(d) of the
17.27 Securities Exchange Act of 1934;

17.28 (B) an investment company;

17.29 (C) a development stage company that either has no specific business plan or
17.30 purpose or has indicated that its business plan is to engage in a merger or acquisition with
17.31 an unidentified company or companies or other entity or person;

17.32 (D) an issuer if the issuer or any of its predecessors, officers, directors, governors,
17.33 partners, ten percent stock or equity holders, promoters, or any selling agents of the
17.34 securities to be offered, or any officer, director, governor, or partner of the selling agent:

18.1 (i) has filed a registration statement that is the subject of a currently effective
18.2 registration stop order entered under a federal or state securities law within five years
18.3 before the filing of the small corporate offering registration application;

18.4 (ii) has been convicted within five years before the filing of the small corporate
18.5 offering registration application of a felony or misdemeanor in connection with the
18.6 offer, purchase, or sale of a security or a felony involving fraud or deceit, including, but
18.7 not limited to, forgery, embezzlement, obtaining money under false pretenses, larceny,
18.8 or conspiracy to defraud;

18.9 (iii) is currently subject to a state administrative enforcement order or judgment
18.10 entered by a state securities administrator or the Securities and Exchange Commission
18.11 within five years before the filing of the small corporate offering registration application,
18.12 or is subject to a federal or state administrative enforcement order or judgment in which
18.13 fraud or deceit, including, but not limited to, making untrue statements of material facts or
18.14 omitting to state material facts, was found and the order or judgment was entered within
18.15 five years before the filing of the small corporate offering registration application;

18.16 (iv) is currently subject to an order, judgment, or decree of a court of competent
18.17 jurisdiction temporarily restraining or enjoining, or is subject to an order, judgment, or
18.18 decree of a court of competent jurisdiction permanently restraining or enjoining the party
18.19 from engaging in or continuing any conduct or practice in connection with the purchase
18.20 or sale of any security or involving the making of a false filing with a state or with the
18.21 Securities and Exchange Commission entered within five years before the filing of the
18.22 small corporate offering registration application; or

18.23 (v) is subject to a state's administrative enforcement order, or judgment that
18.24 prohibits, denies, or revokes the use of an exemption for registration in connection with
18.25 the offer, purchase, or sale of securities,

18.26 (I) except that clauses (i) to (iv) do not apply if the person subject to the
18.27 disqualification is duly licensed or registered to conduct securities-related business in the
18.28 state in which the administrative order or judgment was entered against the person or if
18.29 the dealer employing the party is licensed or registered in this state and the form BD filed
18.30 in this state discloses the order, conviction, judgment, or decree relating to the person, and

18.31 (II) except that the disqualification under this subdivision is automatically
18.32 waived if the state securities administrator or federal agency that created the basis for
18.33 disqualification determines upon a showing of good cause that it is not necessary under
18.34 the circumstances to deny the registration.

18.35 (4) **Filing and effectiveness of registration statement.** A small corporate offering
18.36 registration statement must be filed with the administrator. If no stop order is in effect

19.1 and no proceeding is pending under section 80A.54, such registration statement shall
19.2 become effective automatically at the close of business on the 20th day after filing of
19.3 the registration statement or the last amendment of the registration statement or at such
19.4 earlier time as the administrator may designate by rule or order. For the purposes of
19.5 a nonissuer transaction, other than by an affiliate of the issuer, all outstanding securities
19.6 of the same class identified in the small corporate offering registration statement as a
19.7 security registered under this chapter are considered to be registered while the small
19.8 corporate offering registration statement is effective. A small corporate offering
19.9 registration statement is effective for one year after its effective date or for any longer
19.10 period designated in an order under this chapter. A small corporate offering registration
19.11 statement may be withdrawn only with the approval of the administrator.

19.12 (5) **Contents of registration statement.** A small corporate offering registration
19.13 statement under this section shall be on Form U-7, including exhibits required by
19.14 the instructions thereto, as adopted by the North American Securities Administrators
19.15 Association, or such alternative form as may be designated by the administrator by rule or
19.16 order and must include:

19.17 (A) a consent to service of process complying with section 80A.88;

19.18 (B) a statement of the type and amount of securities to be offered and the amount of
19.19 securities to be offered in this state;

19.20 (C) a specimen or copy of the security being registered, unless the security
19.21 is uncertificated, a copy of the issuer's articles of incorporation and bylaws or their
19.22 substantial equivalents in effect, and a copy of any indenture or other instrument covering
19.23 the security to be registered;

19.24 (D) a signed or conformed copy of an opinion of counsel concerning the legality
19.25 of the securities being registered which states whether the securities, when sold, will be
19.26 validly issued, fully paid, and nonassessable and, if debt securities, binding obligations
19.27 of the issuer;

19.28 (E) the states (i) in which the securities are proposed to be offered; (ii) in which a
19.29 registration statement or similar filing has been made in connection with the offering
19.30 including information as to effectiveness of each such filing; and (iii) in which a stop
19.31 order or similar proceeding has been entered or in which proceedings or actions seeking
19.32 such an order are pending;

19.33 (F) a copy of the offering document proposed to be delivered to offerees; and

19.34 (G) a copy of any other pamphlet, circular, form letter, advertisement, or other sales
19.35 literature intended as of the effective date to be used in connection with the offering and
19.36 any solicitation of interest used in compliance with section 80A.46(17)(B).

20.1 (6) **Copy to purchaser.** A copy of the offering document as filed with the
20.2 administrator must be delivered to each person purchasing the securities prior to sale
20.3 of the securities to such person.

20.4 Sec. 5. Minnesota Statutes 2006, section 80A.52, is amended to read:

20.5 **80A.52 SECTION 304; SECURITIES REGISTRATION BY**
20.6 **QUALIFICATION.**

20.7 (a) **Registration permitted.** A security may be registered by qualification under
20.8 this section.

20.9 (b) **Required records.** A registration statement under this section must contain
20.10 the information or records specified in section 80A.53, a consent to service of process
20.11 complying with section 80A.88, and, if required by rule adopted under this chapter, the
20.12 following information or records:

20.13 (1) with respect to the issuer and any significant subsidiary, its name, address, and
20.14 form of organization; the state or foreign jurisdiction and date of its organization; the
20.15 general character and location of its business; a description of its physical properties
20.16 and equipment; and a statement of the general competitive conditions in the industry or
20.17 business in which it is or will be engaged;

20.18 (2) with respect to each director and officer of the issuer, and other person having a
20.19 similar status or performing similar functions, the person's name, address, and principal
20.20 occupation for the previous five years; the amount of securities of the issuer held by
20.21 the person as of the 30th day before the filing of the registration statement; the amount
20.22 of the securities covered by the registration statement to which the person has indicated
20.23 an intention to subscribe; and a description of any material interest of the person in any
20.24 material transaction with the issuer or a significant subsidiary effected within the previous
20.25 three years or proposed to be effected;

20.26 (3) with respect to persons covered by paragraph (2), the aggregate sum of the
20.27 remuneration paid to those persons during the previous 12 months and estimated to be
20.28 paid during the next 12 months, directly or indirectly, by the issuer, and all predecessors,
20.29 parents, subsidiaries, and affiliates of the issuer;

20.30 (4) with respect to a person owning of record or owning beneficially, if known, ten
20.31 percent or more of the outstanding shares of any class of equity security of the issuer, the
20.32 information specified in paragraph (2) other than the person's occupation;

20.33 (5) with respect to a promoter, if the issuer was organized within the previous three
20.34 years, the information or records specified in paragraph (2), any amount paid to the

21.1 promoter within that period or intended to be paid to the promoter, and the consideration
21.2 for the payment;

21.3 (6) with respect to a person on whose behalf any part of the offering is to be made
21.4 in a nonissuer distribution, the person's name and address; the amount of securities of
21.5 the issuer held by the person as of the date of the filing of the registration statement; a
21.6 description of any material interest of the person in any material transaction with the issuer
21.7 or any significant subsidiary effected within the previous three years or proposed to be
21.8 effected, and a statement of the reasons for making the offering;

21.9 (7) the capitalization and long-term debt, on both a current and pro forma basis,
21.10 of the issuer and any significant subsidiary, including a description of each security
21.11 outstanding or being registered or otherwise offered, and a statement of the amount and
21.12 kind of consideration, whether in the form of cash, physical assets, services, patents,
21.13 goodwill, or anything else of value, for which the issuer or any subsidiary has issued its
21.14 securities within the previous two years or is obligated to issue its securities;

21.15 (8) the kind and amount of securities to be offered; the proposed offering price or the
21.16 method by which it is to be computed; any variation at which a proportion of the offering is
21.17 to be made to a person or class of persons other than the underwriters, with a specification
21.18 of the person or class; the basis on which the offering is to be made if otherwise than for
21.19 cash; the estimated aggregate underwriting and selling discounts or commissions and
21.20 finders' fees, including separately cash, securities, contracts, or anything else of value to
21.21 accrue to the underwriters or finders in connection with the offering or, if the selling
21.22 discounts or commissions are variable, the basis of determining them and their maximum
21.23 and minimum amounts; the estimated amounts of other selling expenses, including legal,
21.24 engineering, and accounting charges; the name and address of each underwriter and each
21.25 recipient of a finder's fee; a copy of any underwriting or selling group agreement under
21.26 which the distribution is to be made or the proposed form of any such agreement whose
21.27 terms have not yet been determined; and a description of the plan of distribution of any
21.28 securities that are to be offered otherwise than through an underwriter;

21.29 (9) the estimated monetary proceeds to be received by the issuer from the offering;
21.30 the purposes for which the proceeds are to be used by the issuer; the estimated amount to
21.31 be used for each purpose; the order or priority in which the proceeds will be used for the
21.32 purposes stated; the amounts of any funds to be raised from other sources to achieve the
21.33 purposes stated; the sources of the funds; and, if a part of the proceeds is to be used to
21.34 acquire property, including goodwill, otherwise than in the ordinary course of business,
21.35 the names and addresses of the vendors, the purchase price, the names of any persons that
21.36 have received commissions in connection with the acquisition, and the amounts of the

22.1 commissions and other expenses in connection with the acquisition, including the cost of
22.2 borrowing money to finance the acquisition;

22.3 (10) a description of any stock options or other security options outstanding, or to
22.4 be created in connection with the offering, and the amount of those options held or to be
22.5 held by each person required to be named in paragraph (2), (4), (5), (6), or (8) and by any
22.6 person that holds or will hold ten percent or more in the aggregate of those options;

22.7 (11) the dates of, parties to, and general effect concisely stated of each managerial
22.8 or other material contract made or to be made otherwise than in the ordinary course of
22.9 business to be performed in whole or in part at or after the filing of the registration
22.10 statement or that was made within the previous two years, and a copy of the contract;

22.11 (12) a description of any pending litigation, action, or proceeding to which the issuer
22.12 is a party and that materially affects its business or assets, and any litigation, action, or
22.13 proceeding known to be contemplated by governmental authorities;

22.14 (13) a copy of any prospectus, pamphlet, circular, form letter, advertisement, or other
22.15 sales literature intended as of the effective date to be used in connection with the offering
22.16 and any solicitation of interest used in compliance with section 80A.46(17)(B);

22.17 (14) a specimen or copy of the security being registered, unless the security
22.18 is uncertificated; a copy of the issuer's articles of incorporation and bylaws or their
22.19 substantial equivalents, in effect; and a copy of any indenture or other instrument covering
22.20 the security to be registered;

22.21 (15) a signed or conformed copy of an opinion of counsel concerning the legality of
22.22 the security being registered, with an English translation if it is in a language other than
22.23 English, which states whether the security when sold will be validly issued, fully paid, and
22.24 nonassessable and, if a debt security, a binding obligation of the issuer;

22.25 (16) a signed or conformed copy of a consent of any accountant, engineer, appraiser,
22.26 or other person whose profession gives authority for a statement made by the person, if the
22.27 person is named as having prepared or certified a report or valuation, other than an official
22.28 record, that is public, which is used in connection with the registration statement;

22.29 (17) a balance sheet of the issuer as of a date within four months before the filing of
22.30 the registration statement; a statement of income and a statement of ~~case~~ cash flows for
22.31 each of the three fiscal years preceding the date of the balance sheet and for any period
22.32 between the close of the immediately previous fiscal year and the date of the balance sheet,
22.33 or for the period of the issuer's and any predecessor's existence if less than three years; and,
22.34 if any part of the proceeds of the offering is to be applied to the purchase of a business, the
22.35 financial statements that would be required if that business were the registrant; and

23.1 (18) any additional information or records required by rule adopted or order issued
23.2 under this chapter.

23.3 (c) **Conditions for effectiveness of registration statement.** A registration statement
23.4 under this section becomes effective 30 days, or any shorter period provided by rule
23.5 adopted or order issued under this chapter, after the date the registration statement or the
23.6 last amendment other than a price amendment is filed, if:

23.7 (1) a stop order is not in effect and a proceeding is not pending under section 80A.54;

23.8 (2) the administrator has not issued an order under section 80A.54 delaying
23.9 effectiveness; and

23.10 (3) the applicant or registrant has not requested that effectiveness be delayed.

23.11 (d) **Delay of effectiveness of registration statement.** The administrator may
23.12 delay effectiveness once for not more than 90 days if the administrator determines the
23.13 registration statement is not complete in all material respects and promptly notifies
23.14 the applicant or registrant of that determination. The administrator may also delay
23.15 effectiveness for a further period of not more than 30 days if the administrator determines
23.16 that the delay is necessary or appropriate.

23.17 (e) **Prospectus distribution may be required.** A rule adopted or order issued
23.18 under this chapter may require as a condition of registration under this section that a
23.19 prospectus containing a specified part of the information or record specified in subsection
23.20 (b) be sent or given to each person to which an offer is made, before or concurrently,
23.21 with the earliest of:

23.22 (1) the first offer made in a record to the person otherwise than by means of a public
23.23 advertisement, by or for the account of the issuer or another person on whose behalf the
23.24 offering is being made or by an underwriter or broker-dealer that is offering part of an
23.25 unsold allotment or subscription taken by the person as a participant in the distribution;

23.26 (2) the confirmation of a sale made by or for the account of the person;

23.27 (3) payment pursuant to such a sale; or

23.28 (4) delivery of the security pursuant to such a sale.

23.29 Sec. 6. Minnesota Statutes 2006, section 80A.54, is amended to read:

23.30 **80A.54 SECTION 306; DENIAL, SUSPENSION, AND REVOCATION OF**
23.31 **SECURITIES REGISTRATION.**

23.32 (a) **Stop orders.** The administrator may issue a stop order denying effectiveness to,
23.33 or suspending or revoking the effectiveness of, a registration statement if the administrator
23.34 finds that the order is in the public interest and that:

24.1 (1) the registration statement as of its effective date or before the effective date in the
24.2 case of an order denying effectiveness, an amendment under section ~~80A.53(j)~~ 80A.53(i)
24.3 as of its effective date, or a report under section ~~80A.53(i)~~ 80A.53(h), is incomplete in a
24.4 material respect or contains a statement that, in the light of the circumstances under which
24.5 it was made, was false or misleading with respect to a material fact;

24.6 (2) this chapter or a rule adopted or order issued under this chapter or a condition
24.7 imposed under this chapter has been willfully violated, in connection with the offering, by:

24.8 (A) the person filing the registration statement, if the person is directly or indirectly
24.9 controlled by or acting for the issuer;

24.10 (B) the issuer;

24.11 (C) a partner, officer, or director of the issuer or a person having a similar status
24.12 or performing similar functions;

24.13 (D) a promoter of the issuer;

24.14 (E) a person directly or indirectly controlling or controlled by the issuer; or

24.15 (F) an underwriter;

24.16 (3) the security registered or sought to be registered is the subject of a permanent or
24.17 temporary injunction of a court of competent jurisdiction or an administrative stop order
24.18 or similar order issued under any federal, foreign, or state law other than this chapter
24.19 applicable to the offering, but the administrator may not institute a proceeding against an
24.20 effective registration statement under this paragraph more than one year after the date of
24.21 the order or injunction on which it is based, and the administrator may not issue an order
24.22 under this paragraph on the basis of an order or injunction issued under the securities act
24.23 of another state unless the order or injunction was based on conduct that would constitute,
24.24 as of the date of the order, a ground for a stop order under this section;

24.25 (4) the issuer's enterprise or method of business includes or would include activities
24.26 that are unlawful where performed;

24.27 (5) with respect to a security sought to be registered under section 80A.51, there has
24.28 been a failure to comply with the undertaking required by section 80A.51(b)(4); or

24.29 (6) the applicant or registrant has not paid the filing fee, but the administrator shall
24.30 void the order if the deficiency is corrected.

24.31 (b) **Institution of stop order.** The administrator may not institute a stop order
24.32 proceeding against an effective registration statement on the basis of conduct or a
24.33 transaction known to the administrator when the registration statement became effective
24.34 unless the proceeding is instituted within 30 days after the registration statement became
24.35 effective.

25.1 (c) **Summary process.** The administrator may summarily revoke, deny, postpone,
25.2 or suspend the effectiveness of a registration statement pending final determination of
25.3 an administrative proceeding. Upon the issuance of the order, the administrator shall
25.4 promptly notify each person specified in subsection (d) that the order has been issued;
25.5 the reasons for the revocation, denial, postponement, or suspension; and that within 15
25.6 days after the receipt of a request in a record from the person the matter will be scheduled
25.7 for a hearing. If a hearing is not requested and none is ordered by the administrator,
25.8 within 30 days after the date of service of the order, the order becomes final. If a hearing
25.9 is requested or ordered, the administrator, after notice of and opportunity for hearing for
25.10 each person subject to the order, may modify or vacate the order or extend the order
25.11 until final determination.

25.12 (d) **Procedural requirements for stop order.** A stop order may not be issued
25.13 under this section without:

25.14 (1) appropriate notice to the applicant or registrant, the issuer, and the person on
25.15 whose behalf the securities are to be or have been offered;

25.16 (2) an opportunity for hearing; and

25.17 (3) findings of fact and conclusions of law in a record in accordance with chapter 14.

25.18 (e) **Modification or vacation of stop order.** The administrator may modify or
25.19 vacate a stop order issued under this section if the administrator finds that the conditions
25.20 that caused its issuance have changed or that it is necessary or appropriate in the public
25.21 interest or for the protection of investors.

25.22 Sec. 7. Minnesota Statutes 2006, section 80A.55, is amended to read:

25.23 **80A.55 SECTION 307; WAIVER AND MODIFICATION.**

25.24 The administrator may waive or modify, in whole or in part, any or all of the
25.25 requirements of sections 80A.50, 80A.51, and 80A.52(b) or the requirement of any
25.26 information or record in a registration statement or in a periodic report filed pursuant
25.27 to section ~~80A.53(i)~~ 80A.53(h).

25.28 Sec. 8. Minnesota Statutes 2006, section 80A.56, is amended to read:

25.29 **80A.56 SECTION 401; BROKER-DEALER REGISTRATION**
25.30 **REQUIREMENT AND EXEMPTIONS.**

25.31 (a) **Registration requirement.** It is unlawful for a person to transact business in this
25.32 state as a broker-dealer unless the person is registered under this chapter as a broker-dealer
25.33 or is exempt from registration as a broker-dealer under subsection (b) or (d).

26.1 (b) **Exemptions from registration.** The following persons are exempt from the
26.2 registration requirement of subsection (a):

26.3 (1) a broker-dealer without a place of business in this state if its only transactions
26.4 effected in the state are with:

26.5 (A) the issuer of the securities involved in the transactions;

26.6 (B) a broker-dealer registered under this chapter or not required to be registered as a
26.7 broker-dealer under this chapter;

26.8 (C) an institutional investor;

26.9 (D) an accredited investor;

26.10 ~~(D)~~ (E) a nonaffiliated federal covered investment adviser with investments under
26.11 management in excess of \$100,000,000 acting for the account of others pursuant to
26.12 discretionary authority in a signed record;

26.13 ~~(E)~~ (F) a bona fide preexisting customer whose principal place of residence is not in
26.14 this state and the person is registered as a broker-dealer under the Securities Exchange
26.15 Act of 1934 or not required to be registered under the Securities Exchange Act of 1934
26.16 and is registered under the securities act of the state in which the customer maintains a
26.17 principal place of residence;

26.18 ~~(F)~~ (G) a bona fide preexisting customer whose principal place of residence is in this
26.19 state but was not present in this state when the customer relationship was established, if:

26.20 (i) the broker-dealer is registered under the Securities Exchange Act of 1934 or not
26.21 required to be registered under the Securities Exchange Act of 1934 and is registered
26.22 under the securities laws of the state in which the customer relationship was established
26.23 and where the customer had maintained a principal place of residence; and

26.24 (ii) within 45 days after the customer's first transaction in this state, the person files
26.25 an application for registration as a broker-dealer in this state and a further transaction is not
26.26 effected more than 75 days after the date on which the application is filed, or, if earlier, the
26.27 date on which the administrator notifies the person that the administrator has denied the
26.28 application for registration or has stayed the pendency of the application for good cause;

26.29 ~~(G)~~ (H) not more than three customers in this state during the previous 12 months,
26.30 in addition to those customers specified in subparagraphs (A) through ~~(F)~~ (G) and under
26.31 subparagraph ~~(H)~~ (I), if the broker-dealer is registered under the Securities Exchange
26.32 Act of 1934 or not required to be registered under the Securities Exchange Act of 1934
26.33 and is registered under the securities act of the state in which the broker-dealer has its
26.34 principal place of business; and

26.35 ~~(H)~~ (I) any other person exempted by rule adopted or order issued under this
26.36 chapter; and

27.1 (2) a person that deals solely in United States government securities and is supervised
27.2 as a dealer in government securities by the Board of Governors of the Federal Reserve
27.3 System, the Comptroller of the Currency, the Federal Deposit Insurance Corporation,
27.4 or the Office of Thrift Supervision; and

27.5 (3) a broker-dealer that is registered in Canada and who has no office or other
27.6 physical presence in this state if the broker-dealer complies with the following conditions:

27.7 (A) the broker-dealer is registered with or is a member of a self-regulatory
27.8 organization in Canada, a stock exchange in Canada, or the Bureau des services financiers;

27.9 (B) the broker-dealer maintains in good standing its provincial or territorial
27.10 registration and its registration with or membership in a self-regulatory organization in
27.11 Canada, a stock exchange in Canada, or the Bureau des services financiers; and

27.12 (C) the broker-dealer effects or attempts to effect transactions in securities:

27.13 (i) with or for a person from Canada who is temporarily present in this state, with
27.14 whom the broker-dealer had a bona fide broker-dealer-client relationship before the person
27.15 entered the United States; or

27.16 (ii) with or for a person from Canada who is present in this state, whose transactions
27.17 are in a Canadian self-directed tax advantaged retirement account of which the person is
27.18 the holder or contributor.

27.19 (c) **Limits on employment or association.** It is unlawful for a broker-dealer, or for
27.20 an issuer engaged in offering, offering to purchase, purchasing, or selling securities in
27.21 this state, directly or indirectly, to employ or associate with an individual to engage in an
27.22 activity related to securities transactions in this state if the registration of the individual is
27.23 suspended or revoked or the individual is barred from employment or association with a
27.24 broker-dealer, an issuer, an investment adviser, or a federal covered investment adviser by
27.25 an order of the administrator under this chapter, the Securities and Exchange Commission,
27.26 or a self-regulatory organization. A broker-dealer or issuer does not violate this subsection
27.27 if the broker-dealer or issuer did not know and in the exercise of reasonable care could not
27.28 have known, of the suspension, revocation, or bar. Upon request from a broker-dealer or
27.29 issuer and for good cause, an order under this chapter may modify or waive, in whole or in
27.30 part, the application of the prohibitions of this subsection to the broker-dealer.

27.31 (d) **Foreign transactions.** A rule adopted or order issued under this chapter may
27.32 permit:

27.33 (1) a broker-dealer that is registered in Canada or other foreign jurisdiction and that
27.34 does not have a place of business in this state to effect transactions in securities with or
27.35 for, or attempt to effect the purchase or sale of any securities by:

28.1 (A) an individual from Canada or other foreign jurisdiction who is temporarily
28.2 present in this state and with whom the broker-dealer had a bona fide customer relationship
28.3 before the individual entered the United States;

28.4 (B) an individual from Canada or other foreign jurisdiction who is present in the
28.5 state and whose transactions are in a self-directed tax advantaged retirement plan of which
28.6 the individual is the holder or contributor in that foreign jurisdiction; or

28.7 (C) an individual who is present in this state, with whom the broker-dealer customer
28.8 relationship arose while the individual was temporarily or permanently resident in Canada
28.9 or the other foreign jurisdiction; and

28.10 (2) an agent who represents a broker-dealer that is exempt under this subsection to
28.11 effect transactions in securities or attempt to effect the purchase or sale of securities in this
28.12 state as permitted for a broker-dealer described in paragraph (1).

28.13 Sec. 9. Minnesota Statutes 2006, section 80A.57, is amended to read:

28.14 **80A.57 SECTION 402; AGENT REGISTRATION REQUIREMENT AND**
28.15 **EXEMPTIONS.**

28.16 (a) **Registration requirement.** It is unlawful for an individual to transact business
28.17 in the state as an agent unless the individual is registered under this chapter as an agent or
28.18 is exempt from registration as an agent under subsection (b).

28.19 (b) **Exemptions from registration.** The following individuals are exempt from the
28.20 registration requirement of subsection (a):

28.21 (1) an individual who represents a broker-dealer in effecting transactions in this state
28.22 limited to those described in Section 15(h)(2) of the Securities Exchange Act of 1934 (15
28.23 U.S.C. Section 78(o)(2));

28.24 (2) an individual who represents a broker-dealer that is exempt under section
28.25 80A.56(b) or (d);

28.26 (3) an individual who represents an issuer with respect to an offer or sale of the
28.27 issuer's own securities or those of the issuer's parent or any of the issuer's subsidiaries, and
28.28 who is not compensated in connection with the individual's participation by the payment
28.29 of commissions or other remuneration based, directly or indirectly, on transactions in
28.30 those securities;

28.31 (4) an individual who represents an issuer and who effects transactions in the issuer's
28.32 securities exempted by section 80A.46, other than section 80A.46(11) and (14);

28.33 (5) an individual who represents an issuer that effects transactions solely in federal
28.34 covered securities of the issuer, but an individual who effects transactions in a federal
28.35 covered security under Section 18(b)(3) or 18(b)(4)(D) of the Securities Act of 1933 (15

29.1 U.S.C. Section 77r(b)(3) or 77r(b)(4)(D)) is not exempt if the individual is compensated
29.2 in connection with the agent's participation by the payment of commissions or other
29.3 remuneration based, directly or indirectly, on transactions in those securities;

29.4 (6) an individual who represents a broker-dealer registered in this state under section
29.5 80A.56(a) or exempt from registration under section 80A.56(b) in the offer and sale
29.6 of securities for an account of a nonaffiliated federal covered investment adviser with
29.7 investments under management in excess of \$100,000,000 acting for the account of others
29.8 pursuant to discretionary authority in a signed record;

29.9 (7) an individual who represents an issuer in connection with the purchase of the
29.10 issuer's own securities;

29.11 (8) an individual who represents an issuer and who restricts participation to
29.12 performing clerical or ministerial acts;

29.13 (9) an individual who represents an issuer in effecting transactions in a security
29.14 exempted by section 80A.45;

29.15 (10) an individual who represents an issuer in effecting transactions with existing
29.16 employees, partners, or directors of the issuer if no commission or other remuneration is
29.17 paid or given directly or indirectly for soliciting any person in this state;

29.18 (11) an individual who represents one or more issuers with respect to an offer or
29.19 sale of the issuer's securities if the offer or sale of the securities is exempted by ~~section~~
29.20 ~~80A.46~~ sections 80A.46(11) or 80A.46(14) and the individual complies with or satisfies
29.21 each of the following conditions:

29.22 (A) the individual (i) would not be deemed disqualified pursuant to section 80A.50
29.23 (b)(3)(D)(ii) to (iv); (ii) is not employed by or associated with a broker-dealer; and
29.24 (iii) has not been the subject of (a) an action, order, or decision by any self-regulatory
29.25 organization, commodities exchange, or securities exchange resulting in a censure or
29.26 other sanction within 12 months prior to the offer or sale or (b) a denial, revocation, or
29.27 restriction of any license or membership by any self-regulatory organization, commodities
29.28 exchange, or securities exchange that has been effective at any time within 12 months
29.29 prior to the offer or sale;

29.30 (B) neither the individual nor any person associated with the individual handles
29.31 or takes possession of funds or securities;

29.32 (C) the individual files with the administrator a consent to service of process
29.33 complying with ~~Section 611~~ section 80A.88 before commencing any such representation;
29.34 and

29.35 (D) the individual files with the administrator a notice that contains (i) the full legal
29.36 name, address, and phone of the individual; (ii) any other names used by the individual

30.1 in the prior five years; (iii) a statement whether the individual is, or within the ~~last~~ prior
30.2 five years has been, licensed by or registered with any state or federal government,
30.3 government agency, or any self-regulatory organization, commodities exchange, or
30.4 securities exchange as a broker-dealer, registered representative, investment advisor, or
30.5 investment advisor representative, including, if applicable, the individual's IARD/CRD
30.6 number; (iv) an undertaking to notify the administrator in writing of a change in any of the
30.7 foregoing within five business days of such change; and (v) any additional information
30.8 that may be required by rule adopted or order issued under this chapter. This notice must
30.9 be filed before the individual commences any issuer representation. The notice is effective
30.10 through December 31 of the year following the year in which it is filed and may be
30.11 renewed annually in such manner as prescribed by the administrator; and

30.12 (12) any other individual exempted by rule adopted or order issued under this chapter.

30.13 (c) **Registration effective only while employed or associated.** The registration of
30.14 an agent is effective only while the agent is employed by or associated with a broker-dealer
30.15 registered under this chapter or an issuer that is offering, selling, or purchasing its
30.16 securities in this state.

30.17 (d) **Limit on employment or association.** It is unlawful for a broker-dealer, or an
30.18 issuer engaged in offering, selling, or purchasing securities in this state, to employ or
30.19 associate with an agent who transacts business in the state on behalf of broker-dealers or
30.20 issuers unless the agent is registered under subsection (a) or exempt from registration
30.21 under subsection (b).

30.22 (e) **Limit on affiliations.** An individual may not act as an agent for more than one
30.23 broker-dealer or one issuer at a time, unless the broker-dealer or the issuer for which the
30.24 agent acts are affiliated by direct or indirect common control or are authorized by rule or
30.25 order under this chapter.

30.26 Sec. 10. Minnesota Statutes 2006, section 80A.58, is amended to read:

30.27 **80A.58 SECTION 403; INVESTMENT ADVISER REGISTRATION**
30.28 **REQUIREMENT AND EXEMPTIONS.**

30.29 (a) **Registration requirement.** It is unlawful for a person to transact business in
30.30 this state as an investment adviser unless the person is registered under this chapter as
30.31 an investment adviser or is exempt from registration as an investment adviser under
30.32 subsection (b).

30.33 (b) **Exemptions from registration.** The following persons are exempt from the
30.34 registration requirement of subsection (a):

30.35 (1) any person whose only clients in this state are:

- 31.1 (A) federal covered investment advisers, investment advisers registered under this
 31.2 chapter, or broker-dealers registered under this chapter;
- 31.3 (B) institutional investors;
- 31.4 (C) accredited investors;
- 31.5 ~~(D)~~ (D) bona fide preexisting clients whose principal places of residence are not in
 31.6 this state if the investment adviser is registered under the securities act of the state in
 31.7 which the clients maintain principal places of residence; or
- 31.8 ~~(E)~~ (E) any other client exempted by rule adopted or order issued under this chapter;
- 31.9 (2) a person without a place of business in this state if the person has had, during the
 31.10 preceding 12 months, not more than five clients that are resident in this state in addition
 31.11 to those specified under paragraph (1); or
- 31.12 (3) any other person exempted by rule adopted or order issued under this chapter.
- 31.13 (c) **Limits on employment or association.** It is unlawful for an investment adviser,
 31.14 directly or indirectly, to employ or associate with an individual to engage in an activity
 31.15 related to investment advice in this state if the registration of the individual is suspended
 31.16 or revoked or the individual is barred from employment or association with an investment
 31.17 adviser, federal covered investment adviser, or broker-dealer by an order under this
 31.18 chapter, the Securities and Exchange Commission, or a self-regulatory organization,
 31.19 unless the investment adviser did not know, and in the exercise of reasonable care could
 31.20 not have known, of the suspension, revocation, or bar. Upon request from the investment
 31.21 adviser and for good cause, the administrator, by order, may waive, in whole or in part, the
 31.22 application of the prohibitions of this subsection to the investment adviser.

31.23 Sec. 11. Minnesota Statutes 2006, section 80A.60, is amended to read:

31.24 **80A.60 SECTION 405; FEDERAL COVERED INVESTMENT ADVISER**
 31.25 **NOTICE FILING REQUIREMENT.**

31.26 (a) **Notice filing requirement.** Except with respect to a federal covered investment
 31.27 adviser described in subsection (b), it is unlawful for a federal covered investment adviser
 31.28 to transact business in this state as a federal covered investment adviser unless the federal
 31.29 covered investment adviser complies with subsection (c).

31.30 (b) **Notice filing requirement not required.** The following federal covered
 31.31 investment advisers are not required to comply with subsection (c):

31.32 (1) a federal covered investment adviser without a place of business in this state if
 31.33 its only clients in this state are:

31.34 (A) federal covered investment advisers, investment advisers registered under this
 31.35 chapter, and broker-dealers registered under this chapter;

- 32.1 (B) institutional investors;
- 32.2 (C) accredited investors;
- 32.3 ~~(C)~~ (D) bona fide preexisting clients whose principal places of residence are not
- 32.4 in this state; or
- 32.5 ~~(D)~~ (E) other clients specified by rule adopted or order issued under this chapter;
- 32.6 (2) a federal covered investment adviser without a place of business in this state if
- 32.7 the person has had, during the preceding 12 months, not more than five clients that are
- 32.8 resident in this state in addition to those specified under paragraph (1); and
- 32.9 (3) any other person excluded by rule adopted or order issued under this chapter.

32.10 (c) **Notice filing procedure.** A person acting as a federal covered investment

32.11 adviser, not excluded under subsection (b), shall file a notice, a consent to service of

32.12 process complying with section 80A.88, and such records as have been filed with the

32.13 Securities and Exchange Commission under the Investment Advisers Act of 1940 required

32.14 by rule adopted or order issued under this chapter and pay the fees specified in section

32.15 ~~80A.65(c)~~ 80A.65.

32.16 (d) **Effectiveness of filing.** The notice under subsection (c) becomes effective upon

32.17 its filing and remains effective through December 31 of the year following the year

32.18 in which it is filed. The notice may be renewed annually in such manner as prescribed

32.19 by the administrator.

32.20 Sec. 12. Minnesota Statutes 2006, section 80A.65, subdivision 2, is amended to read:

32.21 Subd. 2. **Registration application and renewal filing fee.** Every applicant for an

32.22 initial or renewal registration shall pay a filing fee of \$200 in the case of a broker-dealer,

32.23 \$50 in the case of an agent, and \$100 in the case of an investment adviser. When an

32.24 application is denied or withdrawn, the filing fee shall be retained. A registered agent who

32.25 has terminated employment with one broker-dealer shall, before beginning employment

32.26 with another broker-dealer, pay a transfer fee of \$25. ~~The fee for a filing made according~~

32.27 ~~to section 80A.56 is \$100.~~

32.28 Sec. 13. Minnesota Statutes 2006, section 80A.65, is amended by adding a subdivision

32.29 to read:

32.30 Subd. 2a. **Federal covered investment adviser filings.** Every federal covered

32.31 investment adviser filing the initial or renewal notice required under section 80A.60 must

32.32 pay a filing fee of \$100.

33.1 Sec. 14. Minnesota Statutes 2006, section 80A.66, is amended to read:

33.2 **80A.66 SECTION 411; POSTREGISTRATION REQUIREMENTS.**

33.3 (a) **Financial requirements.** Subject to Section 15(h) of the Securities Exchange
33.4 Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act
33.5 of 1940 (15 U.S.C. Section 80b-22), a rule adopted or order issued under this chapter
33.6 may establish minimum financial requirements for broker-dealers registered or required
33.7 to be registered under this chapter and investment advisers registered or required to be
33.8 registered under this chapter.

33.9 (b) **Financial reports.** Subject to Section 15(h) of the Securities Exchange Act of
33.10 1934 (15 U.S.C. Section 78o(h)) or Section 222(b) of the Investment Advisers Act of 1940
33.11 (15 U.S.C. Section 80b-22), a broker-dealer registered or required to be registered under
33.12 this chapter and an investment adviser registered or required to be registered under this
33.13 chapter shall file such financial reports as are required by a rule adopted or order issued
33.14 under this chapter. If the information contained in a record filed under this subsection is or
33.15 becomes inaccurate or incomplete in a material respect, the registrant shall promptly file
33.16 a correcting amendment.

33.17 (c) **Record keeping.** Subject to Section 15(h) of the Securities Exchange Act of
33.18 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of 1940
33.19 (15 U.S.C. Section 80b-22):

33.20 (1) a broker-dealer registered or required to be registered under this chapter and an
33.21 investment adviser registered or required to be registered under this chapter shall make
33.22 and maintain the accounts, correspondence, memoranda, papers, books, and other records
33.23 required by rule adopted or order issued under this chapter;

33.24 (2) broker-dealer records required to be maintained under paragraph (1) may be
33.25 maintained in any form of data storage acceptable under Section 17(a) of the Securities
33.26 Exchange Act of 1934 (15 U.S.C. Section 78q(a)) if they are readily accessible to the
33.27 administrator; and

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

33.31 (d) **Audits or inspections.** The records of a broker-dealer registered or required
33.32 to be registered under this chapter and of an investment adviser registered or required to
33.33 be registered under this chapter are subject to such reasonable periodic, special, or other
33.34 audits or inspections by a representative of the administrator, within or without this state,
33.35 as the administrator considers necessary or appropriate in the public interest and for the
33.36 protection of investors. An audit or inspection may be made at any time and without prior

34.1 notice. The administrator may copy, and remove for audit or inspection copies of, all
34.2 records the administrator reasonably considers necessary or appropriate to conduct the
34.3 audit or inspection. The administrator may assess a reasonable charge for conducting an
34.4 audit or inspection under this subsection.

34.5 (e) **Custody and discretionary authority bond or insurance.** Subject to Section
34.6 15(h) of the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222
34.7 of the Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a rule adopted or
34.8 order issued under this chapter may require a broker-dealer or investment adviser that has
34.9 custody of or discretionary authority over funds or securities of a customer or client to
34.10 obtain insurance or post a bond or other satisfactory form of security in an amount not
34.11 to exceed \$25,000. The administrator may determine the requirements of the insurance,
34.12 bond, or other satisfactory form of security. Insurance or a bond or other satisfactory form
34.13 of security may not be required of a broker-dealer registered under this chapter whose net
34.14 capital exceeds, or of an investment adviser registered under this chapter whose minimum
34.15 financial requirements exceed, the amounts required by rule or order under this chapter.
34.16 The insurance, bond, or other satisfactory form of security must permit an action by
34.17 a person to enforce any liability on the insurance, bond, or other satisfactory form of
34.18 security if instituted within the time limitations in section 80A.76(j)(2).

34.19 (f) **Requirements for custody.** Subject to Section 15(h) of the Securities Exchange
34.20 Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the Investment Advisers Act of
34.21 1940 (15 U.S.C. Section 80b-22), an agent may not have custody of funds or securities
34.22 of a customer except under the supervision of a broker-dealer and an investment adviser
34.23 representative may not have custody of funds or securities of a client except under the
34.24 supervision of an investment adviser or a federal covered investment adviser. A rule
34.25 adopted or order issued under this chapter may prohibit, limit, or impose conditions on a
34.26 broker-dealer regarding custody of funds or securities of a customer and on an investment
34.27 adviser regarding custody of securities or funds of a client.

34.28 (g) **Investment adviser brochure rule.** With respect to an investment adviser
34.29 registered or required to be registered under this chapter, a rule adopted or order
34.30 issued under this chapter may require that information or other record be furnished or
34.31 disseminated to clients or prospective clients in this state as necessary or appropriate in the
34.32 public interest and for the protection of investors and advisory clients.

34.33 (h) **Continuing education.** A rule adopted or order issued under this chapter
34.34 may require an individual registered under section 80A.57 ~~or 80A.59~~ to participate in a
34.35 continuing education program approved by the Securities and Exchange Commission and
34.36 administered by a self-regulatory organization ~~or, in the absence of such a program, a~~

35.1 ~~rule adopted or order issued under this chapter may require continuing education for an~~
35.2 ~~individual registered under section 80A.59.~~

35.3 Sec. 15. Minnesota Statutes 2006, section 80A.67, is amended to read:

35.4 **80A.67 SECTION 412; DENIAL, REVOCATION, SUSPENSION,**
35.5 **WITHDRAWAL, RESTRICTION, CONDITION, OR LIMITATION OF**
35.6 **REGISTRATION.**

35.7 (a) **Disciplinary conditions-applicants.** If the administrator finds that the order is
35.8 in the public interest and subsection (d) authorizes the action, an order issued under this
35.9 chapter may deny an application, or may condition or limit registration of an applicant to
35.10 be a broker-dealer, agent, or investment adviser, and, if the applicant is a broker-dealer
35.11 or investment adviser, of a partner, officer, director, or person having a similar status
35.12 or performing similar functions, or a person directly or indirectly in control of the
35.13 broker-dealer or investment adviser.

35.14 (b) **Disciplinary conditions-registrants.** If the administrator finds that the order is
35.15 in the public interest and subsection (d) authorizes the action an order issued under this
35.16 chapter may revoke, suspend, condition, or limit the registration of a registrant and, if the
35.17 registrant is a broker-dealer or investment adviser, of a partner, officer, director, or person
35.18 having a similar status or performing similar functions, or a person directly or indirectly in
35.19 control of the broker-dealer or investment adviser. However, the administrator may not:

35.20 (1) institute a revocation or suspension proceeding under this subsection based on an
35.21 order issued under a law of another state that is reported to the administrator or a designee
35.22 of the administrator more than one year after the date of the order on which it is based; or

35.23 (2) under subsection (d)(5)(A) or (B), issue an order on the basis of an order issued
35.24 under the securities act of another state unless the other order was based on conduct for
35.25 which subsection (d) would authorize the action had the conduct occurred in this state.

35.26 (c) **Disciplinary penalties-registrants.** If the administrator finds that the order is
35.27 in the public interest and subsection (d)(1) through (6), (8), (9), (10), or (12) and (13)
35.28 authorizes the action, an order under this chapter may censure, impose a bar, or impose a
35.29 civil penalty in an amount up to \$10,000 for each violation, on a registrant, and, if the
35.30 registrant is a broker-dealer or investment adviser, a partner, officer, director, person
35.31 having a similar status or performing similar functions, or a person directly or indirectly in
35.32 control, of the broker-dealer or investment adviser.

35.33 (d) **Grounds for discipline.** A person may be disciplined under subsections (a)
35.34 through (c) if the person:

36.1 (1) has filed an application for registration in this state under this chapter or the
36.2 predecessor act within the previous ten years, which, as of the effective date of registration
36.3 or as of any date after filing in the case of an order denying effectiveness, was incomplete
36.4 in any material respect or contained a statement that, in light of the circumstances under
36.5 which it was made, was false or misleading with respect to a material fact;

36.6 (2) willfully violated or willfully failed to comply with this chapter or the
36.7 predecessor act or a rule adopted or order issued under this chapter or the predecessor
36.8 act within the previous ten years;

36.9 (3) has been convicted of a felony or within the previous ten years has been
36.10 convicted of a misdemeanor involving a security, a commodity future or option contract,
36.11 or an aspect of a business involving securities, commodities, investments, franchises,
36.12 insurance, banking, or finance;

36.13 (4) is enjoined or restrained by a court of competent jurisdiction in an action
36.14 instituted by the administrator under this chapter or the predecessor act, a state, the
36.15 Securities and Exchange Commission, or the United States from engaging in or continuing
36.16 an act, practice, or course of business involving an aspect of a business involving
36.17 securities, commodities, investments, franchises, insurance, banking, or finance.

36.18 (5) is the subject of an order, issued after notice and opportunity for hearing by:

36.19 (A) the securities, depository institution, insurance, or other financial services
36.20 regulator of a state or by the Securities and Exchange Commission or other federal agency
36.21 denying, revoking, barring, or suspending registration as a broker-dealer, agent, investment
36.22 adviser, federal covered investment adviser, or investment adviser representative;

36.23 (B) the securities regulator of a state or the Securities and Exchange Commission
36.24 against a broker-dealer, agent, investment adviser, investment adviser representative, or
36.25 federal covered investment adviser;

36.26 (C) the Securities and Exchange Commission or a self-regulatory organization
36.27 suspending or expelling the registrant from membership in the self-regulatory organization;

36.28 (D) a court adjudicating a United States Postal Service fraud order;

36.29 (E) the insurance regulator of a state denying, suspending, or revoking registration
36.30 as an insurance agent; or

36.31 (F) a depository institution regulator suspending or barring the person from the
36.32 depository institution business;

36.33 (6) is the subject of an adjudication or determination, after notice and opportunity
36.34 for hearing, by the Securities and Exchange Commission, the Commodity Futures Trading
36.35 Commission; the Federal Trade Commission; a federal depository institution regulator,
36.36 or a depository institution, insurance, or other financial services regulator of a state that

37.1 the person willfully violated the Securities Act of 1933, the Securities Exchange Act of
37.2 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, or the
37.3 Commodity Exchange Act, the securities or commodities law of a state, or a federal or
37.4 state law under which a business involving investments, franchises, insurance, banking, or
37.5 finance is regulated;

37.6 (7) is insolvent, either because the person's liabilities exceed the person's assets
37.7 or because the person cannot meet the person's obligations as they mature, but the
37.8 administrator may not enter an order against an applicant or registrant under this paragraph
37.9 without a finding of insolvency as to the applicant or registrant;

37.10 (8) refuses to allow or otherwise impedes the administrator from conducting an audit
37.11 or inspection under section 80A.66(d) or refuses access to a registrant's office to conduct
37.12 an audit or inspection under section 80A.66(d);

37.13 (9) has failed to reasonably supervise an agent, investment adviser representative,
37.14 or other individual, if the agent, investment adviser representative, or other individual
37.15 was subject to the person's supervision and committed a violation of this chapter or the
37.16 predecessor act or a rule adopted or order issued under this chapter or the predecessor
37.17 act within the previous ten years;

37.18 (10) has not paid the proper filing fee within 30 days after having been notified by
37.19 the administrator of a deficiency, but the administrator shall vacate an order under this
37.20 paragraph when the deficiency is corrected;

37.21 (11) after notice and opportunity for a hearing, has been found within the previous
37.22 ten years:

37.23 (A) by a court of competent jurisdiction to have willfully violated the laws of a
37.24 foreign jurisdiction under which the business of securities, commodities, investment,
37.25 franchises, insurance, banking, or finance is regulated;

37.26 (B) to have been the subject of an order of a securities regulator of a foreign
37.27 jurisdiction denying, revoking, or suspending the right to engage in the business of
37.28 securities as a broker-dealer, agent, investment adviser, investment adviser representative,
37.29 or similar person; or

37.30 (C) to have been suspended or expelled from membership by or participation in
37.31 a securities exchange or securities association operating under the securities laws of a
37.32 foreign jurisdiction;

37.33 (12) is the subject of a cease and desist order issued by the Securities and Exchange
37.34 Commission or issued under the securities, commodities, investment, franchise, banking,
37.35 finance, or insurance laws of a state;

38.1 (13) has engaged in dishonest or unethical practices in the securities, commodities,
38.2 investment, franchise, banking, finance, or insurance business within the previous ten
38.3 years; or

38.4 (14) is not qualified on the basis of factors such as training, experience, and
38.5 knowledge of the securities business. However, in the case of an application by an agent
38.6 for a broker-dealer that is a member of a self-regulatory organization ~~or by an individual~~
38.7 ~~for registration as an investment adviser representative~~, a denial order may not be based on
38.8 this paragraph if the individual has successfully completed all examinations required by
38.9 subsection (e). The administrator may require an applicant for registration under section
38.10 80A.57 ~~or 80A.59~~ who has not been registered in a state within the two years preceding
38.11 the filing of an application in this state to successfully complete an examination.

38.12 (e) **Examinations.** A rule adopted or order issued under this chapter may require that
38.13 an examination, including an examination developed or approved by an organization of
38.14 securities regulators, be successfully completed by a class of individuals or all individuals.
38.15 An order issued under this chapter may waive, in whole or in part, an examination as to
38.16 an individual and a rule adopted under this chapter may waive, in whole or in part, an
38.17 examination as to a class of individuals if the administrator determines that the examination
38.18 is not necessary or appropriate in the public interest and for the protection of investors.

38.19 (f) **Summary process.** The administrator may suspend or deny an application
38.20 summarily; restrict, condition, limit, or suspend a registration; or censure, bar, or impose a
38.21 civil penalty on a registrant before final determination of an administrative proceeding.
38.22 Upon the issuance of an order, the administrator shall promptly notify each person subject
38.23 to the order that the order has been issued, the reasons for the action, and that within 15
38.24 days after the receipt of a request in a record from the person the matter will be scheduled
38.25 for a hearing. If a hearing is not requested and none is ordered by the administrator within
38.26 30 days after the date of service of the order, the order becomes final by operation of law.
38.27 If a hearing is requested or ordered, the administrator, after notice of and opportunity for
38.28 hearing to each person subject to the order, may modify or vacate the order or extend the
38.29 order until final determination.

38.30 (g) **Procedural requirements.** An order issued may not be issued under this section,
38.31 except under subsection (f), without:

- 38.32 (1) appropriate notice to the applicant or registrant;
38.33 (2) opportunity for hearing; and
38.34 (3) findings of fact and conclusions of law in a record in accordance with chapter 14.

38.35 (h) **Control person liability.** A person that controls, directly or indirectly, a person
38.36 not in compliance with this section may be disciplined by order of the administrator under

39.1 subsections (a) through (c) to the same extent as the noncomplying person, unless the
39.2 controlling person did not know, or knowingly or recklessly disregarded evidence, of the
39.3 existence of conduct that is a ground for discipline under this section.

39.4 (i) **Limit on investigation or proceeding.** The administrator may not institute a
39.5 proceeding under subsection (a), (b), or (c) based solely on material facts actually known
39.6 by the administrator unless an investigation or the proceeding is instituted within one year
39.7 after the administrator actually acquires knowledge of the material facts.

39.8 Sec. 16. Minnesota Statutes 2006, section 80A.76, is amended to read:

39.9 **80A.76 SECTION 509; CIVIL LIABILITY.**

39.10 (a) **Securities Litigation Uniform Standards Act.** Enforcement of civil liability
39.11 under this section is subject to the Securities Litigation Uniform Standards Act of 1998.

39.12 (b) **Liability of seller to purchaser.** A person is liable to the purchaser if the person
39.13 sells a security in violation of section 80A.49 or, by means of an untrue statement of a
39.14 material fact or an omission to state a material fact necessary in order to make the statement
39.15 made, in light of the circumstances under which it is made, not misleading, the purchaser
39.16 not knowing the untruth or omission and the seller not sustaining the burden of proof that
39.17 the seller did not know and, in the exercise of reasonable care, could not have known of
39.18 the untruth or omission. An action under this subsection is governed by the following:

39.19 (1) The purchaser may maintain an action to recover the consideration paid for the
39.20 security, less the amount of any income received on the security, and interest from the date
39.21 of the purchase, costs, and reasonable attorneys' fees determined by the court, upon the
39.22 tender of the security, or for actual damages as provided in paragraph (3).

39.23 (2) The tender referred to in paragraph (1) may be made any time before entry
39.24 of judgment. Tender requires only notice in a record of ownership of the security and
39.25 willingness to exchange the security for the amount specified. A purchaser that no longer
39.26 owns the security may recover actual damages as provided in paragraph (3).

39.27 (3) Actual damages in an action arising under this subsection are the amount that
39.28 would be recoverable upon a tender less the value of the security when the purchaser
39.29 disposed of it, and interest from the date of the purchase, costs, and reasonable attorneys'
39.30 fees determined by the court.

39.31 (c) **Liability of purchaser to seller.** A person is liable to the seller if the person
39.32 buys a security by means of an untrue statement of a material fact or omission to state a
39.33 material fact necessary in order to make the statement made, in light of the circumstances
39.34 under which it is made, not misleading, the seller not knowing of the untruth or omission,
39.35 and the purchaser not sustaining the burden of proof that the purchaser did not know, and

40.1 in the exercise of reasonable care, could not have known of the untruth or omission. An
40.2 action under this subsection is governed by the following:

40.3 (1) The seller may maintain an action to recover the security, and any income
40.4 received on the security, costs, and reasonable attorneys' fees determined by the court,
40.5 upon the tender of the purchase price, or for actual damages as provided in paragraph (3).

40.6 (2) The tender referred to in paragraph (1) may be made any time before entry
40.7 of judgment. Tender requires only notice in a record of the present ability to pay the
40.8 amount tendered and willingness to take delivery of the security for the amount specified.
40.9 If the purchaser no longer owns the security, the seller may recover actual damages as
40.10 provided in paragraph (3).

40.11 (3) Actual damages in an action arising under this subsection are the difference
40.12 between the price at which the security was sold and the value the security would have
40.13 had at the time of the sale in the absence of the purchaser's conduct causing liability, and
40.14 interest from the date of the sale of the security, costs, and reasonable attorneys' fees
40.15 determined by the court.

40.16 (d) **Liability of unregistered broker-dealer and agent.** A person acting as a
40.17 broker-dealer or agent that sells or buys a security in violation of section 80A.56(a),
40.18 80A.57(a), or 80A.73 is liable to the customer. The customer, if a purchaser, may maintain
40.19 an action for recovery of actual damages as specified in subsections (b)(1) through (3), or,
40.20 if a seller, for a remedy as specified in subsections (c)(1) through (3).

40.21 (e) **Liability of unregistered investment adviser ~~and investment adviser~~**
40.22 **representative.** A person acting as an investment adviser ~~or investment adviser~~
40.23 ~~representative~~ that provides investment advice for compensation in violation of section
40.24 80A.58(a), ~~80A.59(a)~~, or 80A.73 is liable to the client. The client may maintain an action
40.25 to recover the consideration paid for the advice, interest from the date of payment, costs,
40.26 and reasonable attorneys' fees determined by the court.

40.27 (f) **Liability for investment advice.** A person that receives directly or indirectly
40.28 any consideration for providing investment advice to another person and that employs a
40.29 device, scheme, or artifice to defraud the other person or engages in an act, practice, or
40.30 course of business that operates or would operate as a fraud or deceit on the other person,
40.31 is liable to the other person. An action under this subsection is governed by the following:

40.32 (1) The person defrauded may maintain an action to recover the consideration
40.33 paid for the advice and the amount of any actual damages caused by the fraudulent
40.34 conduct, interest from the date of the fraudulent conduct, costs, and reasonable attorneys'
40.35 fees determined by the court, less the amount of any income received as a result of the
40.36 fraudulent conduct.

41.1 (2) This subsection does not apply to a broker-dealer or its agents if the investment
41.2 advice provided is solely incidental to transacting business as a broker-dealer and no
41.3 special compensation is received for the investment advice.

41.4 (g) **Joint and several liability.** The following persons are liable jointly and severally
41.5 with and to the same extent as persons liable under subsections (b) through (f):

41.6 (1) a person that directly or indirectly controls a person liable under subsections (b)
41.7 through (f), unless the controlling person sustains the burden of proof that the person did
41.8 not know, and in the exercise of reasonable care could not have known, of the existence of
41.9 conduct by reason of which the liability is alleged to exist;

41.10 (2) an individual who is a managing partner, executive officer, or director of a person
41.11 liable under subsections (b) through (f), including an individual having a similar status or
41.12 performing similar functions, unless the individual sustains the burden of proof that the
41.13 individual did not know and, in the exercise of reasonable care could have known, of the
41.14 existence of conduct by reason of which the liability is alleged to exist;

41.15 (3) an individual who is an employee of or associated with a person liable under
41.16 subsections (b) through (f) and who materially aids the conduct giving rise to the liability,
41.17 unless the individual sustains the burden of proof that the individual did not know and,
41.18 in the exercise of reasonable care could not have known, of the existence of conduct by
41.19 reason of which the liability is alleged to exist; and

41.20 (4) a person that is a broker-dealer, agent, investment adviser, or investment adviser
41.21 representative that materially aids the conduct giving rise to the liability under subsections
41.22 (b) through (f), unless the person sustains the burden of proof that the person did not know
41.23 and, in the exercise of reasonable care could not have known, of the existence of conduct
41.24 by reason of which liability is alleged to exist.

41.25 (h) **Right of contribution.** A person liable under this section has a right of
41.26 contribution as in cases of tort against any other person liable under this section for the
41.27 same conduct.

41.28 (i) **Survival of cause of action.** A cause of action under this section survives the
41.29 death of an individual who might have been a plaintiff or defendant.

41.30 (j) **Statute of limitations.** A person may not obtain relief:

41.31 (1) under subsection (b) for violation of section 80A.49, or under subsection (d) or
41.32 (e), unless the action is instituted within one year after the violation occurred; or

41.33 (2) under subsection (b), other than for violation of section 80A.49, or under
41.34 subsection (c) or (f), unless the action is instituted within the earlier of two years after
41.35 discovery of the facts constituting the violation or five years after the violation.

42.1 (k) **No enforcement of violative contract.** A person that has made, or has engaged
42.2 in the performance of, a contract in violation of this chapter or a rule adopted or order
42.3 issued under this chapter, or that has acquired a purported right under the contract with
42.4 knowledge of conduct by reason of which its making or performance was in violation of
42.5 this chapter, may not base an action on the contract.

42.6 (l) **No contractual waiver.** A condition, stipulation, or provision binding a person
42.7 purchasing or selling a security or receiving investment advice to waive compliance with
42.8 this chapter or a rule adopted or order issued under this chapter is void.

42.9 (m) **Survival of other right or remedies.** The rights and remedies provided by this
42.10 chapter are in addition to any other rights or remedies that may exist, but this chapter does
42.11 not create a cause of action not specified in this section or section 80A.66(e).

42.12 Sec. 17. Minnesota Statutes 2006, section 80A.82, is amended to read:

42.13 **80A.82 SECTION 605; RULES, FORMS, ORDERS, INTERPRETATIVE**
42.14 **OPINIONS, AND HEARINGS.**

42.15 (a) **Issuance and adoption of forms, orders, and rules.** The administrator may:

42.16 (1) issue forms and orders and, ~~after notice and comment~~ in accordance with chapter
42.17 14, may adopt and amend rules necessary or appropriate to carry out this chapter and may
42.18 repeal rules, including rules and forms governing registration statements, applications,
42.19 notice filings, reports, and other records;

42.20 (2) by rule, define terms, whether or not used in this chapter, but those definitions
42.21 may not be inconsistent with this chapter; and

42.22 (3) by rule, classify securities, persons, and transactions and adopt different
42.23 requirements for different classes.

42.24 (b) **Findings and cooperation.** Under this chapter, a rule or form may not be
42.25 adopted or amended, or an order issued or amended, unless the administrator finds that the
42.26 rule, form, order, or amendment is necessary or appropriate in the public interest or for the
42.27 protection of investors and is consistent with the purposes intended by this chapter. In
42.28 adopting, amending, and repealing rules and forms, section 80A.85 applies in order to
42.29 achieve uniformity among the states and coordination with federal laws in the form and
42.30 content of registration statements, applications, reports, and other records, including the
42.31 adoption of uniform rules, forms, and procedures.

42.32 (c) **Financial statements.** Subject to Section 15(h) of the Securities Exchange Act
42.33 and Section 222 of the Investment Advisers Act of 1940, the administrator may require
42.34 that a financial statement filed under this chapter be prepared in accordance with generally
42.35 accepted accounting principles in the United States and comply with other requirements

43.1 specified by rule adopted or order issued under this chapter. A rule adopted or order
43.2 issued under this chapter may establish:

43.3 (1) subject to Section 15(h) of the Securities Exchange Act and Section 222 of the
43.4 Investment Advisors Act of 1940, the form and content of financial statements required
43.5 under this chapter;

43.6 (2) whether unconsolidated financial statements must be filed; and

43.7 (3) whether required financial statements must be audited by an independent
43.8 certified public accountant.

43.9 (d) **Interpretative opinions.** The administrator may provide interpretative opinions
43.10 or issue determinations that the administrator will not institute a proceeding or an
43.11 action under this chapter against a specified person for engaging in a specified act,
43.12 practice, or course of business if the determination is consistent with this chapter. A
43.13 rule adopted or order issued under this chapter may establish a reasonable charge for
43.14 interpretative opinions or determinations that the administrator will not institute an action
43.15 or a proceeding under this chapter.

43.16 (e) **Effect of compliance.** A penalty under this chapter may not be imposed for, and
43.17 liability does not arise from conduct that is engaged in or omitted in good faith believing it
43.18 conforms to a rule, form, or order of the administrator under this chapter.

43.19 (f) **Presumption for public hearings.** A hearing in an administrative proceeding
43.20 under this chapter must be conducted in public unless the administrator for good cause
43.21 consistent with this chapter determines that the hearing will not be so conducted.

43.22 Sec. 18. Minnesota Statutes 2006, section 80A.83, is amended to read:

43.23 **80A.83 SECTION 606; ADMINISTRATIVE FILES AND OPINIONS.**

43.24 (a) **Public register of filings.** The administrator shall maintain, or designate a
43.25 person to maintain, a register of applications for registration of securities; registration
43.26 statements; notice filings; applications for registration of broker-dealers, agents, and
43.27 investment advisers, ~~and investment adviser representatives~~; notice filings by federal
43.28 covered investment advisers that are or have been effective under this chapter or
43.29 the predecessor act; notices of claims of exemption from registration or notice filing
43.30 requirements contained in a record; orders issued under this chapter or the predecessor act;
43.31 and interpretative opinions or no action determinations issued under this chapter.

43.32 (b) **Public availability.** The administrator shall make all rules, forms, interpretative
43.33 opinions, and orders available to the public.

43.34 (c) **Copies of public records.** The administrator shall furnish a copy of a record
43.35 that is a public record or a certification that the public record does not exist to a person

44.1 that so requests. A rule adopted under this chapter may establish a reasonable charge
44.2 for furnishing the record or certification. A copy of the record certified or a certificate
44.3 by the administrator of a record's nonexistence is prima facie evidence of a record or its
44.4 nonexistence.

44.5 Sec. 19. Minnesota Statutes 2006, section 80A.85, is amended to read:

44.6 **80A.85 SECTION 608; UNIFORMITY AND COOPERATION WITH OTHER**
44.7 **AGENCIES.**

44.8 (a) **Objective of uniformity.** The administrator shall, in its discretion, cooperate,
44.9 coordinate, consult, and, subject to section 80A.84, share records and information with the
44.10 securities regulator of another state, Canada, a Canadian province or territory, a foreign
44.11 jurisdiction, the Securities and Exchange Commission, the United States Department of
44.12 Justice, the Commodity Futures Trading Commission, the Federal Trade Commission, the
44.13 Securities Investor Protection Corporation, a self-regulatory organization, a national or
44.14 international organization of securities regulators, a federal or state banking and insurance
44.15 regulator, and a governmental law enforcement agency to effectuate greater uniformity in
44.16 securities matters among the federal government, self-regulatory organizations, states,
44.17 and foreign governments.

44.18 (b) **Policies to consider.** In cooperating, coordinating, consulting, and sharing
44.19 records and information under this section and in acting by rule, order, or waiver under
44.20 this chapter, the administrator shall, in its discretion, take into consideration in carrying
44.21 out the public interest the following general policies:

44.22 (1) maximizing effectiveness of regulation for the protection of investors;

44.23 (2) maximizing uniformity in federal and state regulatory standards; and

44.24 (3) minimizing burdens on the business of capital formation, without adversely
44.25 effecting essentials of investor protection.

44.26 (c) **Subjects for cooperation.** The cooperation, coordination, consultation, and
44.27 sharing of records and information authorized by this section includes:

44.28 (1) establishing or employing one or more designees as a central depository for
44.29 registration and notice filings under this chapter and for records required or allowed to
44.30 be maintained under this chapter;

44.31 (2) developing and maintaining uniform forms;

44.32 (3) conducting a joint examination or investigation;

44.33 (4) holding a joint administrative hearing;

44.34 (5) instituting and prosecuting a joint civil or administrative proceeding;

44.35 (6) sharing and exchanging personnel;

45.1 (7) coordinating registrations under sections 80A.49 and 80A.56 through ~~80A.59~~
45.2 80A.58 and exemptions under section 80A.47;

45.3 (8) sharing and exchanging records, subject to section 80A.84;

45.4 (9) formulating rules, statements of policy, guidelines, forms, and interpretative
45.5 opinions and releases;

45.6 (10) formulating common systems and procedures;

45.7 (11) notifying the public of proposed rules, forms, statements of policy, and
45.8 guidelines;

45.9 (12) attending conferences and other meetings among securities regulators, which
45.10 may include representatives of governmental and private sector organizations involved in
45.11 capital formation, deemed necessary or appropriate to promote or achieve uniformity; and

45.12 (13) developing and maintaining a uniform exemption from registration for small
45.13 issuers, and taking other steps to reduce the burden of raising investment capital by small
45.14 businesses.

45.15 Sec. 20. Minnesota Statutes 2006, section 80A.87, is amended to read:

45.16 **80A.87 SECTION 610; JURISDICTION.**

45.17 (a) **Sales and offers to sell.** Sections 80A.49, 80A.50, 80A.56(a), 80A.57(a),
45.18 80A.58(a), ~~80A.59(a)~~, 80A.68, 80A.73, 80A.76, and 80A.77 do not apply to a person that
45.19 sells or offers to sell a security unless the offer to sell or the sale is made in this state or the
45.20 offer to purchase or the purchase is made and accepted in this state.

45.21 (b) **Purchases and offers to purchase.** Sections 80A.56(a), 80A.57(a), 80A.58(a),
45.22 ~~80A.59(a)~~, 80A.68, 80A.73, 80A.76, and 80A.77 do not apply to a person that purchases
45.23 or offers to purchase a security unless the offer to purchase or the purchase is made in this
45.24 state or the offer to sell or the sale is made and accepted in this state.

45.25 (c) **Offers in this state.** For the purpose of this section, an offer to sell or to purchase
45.26 a security is made in this state, whether or not either party is then present in this state, if
45.27 the offer:

45.28 (1) originates from within this state; or

45.29 (2) is directed by the offeror to a place in this state and received at the place to
45.30 which it is directed.

45.31 (d) **Acceptances in this state.** For the purpose of this section, an offer to purchase
45.32 or to sell is accepted in this state, whether or not either party is then present in this
45.33 state, if the acceptance:

46.1 (1) is communicated to the offeror in this state and the offeree reasonably believes
 46.2 the offeror to be present in this state and the acceptance is received at the place in this
 46.3 state to which it is directed; and

46.4 (2) has not previously been communicated to the offeror, orally or in a record,
 46.5 outside this state.

46.6 (e) **Publications, radio, television, or electronic communications.** An offer
 46.7 to sell or to purchase is not made in this state when a publisher circulates or there is
 46.8 circulated on the publisher's behalf in this state a bona fide newspaper or other publication
 46.9 of general, regular, and paid circulation that is not published in this state, or that is
 46.10 published in this state but has had more than two-thirds of its circulation outside this state
 46.11 during the previous 12 months or when a radio or television program or other electronic
 46.12 communication originating outside this state is received in this state. A radio or television
 46.13 program, or other electronic communication is considered as having originated in this
 46.14 state if either the broadcast studio or the originating source of transmission is located
 46.15 in this state, unless:

46.16 (1) the program or communication is syndicated and distributed from outside this
 46.17 state for redistribution to the general public in this state;

46.18 (2) the program or communication is supplied by a radio, television, or other
 46.19 electronic network with the electronic signal originating from outside this state for
 46.20 redistribution to the general public in this state;

46.21 (3) the program or communication is an electronic communication that originates
 46.22 outside this state and is captured for redistribution to the general public in this state by a
 46.23 community antenna or cable, radio, cable television, or other electronic system; or

46.24 (4) the program or communication consists of an electronic communication that
 46.25 originates in this state, but which is not intended for distribution to the general public in
 46.26 this state.

46.27 (f) **Investment advice and misrepresentations.** Sections 80A.58(a), ~~80A.59(a)~~;
 46.28 80A.60(a), 80A.69, 80A.72, and 80A.73 apply to a person if the person engages in an act,
 46.29 practice, or course of business instrumental in effecting prohibited or actionable conduct
 46.30 in this state, whether or not either party is then present in this state.

46.31 **Sec. 21. REVISOR'S INSTRUCTION.**

46.32 The revisor of statutes shall change the references to "section 80A.41(28)" in
 46.33 Minnesota Statutes, sections 66A.40, subdivision 9, 82.23, 302A.011, subdivision 26,
 46.34 and 322B.03, subdivision 43, to "section 80A.41(30)" to reflect the renumbering of that
 46.35 section made by this act.

47.1 Sec. 22. **EFFECTIVE DATE.**

47.2 Sections 1 to 21 are effective the day following final enactment.