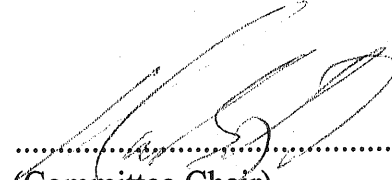


1.1 **Senator Betzold from the Committee on Judiciary, to which was referred**

1.2 **S.F. No. 2633: A bill for an act relating to courts; providing for appeal of Fourth Judicial District Family Court referee orders; amending Minnesota Statutes 2004, section 484.65, subdivision 9.**

1.5 Reports the same back with the recommendation that the bill do pass. Report
1.6 adopted.


.....
(Committee Chair)

1.9 March 2, 2006
1.10 (Date of Committee recommendation)

Senators Rest, Skoglund, Ranum and Hann introduced—
S.F. No. 2633: Referred to the Committee on Judiciary.

A bill for an act
relating to courts; providing for appeal of Fourth Judicial District Family Court
referee orders; amending Minnesota Statutes 2004, section 484.65, subdivision 9.

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

Section 1. Minnesota Statutes 2004, section 484.65, subdivision 9, is amended to read:

Subd. 9. **Referees; review appeal.** All recommended orders and findings of a referee shall be subject to confirmation by said district court judge. ~~Review of any recommended order or finding of a referee by the district court judge may be had by notice served and filed within ten days of effective notice of such recommended order or finding. The notice of review shall specify the grounds for such review and the specific provisions of the recommended findings or orders disputed, and said district court judge, upon receipt of such notice of review, shall set a time and place for such review hearing.~~ Fourth Judicial District Family Court referee orders and decrees may be appealed directly to the Court of Appeals in the same manner as judicial orders and decrees. The time for appealing an appealable referee order runs from service by any party of written notice of the filing of the confirmed order.

EFFECTIVE DATE. This section is effective the day following final enactment.

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and Fiscal Analysis**

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Senate

State of Minnesota

S.F. No. 2633 - Hennepin County Family Court

Author: Senator Ann H. Rest

Prepared by: Kathleen Pontius, Senate Counsel (651/296-4394)

Date: March 2, 2006

K.P.

This bill amends provisions governing the appeal of family court referee decisions in the Fourth Judicial District (Hennepin County). The process for review of a recommended order or finding by a district court judge would be replaced by new language providing that referee orders and decrees may be appealed directly to the Court of Appeals in the same manner as judicial orders and decrees. The time for appealing an order would begin upon service by a party of written notice of the filing of the confirmed order.

An immediate effective date is included.

KP:cs

Bill for Hennepin County Family Court

Summary

- This bill provides for litigants to appeal decisions by Family Court referees directly to the Minnesota Court of Appeals.
- Litigants have this option at Ramsey County Family Court.
- The Court of Appeals has no problems with this bill.

Purpose

- To assist litigants by decreasing the cost, length and acrimony of family cases handled by referees;
- To extricate children as soon as possible from custody battles; and
- To reallocate judicial resources to other pressing areas.

Supporters

- Hennepin County District Court / Fourth Judicial District
- Minnesota Judicial Council - the governing body of the Minnesota Judicial Branch
- American Academy of Matrimonial Lawyers / Minnesota Chapter
- Hennepin County Bar Association / Family Law Section
- Minnesota Association for Court Management - the professional association of Minnesota state court administrators and managers

- more -

Now, I would like to introduce the two witnesses who will provide additional detail on the bill...

From Hennepin County Family Court
The Honorable James T. Swenson
Presiding Judge

**From the American Academy of Matrimonial Lawyers /
Minnesota Chapter**
Michael D. Dittberner, Attorney
Clugg, Linder, Dittberner & Edmiston, Ltd.

Senators Kelley, Kierlin and Solon introduced--
S.F. No. 1973: Referred to the Committee on Health and Family Security.

1 A bill for an act

2 relating to health; providing for the medical use of
3 marijuana; providing civil and criminal penalties;
4 proposing coding for new law in Minnesota Statutes,
5 chapter 152.

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

7 Section 1. [152.22] [DEFINITIONS.]

8 Subdivision 1. [APPLICABILITY.] For purposes of sections
9 152.22 to 152.31, the terms defined in this section have the
10 meanings given them.

11 Subd. 2. [COMMISSIONER.] "Commissioner" means the
12 commissioner of health.

13 Subd. 3. [DEBILITATING MEDICAL CONDITION.] "Debilitating
14 medical condition" means:

15 (1) cancer, glaucoma, acquired immune deficiency syndrome,
16 hepatitis C, or the treatment of these conditions;

17 (2) a chronic or debilitating disease or medical condition
18 or its treatment that produces one or more of the following:
19 cachexia or wasting syndrome; severe or chronic pain; severe
20 nausea; seizures, including but not limited to those
21 characteristic of epilepsy; severe and persistent muscle spasms,
22 including but not limited to those characteristic of multiple
23 sclerosis and Crohn's disease; or agitation of Alzheimer's
24 disease;

25 (3) the condition of an HIV-positive patient when the

1 patient's condition has worsened and the patient's physician
2 believes the patient could benefit from consumption of
3 marijuana; or

4 (4) any other medical condition or its treatment approved
5 by the commissioner under section 152.24.

6 Subd. 4. [MEDICAL USE.] "Medical use" means the
7 acquisition, possession, cultivation, manufacture, use,
8 delivery, transfer, or transportation of marijuana or
9 paraphernalia relating to the consumption of marijuana to
10 alleviate a registered qualifying patient's debilitating medical
11 condition or symptoms associated with the medical condition.

12 Subd. 5. [PRACTITIONER.] "Practitioner" means a person who
13 is licensed with the authority to prescribe drugs under section
14 151.01, subdivision 23.

15 Subd. 6. [PRIMARY CAREGIVER.] "Primary caregiver" means a
16 person who is at least 18 years old and who has agreed to assist
17 with a qualifying patient's medical use of marijuana. A primary
18 caregiver may assist no more than five qualifying patients with
19 their medical use of marijuana.

20 Subd. 7. [QUALIFYING PATIENT.] "Qualifying patient" means
21 a person who has been diagnosed by a practitioner as having a
22 debilitating medical condition.

23 Subd. 8. [REGISTRY IDENTIFICATION CARD.] "Registry
24 identification card" means a document issued by the commissioner
25 that identifies a person as a qualifying patient or primary
26 caregiver.

27 Subd. 9. [USABLE MARIJUANA.] "Usable marijuana" means the
28 dried leaves and flowers of the marijuana plant, and any mixture
29 or preparation thereof, but does not include the seeds, stalks,
30 and roots of the plant.

31 Subd. 10. [WRITTEN CERTIFICATION.] "Written certification"
32 means the qualifying patient's medical records, or a statement
33 signed by a practitioner, stating that in the practitioner's
34 professional opinion the potential benefits of the medical use
35 of marijuana would likely outweigh the health risks for the
36 qualifying patient. A written certification shall only be made

1 in the course of a bona fide practitioner-patient relationship
2 after the practitioner has completed a full assessment of the
3 qualifying patient's medical history. The written certification
4 shall specify the qualifying patient's debilitating medical
5 condition or conditions.

6 Sec. 2. [152.23] [PROTECTIONS FOR THE MEDICAL USE OF
7 MARIJUANA.]

8 Subdivision 1. [QUALIFYING PATIENT.] A qualifying patient
9 who has a registry identification card in possession shall not
10 be subject to arrest, prosecution, or penalty in any manner or
11 denied any right or privilege, including but not limited to
12 civil penalty or disciplinary action by a business,
13 occupational, or professional licensing board or bureau, for the
14 medical use of marijuana, provided that the qualifying patient
15 possesses an amount of marijuana that does not exceed 12
16 marijuana plants and 2.5 ounces of usable marijuana.

17 Subd. 2. [PRIMARY CAREGIVER.] A primary caregiver who has
18 a registry identification card in possession shall not be
19 subject to arrest, prosecution, or penalty in any manner or
20 denied any right or privilege, including but not limited to
21 civil penalty or disciplinary action by a business,
22 occupational, or professional licensing board or bureau, for
23 assisting a qualifying patient to whom the caregiver is
24 connected through the commissioner's registration process with
25 the medical use of marijuana, provided that the primary
26 caregiver possesses an amount of marijuana that does not exceed
27 12 marijuana plants and 2.5 ounces of usable marijuana for each
28 qualifying patient to whom the caregiver is connected through
29 the commissioner's registration process.

30 Subd. 3. [DISCRIMINATION PROHIBITED.] No school, employer,
31 or landlord may refuse to enroll, employ, lease to, or otherwise
32 penalize a person solely for the person's status as a registered
33 qualifying patient or a registered primary caregiver.

34 Subd. 4. [PRESUMPTION:] (a) There is a presumption that a
35 qualifying patient or primary caregiver is engaged in the
36 medical use of marijuana if the qualifying patient or primary

1 caregiver:

2 (1) is in possession of a registry identification card; and
3 (2) is in possession of an amount of marijuana that does
4 not exceed the amount permitted under sections 152.22 to 152.31.

5 (b) The presumption may be rebutted by evidence that
6 conduct related to marijuana was not for the purpose of
7 alleviating the qualifying patient's debilitating medical
8 condition or symptoms associated with the medical condition.

9 Subd. 5. [CAREGIVER'S REIMBURSEMENT.] A primary caregiver
10 may receive reimbursement for costs associated with assisting
11 with a registered qualifying patient's medical use of marijuana.
12 Compensation does not constitute sale of controlled substances.

13 Subd. 6. [PRACTITIONER.] A practitioner shall not be
14 subject to arrest, prosecution, or penalty in any manner or
15 denied any right or privilege, including but not limited to
16 civil penalty or disciplinary action by the Board of Medical
17 Practice or by another business, occupational, or professional
18 licensing board or bureau, solely for providing written
19 certifications or otherwise stating that, in the practitioner's
20 professional opinion, the potential benefits of the medical use
21 of marijuana would likely outweigh the health risks for a
22 patient.

23 Subd. 7. [PROPERTY RIGHTS.] (a) Any interest in or right
24 to property that is possessed, owned, or used in connection with
25 the medical use of marijuana, or acts incidental to such use, is
26 not forfeited.

27 (b) A law enforcement agency that seizes and does not
28 return usable marijuana to a registered qualifying patient or a
29 registered primary caregiver is liable to the cardholder for the
30 fair market value of the marijuana.

31 Subd. 8. [ARREST AND PROSECUTION PROHIBITED.] No person is
32 subject to arrest or prosecution for constructive possession,
33 conspiracy, aiding and abetting, being an accessory, or any
34 other offense for being in the presence or vicinity of the
35 medical use of marijuana as permitted under sections 152.22 to
36 152.31 or for assisting a registered qualifying patient with

1 using or administering marijuana.

2 Subd. 9. [RECIPROCITY.] A registry identification card, or
3 its equivalent, issued under the laws of another state, United
4 States territory, or the District of Columbia to permit the
5 medical use of marijuana by a qualifying patient, or to permit a
6 person to assist with a qualifying patient's medical use of
7 marijuana, shall have the same force and effect as a registry
8 identification card issued by the commissioner.

9 Sec. 3. [152.24] [RULEMAKING.]

10 (a) Not later than 90 days after the effective date of this
11 section, the commissioner shall adopt rules governing the manner
12 in which the commissioner shall consider petitions from the
13 public to add debilitating medical conditions to those included
14 under section 152.22, subdivision 3. When considering
15 petitions, the commissioner shall give public notice of and an
16 opportunity to comment at a public hearing upon the petitions.
17 The commissioner shall, after a public hearing, approve or deny
18 petitions within 180 days of submission. The approval or denial
19 of a petition is a final agency action, subject to judicial
20 review. Jurisdiction and venue for judicial review are vested
21 in the district court. The denial of a petition does not
22 disqualify qualifying patients with that condition if they have
23 a debilitating medical condition. The denial of a petition does
24 not prevent a person with the denied condition from raising an
25 affirmative defense.

26 (b) Not later than 90 days after the effective date of this
27 section, the commissioner shall adopt rules governing the manner
28 in which the commissioner shall consider applications for and
29 renewals of registry identification cards for qualifying
30 patients and primary caregivers. Notwithstanding section
31 16A.1283, the commissioner shall establish application and
32 renewal fees that generate revenues sufficient to offset all
33 expenses of implementing and administering sections 152.22 to
34 152.31. The commissioner may vary the application and renewal
35 fees along a sliding scale that accounts for a qualifying
36 patient's income. The commissioner may accept donations from

1 private sources to reduce the application and renewal fees.

2 Sec. 4. [152.25] [REGISTRY IDENTIFICATION CARDS;
3 ISSUANCE.]

4 Subdivision 1. [REQUIREMENTS; ISSUANCE.] (a) The
5 commissioner shall issue registry identification cards to
6 qualifying patients who submit:

7 (1) a written certification;

8 (2) the application or renewal fee;

9 (3) the name, address, and date of birth of the qualifying
10 patient, except that if the applicant is homeless, no address is
11 required;

12 (4) the name, address, and telephone number of the
13 qualifying patient's practitioner; and

14 (5) the name, address, and date of birth of each primary
15 caregiver of the qualifying patient, if any.

16 (b) The commissioner shall not issue a registry
17 identification card to a qualifying patient under the age of 18
18 unless:

19 (1) the qualifying patient's practitioner has explained the
20 potential risks and benefits of the medical use of marijuana to
21 the qualifying patient and to a parent, guardian, or person
22 having legal custody of the qualifying patient; and

23 (2) a parent, guardian, or person having legal custody
24 consents in writing to:

25 (i) allow the qualifying patient's medical use of
26 marijuana;

27 (ii) serve as one of the qualifying patient's primary
28 caregivers; and

29 (iii) control the acquisition of marijuana, the dosage, and
30 the frequency of the medical use of marijuana by the qualifying
31 patient.

32 (c) The commissioner shall verify the information contained
33 in an application or renewal submitted under this section and
34 shall approve or deny an application or renewal within 15 days
35 of receiving it. The commissioner may deny an application or
36 renewal only if the applicant did not provide the information

1 required under this section or if the commissioner determines
2 that the information provided was falsified. Rejection of an
3 application or renewal is a final agency action, subject to
4 judicial review. Jurisdiction and venue for judicial review are
5 vested in the district court.

6 (d) The commissioner shall issue a registry identification
7 card to each primary caregiver, if any, who is named in a
8 qualifying patient's approved application, up to a maximum of
9 two primary caregivers per qualifying patient.

10 (e) The commissioner shall issue a registry identification
11 card within five days of approving an application or renewal.
12 The card expires one year after the date of issuance. A
13 registry identification card shall contain:

14 (1) the name, address, and date of birth of the qualifying
15 patient;

16 (2) the name, address, and date of birth of each primary
17 caregiver of the qualifying patient, if any;

18 (3) the date of issuance and expiration date of the
19 registry identification card;

20 (4) a random registry identification number; and

21 (5) a photograph, if the commissioner adopts rules to
22 require one.

23 Subd. 2. [NOTIFICATION OF CHANGES; PENALTIES.] (a) A
24 qualifying patient who has been issued a registry identification
25 card shall notify the commissioner within ten days of any change
26 in the qualifying patient's name, address, or primary caregiver
27 or if the qualifying patient ceases to have a debilitating
28 medical condition.

29 (b) Failure to notify the commissioner of a change as
30 required under paragraph (a) is a civil violation, punishable by
31 a fine of no more than \$150. If the person has ceased to have a
32 debilitating medical condition, the card is null and void and
33 the person is liable for any other penalties that may apply to
34 the person's nonmedical use of marijuana.

35 (c) A registered primary caregiver shall notify the
36 commissioner within ten days of any change in the caregiver's

1 name or address. Failure to notify the commissioner of the
2 change is a civil violation, punishable by a fine of no more
3 than \$150.

4 (d) When a qualifying patient or primary caregiver notifies
5 the commissioner of any changes under this subdivision, the
6 commissioner shall issue the qualifying patient and each primary
7 caregiver a new registry identification card within ten days of
8 receiving the updated information and a \$10 fee.

9 (e) When a registered qualifying patient ceases to use the
10 assistance of a registered primary caregiver, the commissioner
11 shall notify the primary caregiver within ten days. The primary
12 caregiver's protections as provided under section 152.23 expire
13 ten days after notification by the commissioner.

14 Subd. 3. [LOST CARDS.] If a registered qualifying patient
15 or a registered primary caregiver loses a registry
16 identification card, the patient or caregiver shall notify the
17 commissioner and submit a \$10 fee within ten days of losing the
18 card. Within five days, the commissioner shall issue a new
19 registry identification card with a new random identification
20 number.

21 Subd. 4. [CARD AS PROBABLE CAUSE.] Possession of, or
22 application for, a registry identification card does not
23 constitute probable cause or reasonable suspicion, nor shall it
24 be used to support search of the person or property of the
25 person possessing or applying for the registry identification
26 card, or otherwise subject the person or property of the person
27 to inspection by any governmental agency.

28 Subd. 5. [CONFIDENTIALITY.] (a) Registration applications
29 and supporting information submitted by qualifying patients,
30 including information regarding their primary caregivers and
31 practitioners, are confidential.

32 (b) The commissioner shall maintain a confidential list of
33 the persons to whom the commissioner has issued registry
34 identification cards. Individual names and other identifying
35 information on the list are private data on individuals under
36 chapter 13 and are not subject to disclosure, except to

1 authorized employees of the Department of Health as necessary to
2 perform official duties of the department.

3 (c) The commissioner shall verify to law enforcement
4 personnel whether a registry identification card is valid solely
5 by confirming the random registry identification card number.

6 (d) It is a crime, punishable by up to 180 days in jail and
7 a \$1,000 fine, for a person, including an employee or official
8 of the Department of Health or another state agency or local
9 government, to breach the confidentiality of information
10 obtained under sections 152.22 to 152.31. Notwithstanding this
11 paragraph, employees of the Department of Health may notify law
12 enforcement about falsified or fraudulent information submitted
13 to the commissioner.

14 Subd. 6. [REPORT.] The commissioner shall report annually
15 to the legislature on the number of applications for registry
16 identification cards, the number of qualifying patients and
17 primary caregivers approved, the nature of the debilitating
18 medical conditions of the qualifying patients, the number of
19 registry identification cards revoked, and the number of
20 practitioners providing written certification for qualifying
21 patients. The commissioner shall not provide any identifying
22 information of qualifying patients, primary caregivers, or
23 practitioners.

24 Subd. 7. [OFFICIAL SANCTIONS.] Any state or local law
25 enforcement official who knowingly cooperates with federal law
26 enforcement agents to arrest, investigate, prosecute, or search
27 a registered qualifying patient or a registered primary
28 caregiver or a patient's or caregiver's property for acting in
29 compliance with sections 152.22 to 152.31 shall have the
30 official's employment suspended or terminated.

31 Sec. 5. [152.26] [CONSTRUCTION.]

32 (a) Sections 152.22 to 152.31 do not permit:

33 (1) a person to undertake a task under the influence of
34 marijuana, when doing so would constitute negligence or
35 professional malpractice;

36 (2) smoking of marijuana:

1 (i) in a school bus or other form of public transportation;

2 (ii) on school grounds;

3 (iii) in a correctional facility; or

4 (iv) in any public place; and

5 (3) a person to operate, navigate, or be in actual physical
6 control of any motor vehicle, aircraft, or motorboat while under
7 the influence of marijuana. However, a registered qualifying
8 patient shall not be considered to be under the influence solely
9 for having marijuana metabolites in the patient's system.

10 (b) Nothing in sections 152.22 to 152.31 shall be construed
11 to require:

12 (1) a government medical assistance program or private
13 health insurer to reimburse a person for costs associated with
14 the medical use of marijuana; or

15 (2) an employer to accommodate the medical use of marijuana
16 in any workplace.

17 Sec. 6. [152.27] [PENALTIES.]

18 Fraudulent representation to a law enforcement official of
19 any fact or circumstance relating to the medical use of
20 marijuana to avoid arrest or prosecution is punishable by a fine
21 of \$500, which shall be in addition to any other penalties that
22 may apply for making a false statement and for the nonmedical
23 use of marijuana.

24 Sec. 7. [152.28] [AFFIRMATIVE DEFENSE AND DISMISSAL FOR
25 MEDICAL USE OF MARIJUANA.]

26 (a) Except as provided in section 152.27, a person and a
27 person's primary caregiver, if any, may assert the medical
28 purpose for using marijuana as a defense to any prosecution
29 involving marijuana, and such defense shall be presumed valid
30 where the evidence shows that:

31 (1) the person's medical records indicate, or a
32 practitioner has stated that, in the practitioner's professional
33 opinion, after having completed a full assessment of the
34 person's medical history and current medical condition made in
35 the course of a bona fide practitioner-patient relationship, the
36 potential benefits of using marijuana for medical purposes would

1 likely outweigh the health risks for the person; and

2 (2) the person and the person's primary caregiver, if any,
3 were collectively in possession of a quantity of marijuana that
4 was not more than was reasonably necessary to ensure the
5 uninterrupted availability of marijuana for the purpose of
6 alleviating the person's medical condition or symptoms
7 associated with the medical condition.

8 (b) A person may assert the medical purpose for using
9 marijuana in a motion to dismiss and the charges shall be
10 dismissed following an evidentiary hearing when the defendant
11 shows the elements listed in paragraph (a).

12 (c) Any interest in or right to property that was
13 possessed, owned, or used in connection with a person's use of
14 marijuana for medical purposes is not forfeited if the person or
15 the person's primary caregiver demonstrates the person's medical
16 purpose for using marijuana pursuant to sections 152.22 to
17 152.31.

18 Sec. 8. [152.29] [COMMISSIONER'S FAILURE TO ACT.]

19 (a) If the commissioner fails to adopt rules to implement
20 sections 152.22 to 152.31 within 120 days of the effective date
21 of this section, a qualifying patient may commence an action in
22 a court of competent jurisdiction to compel the commissioner to
23 perform the actions mandated under sections 152.22 to 152.31.

24 (b) If the commissioner fails to issue a valid registry
25 identification card in response to a valid application submitted
26 according to section 152.25 within 20 days of its submission,
27 the registry identification card shall be deemed granted and a
28 copy of the registry identification application shall be deemed
29 a valid registry identification card.

30 Sec. 9. [152.30] [SEVERABILITY.]

31 Any provision of sections 152.22 to 152.31 being held
32 invalid as to any person or circumstances shall not affect the
33 application of any other provision of sections 152.22 to 152.31
34 that can be given full effect without the invalid section or
35 application.

36 Sec. 10. [152.31] [REGISTERED ORGANIZATION.]

1 Subdivision 1. [DEFINITION.] For purposes of this section,
2 "registered organization" means a nonprofit entity registered
3 with the commissioner under this section that acquires,
4 possesses, cultivates, manufactures, delivers, transfers,
5 transports, supplies, or dispenses marijuana, cultivation
6 equipment, related supplies and educational materials, or
7 marijuana seeds to registered qualifying patients and their
8 registered primary caregivers. A registered organization is a
9 primary caregiver, although it may supply marijuana to any
10 number of registered qualifying patients who have designated it
11 as one of their primary caregivers.

12 Subd. 2. [REGISTRATION REQUIREMENTS.] (a) The commissioner
13 shall issue a registered organization license within 20 days to
14 any person who complies with rules adopted by the commissioner
15 and provides:

16 (1) a fee in an amount established by the commissioner
17 notwithstanding section 16A.1283, which shall not exceed \$1,000;

18 (2) the name of the registered organization;

19 (3) the physical addresses of the registered organization
20 and any other real property where marijuana is to be possessed,
21 cultivated, manufactured, supplied, or dispensed relating to the
22 operations of the registered organization; and

23 (4) the name, address, and date of birth of any person who
24 is an agent of or employed by the registered organization.

25 (b) The commissioner shall issue each agent and employee of
26 a registered organization a registry identification card for a
27 cost of \$10 each within ten days of receipt of the person's
28 identifying information and the fee. Each card shall specify
29 that the cardholder is an employee or agent of a registered
30 organization.

31 Subd. 3. [EXPIRATION.] A license for a registered
32 organization and each employee or agent registry identification
33 card expires one year after the date of issuance.

34 Subd. 4. [RULEMAKING.] Not later than 90 days after the
35 effective date of this section, the commissioner shall adopt
36 rules to implement this section, including:

1 (1) procedures for the oversight of registered
2 organizations, record keeping and reporting requirements for
3 registered organizations, procedures for the transference or
4 sale of seized cultivation equipment and related supplies from
5 law enforcement agencies to registered organizations, and
6 procedures for suspending or terminating the licenses of
7 registered organizations; and

8 (2) the form and content of the license and renewal
9 applications.

10 Subd. 5. [INSPECTION.] Registered organizations are
11 subject to reasonable inspection by the commissioner to
12 determine that applicable rules are being followed. Reasonable
13 notice shall be given prior to the inspections.

14 Subd. 6. [ORGANIZATION REQUIREMENTS.] (a) Registered
15 organizations must be established as nonprofit entities.
16 Registered organizations are subject to all applicable state
17 laws governing nonprofit entities, but need not be recognized as
18 a 501(c)(3) organization by the Internal Revenue Service.

19 (b) Registered organizations may not be located within 500
20 feet of the property line of a public school, private school, or
21 structure used primarily for religious services or worship.

22 (c) The operating documents of a registered organization
23 shall include procedures for the oversight of the registered
24 organization and procedures to ensure adequate record keeping.

25 (d) A registered organization shall notify the commissioner
26 within ten days of when an employee or agent ceases to work at
27 the registered organization.

28 (e) The registered organization shall notify the
29 commissioner before a new agent or employee begins working at
30 the registered organization, in writing, and the organization
31 shall submit a \$10 fee for the person's registry identification
32 card.

33 (f) No registered organization shall be subject to
34 prosecution, search, seizure, or penalty in any manner or denied
35 any right or privilege, including but not limited to civil
36 penalty or disciplinary action by a business, occupational, or

1 professional licensing board or bureau, for acting according to
2 sections 152.22 to 152.31 and rules adopted thereunder to assist
3 registered qualifying patients to whom it is connected through
4 the commissioner's registration process with the medical use of
5 marijuana, provided that the registered organization possesses
6 an amount of marijuana that does not exceed 12 marijuana plants
7 and 2.5 ounces of usable marijuana for each registered
8 qualifying patient.

9 (g) No employees, agents, or board members of a registered
10 organization shall be subject to arrest, prosecution, search,
11 seizure, or penalty in any manner or denied any right or
12 privilege, including but not limited to civil penalty or
13 disciplinary action by a business, occupational, or professional
14 licensing board or bureau, for working for a registered
15 organization according to sections 152.22 to 152.31.

16 (h) The registered organization is prohibited from:

17 (1) obtaining marijuana from outside the state in violation
18 of federal law; or

19 (2) acquiring, possessing, cultivating, manufacturing,
20 delivering, transferring, transporting, supplying, or dispensing
21 marijuana for any purpose except to assist registered qualifying
22 patients with the medical use of marijuana directly or through
23 the qualifying patients' other primary caregivers.

24 (i) A municipality may not prevent a registered
25 organization from operating according to sections 152.22 to
26 152.31 in an area where zoning permits retail businesses.

27 (j) If provisions of this section are enjoined or declared
28 unconstitutional, then enforcing laws against delivery of
29 marijuana for consideration to registered qualifying patients
30 shall be the lowest priority of law enforcement.

31 Sec. 11. [EFFECTIVE DATE.]

32 Sections 1 to 10 are effective the day following final
33 enactment.

**Senate Counsel, Research,
and Fiscal Analysis**

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State of Minnesota

S.F. No. 1973 - Medical Use of Marijuana - Judiciary Issues

Author: Senator Steve Kelley

Prepared by: Kathleen Pontius, Senate Counsel (651/296-4394) *K.P.*

Date: February 28, 2006

This bill establishes a framework for the legal use of marijuana for medical purposes under state law. Note that it only applies to state law and would not prohibit prosecution under federal law. In a June 2005 decision, the United States Supreme Court held that Congress' commerce clause authority includes the power to prohibit the local cultivation and use of marijuana, even though it is in compliance with a state law legalizing the use of marijuana for medicinal purposes. See *Gonzales v. Raich*, 125 S. Ct. 2195 (2005). Following is a summary of the judiciary issues.

Section 1, subdivision 1 and 2, protect qualifying patients and primary suppliers from civil and criminal liability.

Section 2, subdivision 3, prohibits various forms of discrimination based on a person's status as a registered qualifying patient or a registered primary supplier.

Subdivision 4 contains a presumption a qualifying patient or primary supplier is engaged in the medical use of marijuana based on specified circumstances.

Subdivision 7 prohibits forfeiture of property in connection with the medical use of marijuana and provides that a law enforcement agency that seizes and does not return marijuana to a qualifying patient or primary supplier is liable for the fair market value of the marijuana.

Section 4, subdivision 1, contains requirements for issuance of identification cards. Under **paragraph (c)**, rejection of an application or renewal is a final agency action subject to judicial review and jurisdiction and venue are vested in the district court.

Subdivision 5 deals with confidentiality of registration applications. Applications and supporting information would be confidential. The Commissioner must maintain a confidential list of persons to whom the Commissioner has issued registry identification cards. Names and other identifying information are private data and are not subject to disclosure except to authorized employees of the Department of Health. The Commissioner must verify to law enforcement whether an identification card is valid solely by confirming the random registration card number. A breach of the confidentiality of information by an employee or official of the Department of Health or another state agency or local government would be a crime, punishable by up to 180 days in jail and a \$1,000 fine. An exception is included under which employees of the Department of Health may notify law enforcement about falsified or fraudulent information submitted to the Commissioner.

Subdivision 7 requires the Commissioner to submit an annual report to the Legislature. The report may not include identifying information on qualifying patients, primary suppliers, or practitioners.

Section 7, paragraph (c), provides that property interests connected with a person's use of marijuana for medical purposes are not forfeited if the person or primary supplier demonstrates the person's medical purpose for using the marijuana under the law.

Section 9, subdivision 6, provides that registered organizations involved in the acquisition and distribution of marijuana for a medical purpose must be organized as nonprofit entities. They are subject to applicable state laws governing nonprofit entities but need not be recognized as a 501(c)(3) organization by the Internal Revenue Service (these are entities for whom tax-deductible contributions may be made). Operating documents of a registered organization must include procedures for the oversight of the organization and procedures to ensure adequate record keeping.

KP:cs

March 2, 2006

Dear Senators,

We strongly support S.F. 1973, the medical marijuana bill, and urge you to pass it during this legislative session. People who are seriously ill deserve to have access to any medication that will help them, and should be able to follow the advice of their physicians without fear of arrest and imprisonment. Compassion demands that we act to ease people's suffering, not criminalize them for seeking to alleviate their pain. There is already ample evidence that marijuana can be used safely and effectively to help those suffering from diseases like multiple sclerosis and AIDS wasting syndrome, and from the debilitating side effects of cancer treatments like chemotherapy and radiation. Numerous reputable medical journals and public health organizations have advocated the medical use of marijuana. We want to add our support to the proposed legislation and ask that you support the well-being of vulnerable, suffering human beings and pass this much needed law.

Sincerely,

The Reverend Mildred L. Cox
Priest
Episcopal Diocese of Minnesota

Reverend Sosan Theresa Flynn
Temple Priest
Clouds in Water Zen Center

Rev. Greg Renstrom, Minister
Hamline United Methodist Church
St. Paul, Minnesota

Rev. Thomas A. Duke
Evangelical Lutheran Church in America (retired) Director, Leadership in
Support of Neighborhood, Hamline University - Hamline Midway Coalition

Dr. Anantanand Rambachan
Professor of Religion
Saint Olaf College
(Hindu Mandir of Minnesota)

Teresa J. Guindon
Pastoral Associate of Pastoral Care
Church of the Immaculate Heart of Mary

The Reverend Doctor Theresa Mason
Chaplain and Assistant Professor of Religion Hamline University United
Methodist Clergy



Minnesota Senior Federation

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Minnesota Valley

North Star

Northwest

South Central

Southwest

Senator Steve Kelley
Minnesota Senate
75 Rev. Dr. Martin Luther King Jr. Blvd.
Room 205
St. Paul, MN 55155-1606

Dear Senator Kelley:

On behalf of the seniors at the MN Senior Federation, this letter implores you to support S.F. 1973 and H.F. 2151. These bills give protection against prosecution to qualifying patients and primary caregivers, who are in possession of marijuana for the purpose of alleviating the suffering associated with a chronic or debilitating medical condition.

Seniors are faced with many conditions that could benefit from the use of medical cannabis. It's use has been demonstrated to be effective in the treatment of migraines, pain from arthritis, low back pain, multiple sclerosis, and neuropathic pain to name a few.

While pharmaceuticals are the traditional treatment in conventional medicine, they are not always effective. Patients are forced to resort to illegal sources to obtain relief, which puts them at risk of criminal charges and contaminated substances due to lack of quality control.

For these reasons, the MN Senior Federation supports the passage of H.F. 2151 and S.F. 1973.

Sincerely,

Lee Graczyk
Executive Director, MN State Senior Federation



Minnesota Public Health Association

www.mpha.net

February 28, 2006

Senator Steve Kelley
Minnesota Senate
75 Rev. Dr. Martin Luther King Jr. Blvd.
Room 205
St. Paul, MN 55155-1606

Dear Senator Kelley:

This letter is provided in support of S.F. 1973 and H.F. 2151, bills allowing for the medical use of marijuana. These bills give protection against prosecution to qualifying patients, primary caregivers, and physicians who are in possession of marijuana for the purpose of alleviating the suffering associated with a debilitating medical condition.

Like the American Public Health Association, we understand that marijuana has an extremely acute margin of safety for use under medical supervision and cannot cause lethal reactions. It has proven an effective treatment for reducing the nausea and vomiting associated with chemotherapy, decreasing the suffering associated with chronic pain, controlling spasticity associated with spinal cord injury and multiple sclerosis, and reducing intraocular pressure in glaucoma patients, along with a variety of other conditions. Indeed, marijuana has been used medicinally for centuries and cannabis products were widely prescribed by physicians in the United States until 1937.

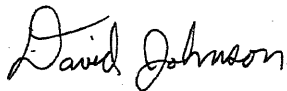
While we realize that pharmaceuticals can treat many of these symptoms effectively, conventional medicines do not work effectively for all people. Recognizing the deleterious effects of smoking, we encourage vaporization as a method of delivery for marijuana rather than smoking when at all possible.

Today, some patients must turn to illegal sources to obtain the best medicine for their condition. This puts them at risk for criminal charges and for obtaining contaminated medicine because of the lack of quality control.

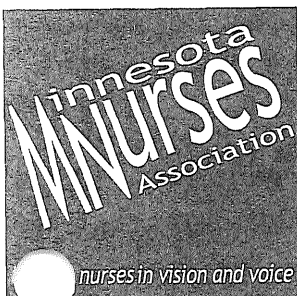
As such, we conclude that there is greater harm caused by the legal risks of marijuana's prohibition than possible risks of medicinal use.

For these reasons, the Minnesota Public Health Association supports the passage of S.F. 1973 and H.F. 2151. To request additional information, please contact me us at the number listed below.

Sincerely,

A handwritten signature in cursive script that reads "David Johnson".

David Johnson, MPH
President
Minnesota Public Health Association
(612) 673-3948



February 27, 2006

Senator Steve Kelley
Minnesota Senate
75 Rev. Dr. Martin Luther King Jr. Blvd., Room 205
St. Paul, MN 55155-1606

Dear Senator Kelley:

This letter is provided in support of S.F. 1973 and H.F. 2151, bills allowing for the medical use of marijuana. These bills give protection against prosecution to qualifying patients and primary caregivers who are in possession of marijuana for the purpose of alleviating the suffering associated with a debilitating medical condition.

Nurses have an ethical obligation to advocate for patients which includes, but is not limited to, access to healthcare and advocating for quality of life concerns. When patients have been diagnosed with terminal illnesses, quality of life is improved by assuring comfort and a sense of wellbeing. As patient advocates, we must do all we can to ensure their needs are met. The Code of Ethics for Nurses directs engagement in political and policy advocacy. As health care professionals, we support this legislation as appropriate advocacy for our patients.

According to the Institute of Medicine report in 1999, when marijuana is used under the supervision and direction of a physician, there is significant margin of safety. Marijuana can help alleviate pressure associated with glaucoma, nausea from chemotherapy, wasting condition from AIDS and it can control some seizures. Pharmacologically, marijuana is often the last effective choice for the very ill.

Along with our national association and many other state nurses associations, the Minnesota Nurses Association wants to offer our support for the passage of S.F. 1973 and H.F. 2151.

Sincerely,

Linda Slattengren RN
President

cc: Judiciary Committee
Erin Murphy RN, Executive Director MN Nurses Association
Vicki Johnson, RN Gov't Affairs Commission Chair

Professional Distinction

Personal Dignity

Patient Advocacy



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From Ada to Zumbrota and from Duluth to Worthington, more than 2,700 Minnesota doctors and nurses support medical marijuana

“Licensed medical doctors should not be punished for recommending the medical use of marijuana to seriously ill people, and seriously ill people should not be subject to criminal sanctions for using marijuana if the patients’ physicians have told them that such use is likely to be beneficial.”

Signed,

Dr. Linda Abendroth	Dr. David Cartwright	Dr. Kathrine Frey	Dr. Lynn Kelley	Dr. Thomas Mayer
Dr. David Abraham	Dr. Salvatore Cavaliere	Dr. Melissa Geller	Dr. Jawad Khan	Dr. Gary Mayer
Dr. Charles Alward	Dr. Thomas Chapa	Dr. Amy Gilbert	Dr. Theodore Kleiman	Dr. Catherine Mayer
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Dr. Howard Atkin	Dr. Stanley Davis	Dr. Lawrence Greenberg	Dr. David Lang	Dr. Madeleine Meyer
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Dr. Bradley Bangtson	Dr. Charles Decker	Dr. Jonathan Grymaloski	Dr. Lorraine Laroy	Dr. Martha Millman
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Dr. James Carpenter	Dr. Richard Fraser	Dr. Loree Kallianen	Dr. Mark Martin	Dr. Mary Pohl
Dr. Earl Carter	Dr. Sarah Freitas	Dr. Koren Kaye	Dr. George Mathison	Dr. Lawrence Quist

Please support S.F. 1973, a bill that would protect seriously ill patients who use medical marijuana with their doctors’ recommendations from criminal penalties. For more information, please contact Tom Lehman—(763) 377-9167 or tom@thelehmgangroup.com—or visit www.minnesotacares.org.

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Angela Mlynczak, LPN	Doreen Johnson, LPN	Shannon Albrecht, LPN	Harriet Finke, LPN	Virginia Cooper, LPN

Please support S.F. 1973, a bill that would protect seriously ill patients who use medical marijuana with their doctors' recommendations from criminal penalties. For more information, please contact Tom Lehman—(763) 377-9167 or tom@thelehmgangroup.com—or visit www.minnesotacares.org.

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Kari Halbakken, LPN
Lori Dietrich, LPN
Dixie Bunnell, LPN
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Cathy Jensen, LPN
Carol Ford, LPN
Elaine Berg, LPN
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Deborah Jackson, LPN
Lisa Bodell, LPN
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Keri Redding, LPN
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Mildred Waltman, LPN
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Danielle Smith, LPN
Elizabeth Retzlaff, LPN
Roxanne Miller, LPN
Francine Curtis, LPN

Dianna Bryan, LPN
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Elizabeth Hirsch, LPN
Erica Labes, LPN
Aenone Veeder, LPN
Susan Boe, LPN
Denise Halverson, LPN
Amy Christenson, LPN
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Kari Winblad Vonwalter, RN

Please support S.F. 1973, a bill that would protect seriously ill patients who use medical marijuana with their doctors' recommendations from criminal penalties. For more information, please contact Tom Lehman—(763) 377-9167 or tom@thelehmgangroup.com—or visit www.minnesotacares.org.

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Kristen Weber, RN
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Please support S.F. 1973, a bill that would protect seriously ill patients who use medical marijuana with their doctors' recommendations from criminal penalties. For more information, please contact Tom Lehman—(763) 377-9167 or tom@thelehmgangroup.com—or visit www.minnesotacares.org.

Statement of Neil Haugerud

Mr. Chairman and Members, thank you for this opportunity to testify in support of Senate File 1973.

My name is Neil Haugerud. I am a former Minnesota Sheriff and former member of the Minnesota House of Representatives.

As a former Sheriff, I know that patients using marijuana for medical purposes are not a priority for the law enforcement community. Patients with cancer, MS and other diseases that use marijuana do not cause or promote drug abuse any more than do cancer patients taking morphine. These patients are law-abiding citizens who often suddenly face a terrifying and traumatic medical crisis. Yet these patients are breaking the law if they obtain and use marijuana in their home or hospice to help address their symptoms, even though thousands of health care professionals across Minnesota are telling their patients every day that marijuana might be of benefit.

In addition to struggling with a diagnosis they never sought, patients must also struggle with whether and how to break the law to seek the relief their doctor or nurse says may be there. They have no options available to them to obtain marijuana legally and use it free from fear of arrest and prosecution.

I know that some public officials are concerned that allowing a limited number of patients to use marijuana under limited circumstances will somehow promote the use of marijuana in Minnesota. Well, I have some news for you. Marijuana is already here. It's readily available in every corner of the State. But it wasn't introduced here by patients using it for medical purposes.

What would you do if your spouse were suffering? What if it was your mother or your father or your sister or brother? What if it was you?

Those are not academic questions. I have had chronic pain for 28 years. I am taking OxyContin, a powerful narcotic pain-killer. Some of the side effects of this drug include addiction, nausea, somnolence, dizziness, vomiting, pruritus, headache, dry mouth, sweating, and asthenia. While marijuana is reported to ease chronic pain, I have never tried it for the obvious reasons – there is no reliable supply and obtaining marijuana would involve illegal activity. I don't feel I can break Minnesota's drug laws even though I know that using marijuana for my chronic pain would be far less harmful for me than using the narcotics that have been prescribed for me.

Please support Senate File 1973 so I and patients like me have options without fear of arrest and prosecution.

Thank you.

My name is Jason McDonough but you can call me Jay-Jay. I live in New Richland, Minnesota and am 37 years old.

Seven years ago the helicopter that I was piloting had an inflight mechanical failure. As a result of the crash, I have lost the use of my legs, and am in constant neurogenic pain. My feet have the sensation of being recently burned and also have a stabbing sensation of pins and needles. This pain never stops.

For some time following the accident, friends and family members told me that they had heard that marijuana is often used to reduce pain and nausea, and to increase appetite in those suffering chronic pain. I eventually decided to try medical marijuana, despite my fear of arrest for breaking Minnesota law.

Though medical marijuana is of course no miracle cure, I have found it very effective at reducing my neurogenic pain. By reducing my pain, it has allowed me to rely less heavily on the powerful and addictive pain medications that I am legally prescribed.

I have never discussed my use of medical marijuana with my doctor because of the stigma attached to the use of an illegal drug. In fact, it is only with great fear and apprehension that I sit before you today, but I consider this matter too important for me to remain silent.

It is my hope that this legislation will remove the fear that surrounds medical marijuana, so that I can discuss it with my doctor and determine the best way for medical marijuana to fit into my regimen of daily medications.

Thank you for your time. I look forward to answering any of your questions.

My name is Darrell Paulsen.

I am 35 years old and live with cerebral palsy. I was diagnosed with this disability about eight months after my birth, and I have lived with intense muscle spasticity ever since. I have little or no use of my legs, and my left arm might as well be nonexistent, because I am unable to do much of anything with it. I live my life from a power wheelchair.

I live with disability. I deal with it every day. I know that I am different from most other people and I have slowly learned to accept and even celebrate this part of me.

I first realized that medical marijuana helped to alleviate my symptoms by reducing my spasticity and increasing my appetite nearly 20 years ago. It has always been effective medicine for me, and I have used it in consultation with my doctor.

About two years ago, my doctor wrote me a prescription for Marinol -- the THC pill -- but I have found it to be far less effective than marijuana in treating my spasticity and stimulating my appetite. Marinol also has more severe side effects, including grogginess, disorientation, and nausea. I can say from personal experience that Marinol is not a sufficient substitute for medical marijuana.

I am inspired to join these patients speaking before you. It takes a lot of courage for us to risk our health care, housing, education, transportation, and most importantly, our liberty, to testify before you today. These are all things that people who aren't disabled take for granted on a daily basis, but they are things that medical marijuana patients are forced to risk simply to live more normal lives.

I would like to leave this committee with one fundamental question: Is Minnesota a better place with me and my fellow patients locked behind bars, or receiving the treatment our doctors recommend?

Thank you for your time.

Dear Judiciary Committee Members,

Three years ago, my wife was diagnosed with breast cancer at the age of 32. She went through surgery, and chemotherapy, and thankfully is cancer-free today.

During chemotherapy, the doctors tried her out on a number of different anti-nausea medications, including Zofram, Lorazepam, and a Scopolamine patch. None of them really worked; in fact, they usually made her nausea worse. She was often in tears because she was unable to do anything but feel miserable. She could barely eat.

So we obtained some marijuana, and she used that to relieve her nausea. She talked to her doctor and nurses about it, and they concurred that she should continue. It made all the difference in the world. She smoked two or three times a day, and was able to read, to move around and do a little housework, to enjoy conversations and movies, and basically enjoy life. Even more importantly, from a medical perspective, it restored her appetite so she could keep her strength up over the course of chemotherapy.

But what we did was illegal. We could have been sent to jail for doing what it took to help my wife survive cancer.

S.F. 1973 can rectify this situation, by creating a registry of patients with conditions that can be helped by marijuana. Patients on this registry would not be subject to arrest or prosecution for marijuana possession, or for small amounts of cultivation. I hope your committee will support this compassionate reform.

Sincerely,
Steve Anderson
4135 41st Ave S
Minneapolis, MN 55406

To: Minnesota State Senate Judiciary Committee
From: Don Haumant
Re: Medical Marijuana Legislation
Date: March 2, 2006

As a Minnesota resident and former Californian who legally obtained marijuana there for medical use, I thank you for considering the well-being of seriously ill individuals who can benefit from the use of marijuana under medical supervision.

In 1976 I contracted the hepatitis B virus. My condition became chronic, leading to a diagnosis of cirrhosis of the liver, for which there is no cure. At that time I lived in California, where voters had approved an initiative allowing controlled use of cannabis (marijuana) for medical purposes. Symptoms related to my advanced liver disease include anorexia and nausea. After several treatments proved unsuccessful, my physician recommended the use of cannabis to help control my symptoms and maintain my body weight. We both agree that cannabis has been beneficial to me in this regard. Many other doctors, as well as scientists and other learned people, are recognizing that cannabis, like thousands of other drugs, can be used appropriately and effectively to treat serious medical conditions.

While living in California, I participated in a voluntary program administered by the City and County of San Francisco. I became registered as a medical marijuana patient and was issued a photo ID card that allowed access to privately operated cannabis distribution centers in the city. With the formal recommendation of my physician, my participation in the program was reviewed and recertified on a yearly basis.

In addition to my dealing for 30 years with the effects of increasingly severe liver disease, I also suffer from several musculoskeletal conditions, including degenerative disc disease, scoliosis, osteoarthritis, carpal tunnel syndrome, and myofascial pain syndrome. In the past, I tried numerous prescription medicines to alleviate pain and nausea, but achieved little or no relief, not to mention unhealthy side effects. Marijuana has been the only medicine I have found to ease my pain and restore my appetite. Most importantly, marijuana has been considerably less detrimental to my body than many of the analgesic and anti-nausea medicines I have tried. My choice is the safe administration of marijuana over liver failure or narcotic addiction.

Unfortunately, exercising this choice in Minnesota can invite arrest, prosecution, and even imprisonment. The last things I need to worry about are the dangers associated with obtaining medicine in a criminal environment or the risk of landing in jail for taking the medicine I need. Last year's Zogby poll clearly shows that Minnesota voters favor medical marijuana legislation by a two-to-one margin. I believe that the responsibility of our elected representatives is to represent the will of the voters. I urge you to vote with compassion and common sense for SF 1973.

Thank you for your consideration.

1.1 **Senator Betzold from the Committee on Judiciary, to which was re-referred**

1.2 **S.F. No. 1039:** A bill for an act relating to commerce; prohibiting tampering with
1.3 clock-hour meters on farm tractors; prescribing a civil penalty and a private right of
1.4 action; proposing coding for new law in Minnesota Statutes, chapter 325E.

1.5 Reports the same back with the recommendation that the bill be amended as follows:

1.6 Page 1, line 7, delete "DEFINITIONS" and insert "DEFINITION"

1.7 Page 1, delete lines 8 to 10 and insert:

1.8 "For purposes of sections 325E.165 to 325E.167, "farm tractor" means a"

1.9 Page 1, delete lines 16 to 18

1.10 And when so amended the bill do pass. Amendments adopted. Report adopted.

1.11 
1.12 (Committee Chair)

1.13 March 2, 2006
1.14 (Date of Committee recommendation)

1 A bill for an act

2 relating to commerce; prohibiting tampering with
3 clock-hour meters on farm tractors; prescribing a
4 civil penalty and a private right of action; proposing
5 coding for new law in Minnesota Statutes, chapter 325E.

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

7 Section 1. [325E.165] [DEFINITIONS.]

8 Subdivision 1. [SCOPE.] The definitions in this section
9 apply to sections 325E.165 to 325E.167.

10 Subd. 2. [FARM TRACTOR.] "Farm tractor" means a
11 self-propelled vehicle that is designed primarily for pulling or
12 propelling agricultural machinery and implements and used
13 principally in the occupation or business of farming, including
14 an implement of husbandry, as defined in section 169.01,
15 subdivision 55, that is self-propelled.

16 Subd. 3. [PERSON.] "Person" means an individual, firm,
17 partnership, incorporated or unincorporated association, or
18 other legal or commercial entity.

19 Sec. 2. [325E.166] [CLOCK-HOUR METERS; PROHIBITED ACTS.]

20 Subdivision 1. [TAMPERING.] No person shall, with intent
21 to defraud, knowingly tamper with, adjust, alter, change, set
22 back, disconnect, or fail to connect the clock-hour meter of a
23 farm tractor, or cause any of the foregoing to occur to a
24 clock-hour meter of a farm tractor, so as to reflect fewer hours
25 than the farm tractor has actually been in operation.

1 Subd. 2. [OPERATION WITH DISCONNECTED OR NONFUNCTIONAL
2 METER.] No person shall, with intent to defraud, operate a farm
3 tractor knowing that the clock-hour meter of the farm tractor is
4 disconnected or nonfunctional.

5 Subd. 3. [TAMPERING DEVICE.] No person shall advertise for
6 sale, sell, use, or install on any part of a farm tractor or on
7 a clock-hour meter in a farm tractor a device that causes the
8 clock-hour meter to register any hours of operation other than
9 the true hours of operation that the clock-hour meter was
10 designed to measure.

11 Subd. 4. [DISCLOSURE.] No person shall sell or offer for
12 sale or trade in a farm tractor with knowledge that the hours
13 registered on the clock-hour meter have been altered so as to
14 reflect fewer hours than the farm tractor has actually been in
15 operation, without disclosing the fact to prospective purchasers.

16 Subd. 5. [CONSPIRACY.] No person shall conspire with
17 another person to violate this section.

18 Sec. 3. [325E.167] [PENALTY; RIGHT OF ACTION.]

19 Subdivision 1. [CIVIL PENALTY.] A person who is found to
20 have violated sections 325E.165 and 325E.166 is subject to the
21 penalties in section 8.31.

22 Subd. 2. [PRIVATE RIGHT OF ACTION.] A person injured by a
23 violation of sections 325E.165 and 325E.166 may recover the
24 actual damages sustained together with costs and disbursements,
25 including reasonable attorney fees. The court, in its
26 discretion, may increase the award of damages to an amount not
27 to exceed three times the actual damages sustained or \$1,500,
28 whichever is greater.

Senator Kubly introduced--

S.F. No. 1039: Referred to the Committee on Commerce.

1 A bill for an act
2 relating to commerce; prohibiting tampering with
3 clock-hour meters on farm tractors; prescribing a
4 civil penalty and a private right of action; proposing
5 coding for new law in Minnesota Statutes, chapter 325E.

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

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24 clock-hour meter of a farm tractor, so as to reflect fewer hours
25 than the farm tractor has actually been in operation.

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2 METER.] No person shall, with intent to defraud, operate a farm
3 tractor knowing that the clock-hour meter of the farm tractor is
4 disconnected or nonfunctional.

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6 sale, sell, use, or install on any part of a farm tractor or on
7 a clock-hour meter in a farm tractor a device that causes the
8 clock-hour meter to register any hours of operation other than
9 the true hours of operation that the clock-hour meter was
10 designed to measure.

11 Subd. 4. [DISCLOSURE.] No person shall sell or offer for
12 sale a farm tractor with knowledge that the hours registered on
13 the clock-hour meter have been altered so as to reflect fewer
14 hours than the farm tractor has actually been in operation,
15 without disclosing the fact to prospective purchasers.

16 Subd. 5. [CONSPIRACY.] No person shall conspire with
17 another person to violate this section.

18 Sec. 3. [325E.167] [PENALTY; RIGHT OF ACTION.]

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21 penalties in section 8.31.

22 Subd. 2. [PRIVATE RIGHT OF ACTION.] A person injured by a
23 violation of sections 325E.165 and 325E.166 may recover the
24 actual damages sustained together with costs and disbursements,
25 including reasonable attorney fees. The court, in its
26 discretion, may increase the award of damages to an amount not
27 to exceed three times the actual damages sustained or \$1,500,
28 whichever is greater.

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and Fiscal Analysis**

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Senate

State of Minnesota

S.F. No. 1039 - Farm Tractor Meters - first engrossment

Author: Senator Gary W. Kubly

Prepared by: Kathleen Pontius, Senate Counsel (651/296-4394) *K.P.*

Date: March 2, 2006

This bill prohibits tampering with clock-hour meters on farm tractors and related activity.

Section 1 contains the definitions.

Section 2 lists prohibited acts. **Subdivision 1** prohibits various forms of tampering with a clock-hour meter with intent to defraud so that the meter reflects fewer hours than the farm tractor has actually been in operation.

Subdivision 2 prohibits operation with a disconnected or nonfunctional meter if it is done with intent to defraud.

Subdivision 3 prohibits the advertisement, sale, use, or installation of a device that causes a clock-hour meter to register hours of operation that are not the true hours.

Subdivision 4 requires a person who is selling or trading a farm tractor with knowledge that the registered hours have been altered to reflect fewer hours than the actual hours of operation to disclose that fact to prospective purchasers.

Subdivision 5 prohibits persons from conspiring to violate these provisions.

Section 3 contains a civil penalty and private right of action. A person who is found to violate these provisions would be subject to the penalties in **section 8.31**, which is the general statute dealing with enforcement of consumer protection statutes by the Attorney General and public and private remedies and penalties. In addition, an injured person could recover actual damages together

with costs and reasonable attorney fees. The court could increase the damage award to an amount not to exceed three times the actual damages or \$1,500, whichever is greater.

KP:cs

To Senator Gary W. Kubly:

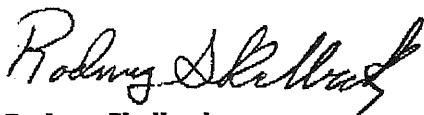
In December, my son was looking for a used tractor. A dealer said he had one with less than 3,000 hours on the clock. As Todd was looking over the tractor, he happened to see a filter that had been written on saying it had been installed at 4,000 hours. When confronted, the salesman said the farmer must have made a mistake. Our son did not buy the tractor. This is just the latest story about a practice which is not illegal in Minnesota: hour clock tampering.

In September, 1994, my son and I purchased used combine from dealer. The clock on the combine showed just under 1800 hours. We traded in our old combine that had 3800 hours on the clock. The purchase price was \$45,000...our trade-in plus \$26,000 to "boot".

When we began using the combine, it became obvious the clock was off...way off. The straw walker simply broke apart from metal fatigue. Shafts would crystalize and break. I had never had that happen before, even the year I rented a combine with 6000 hours on it. Waxing and polisheng can make a combine look pretty good, and if the clock says 1800 hours there should be a lot of useful life in it. The combine we traded in was better than the one we purchased. In the three years we tried to use it, we were never able to finish our 750 acres without borrowing a combine or hiring a custom operator to finish, because our combine had broken down.

One man told me about his brother's experience. His brother, Tom, a real good farmer who took good care of his machinery, traded in his combine with 1600 hours on the clock. The dealer sold it to another farmer who used it for two years and then traded it back to the dealer. The dealer called Tom and asked if he could say it was Tom's machine because it would be easier to sell. Tom asked how many hours were on it. The dealer said, "1400," 200 less than when Tom traded it in. When challenged, the dealer said, "Everyone does it."

We have a law against turning back odometers on cars, even those selling for \$2,000 or less, but no law concerning farm tractors or combines which can cost as much as \$100,000. A bill preventing the practice of tampering with hour clocks has passed in all the committees it has been brought up to over the past several years. Then the bill disappears from view. Isn't it time to get serious about this swindle, and give farmers some protection against a practice that is so costly financially, but also costly in time which is critical to the farmer.



Rodney Skalbeck
80903 160th Street
Sacred Heart, MN 56285
1-320-765-2542

March 16,2005

1.1 **Senator Betzold from the Committee on Judiciary, to which was referred**

1.2 **S.F. No. 2319:** A bill for an act relating to securities; enacting and modifying the
 1.3 2002 Uniform Securities Act of the National Conference of Commissioners on Uniform
 1.4 State Laws; prescribing criminal penalties; amending Minnesota Statutes 2004, sections
 1.5 60A.077, subdivision 9; 82.23; 82.43, subdivision 7; 144A.01, subdivision 4; 245A.02,
 1.6 subdivision 5a; 302A.011, subdivision 26; 302A.251, subdivision 4; 308A.505; 308B.465,
 1.7 subdivision 2; 322B.03, subdivision 43; 322B.663, subdivision 4; 356A.06, subdivision 6;
 1.8 proposing coding for new law in Minnesota Statutes, chapter 80A; repealing Minnesota
 1.9 Statutes 2004, sections 80A.01; 80A.02; 80A.03; 80A.04; 80A.041; 80A.05; 80A.06;
 1.10 80A.07; 80A.08; 80A.09; 80A.10; 80A.11; 80A.115; 80A.12; 80A.122; 80A.125; 80A.13;
 1.11 80A.14; 80A.15; 80A.16; 80A.17; 80A.18; 80A.19; 80A.22; 80A.23; 80A.24; 80A.25;
 1.12 80A.26; 80A.27; 80A.28; 80A.29; 80A.30; 80A.31.

1.13 Reports the same back with the recommendation that the bill be amended as follows:

1.14 Page 2, delete lines 30 to 36

1.15 Page 3, delete line 1

1.16 Page 3, line 2, delete "(D) credit union" and insert "(C) a depository institution"

1.17 Page 3, line 4, delete "commissioner" and insert "administrator"

1.18 Page 3, line 5, delete "(E)" and insert "(D)"

1.19 Page 3, line 6, delete "(F)" and insert "(E)"

1.20 Page 12, delete lines 28 to 30 and insert "controlled by, or in common control with,
 1.21 such person, but does not include a person whose primary duties are ministerial or clerical."

1.22 Page 16, delete lines 3 to 33 and insert "offer or sale, an issuer of such a note,
 1.23 bond, debenture, or other evidence of indebtedness is required to file a notice specifying
 1.24 the material terms of the proposed offer or sale and copies of any proposed sales and
 1.25 advertising literature to be used together with the fee required by section 80A.65 and
 1.26 provided that this exemption shall be effective if the administrator does not disallow the
 1.27 exemption in writing within 15 days following the date of the notice filing."

1.28 Page 24, delete lines 2 to 36 and insert:

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

1.38 (B) the offer and sale by a cooperative organized under chapter 308B of its securities
 1.39 when the securities are offered and sold to its existing members or when the purchase of the
 1.40 securities is necessary or incidental to establishing patron membership in the cooperative,
 1.41 or when such securities are issued as patronage dividends. The administrator has the

2.1 power to define "patron membership" for purposes of this paragraph. This paragraph
2.2 applies to securities, other than securities issued as patronage dividends, only when:

2.3 (i) the issuer, before the completion of the sale of the securities, provides each
2.4 offeree or purchaser disclosure materials that, to the extent material to an understanding of
2.5 the issuer, its business, and the securities being offered, substantially meet the disclosure
2.6 conditions and limitations found in rule 502(b) of Regulation D promulgated by the
2.7 Securities and Exchange Commission, Code of Federal Regulations, title 17, section
2.8 230.502; and

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

2.14 (C) a cooperative may, at or about the same time as offers or sales are being
2.15 completed in reliance upon the exemptions from registration found in this subpart and as
2.16 part of a common plan of financing, offer or sell its securities in reliance upon any other
2.17 exemption from registration available under this chapter. The offer or sale of securities in
2.18 reliance upon the exemptions found in this subpart will not be considered or deemed a part
2.19 of or be integrated with any offer or sale of securities conducted by the cooperative in
2.20 reliance upon any other exemption from registration available under this chapter, nor will
2.21 offers or sales of securities by the cooperative in reliance upon any other exemption from
2.22 registration available under this chapter be considered or deemed a part of or be integrated
2.23 with any offer or sale conducted by the cooperative in reliance upon this paragraph."

2.24 Page 25, delete lines 1 to 17

2.25 Page 47, line 31, delete "or"

2.26 Page 47, after line 31, insert:

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

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

2.32 (11) an individual who represents one or more issuers with respect to an offer or sale
2.33 of the issuer's securities if the offer or sale of the securities is exempted by section 80A.46
2.34 and the individual complies with or satisfies each of the following conditions:

2.35 (A) the individual (i) would not be deemed disqualified pursuant to section 80A.50

2.36 (b)(3)(D)(ii) to (iv); (ii) is not employed by or associated with a broker-dealer; and

3.1 (iii) has not been the subject of (a) an action, order, or decision by any self-regulatory
 3.2 organization, commodities exchange, or securities exchange resulting in a censure or
 3.3 other sanction within 12 months prior to the offer or sale or (b) a denial, revocation, or
 3.4 restriction of any license or membership by any self-regulatory organization, commodities
 3.5 exchange, or securities exchange that has been effective at any time within 12 months
 3.6 prior to the offer or sale;

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

3.9 (C) the individual files with the administrator a consent to service of process
 3.10 complying with Section 611 before commencing any such representation; and

3.11 (D) the individual files with the administrator a notice that contains (i) the full legal
 3.12 name, address, and phone of the individual; (ii) any other names used by the individual in
 3.13 the prior five years; (iii) a statement whether the individual is, or within the last prior years
 3.14 has been, licensed by or registered with any state or federal government, government
 3.15 agency, or any self-regulatory organization, commodities exchange, or securities exchange
 3.16 as a broker-dealer, registered representative, investment advisor, or investment advisor
 3.17 representative, including, if applicable, the individual's IARD/CRD number; (iv) an
 3.18 undertaking to notify the administrator in writing of a change in any of the foregoing
 3.19 within five business days of such change; and (v) any additional information that may be
 3.20 required by rule adopted or order issued under this chapter. This notice must be filed
 3.21 before the individual commences any issuer representation. The notice is effective through
 3.22 December 31 of the year following the year in which it is filed and may be renewed
 3.23 annually in such manner as prescribed by the administrator; and"

3.24 Page 47, line 32, delete "(9)" and insert "(12)"

3.25 Page 48, delete lines 23 to 26 and insert:

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

3.27 Page 55, lines 11, 12, 17, 28, 34, and 35, delete "commissioner" and insert "administrator"

3.29 Page 56, lines 2, 15, 20, 22, 27, and 33, delete "commissioner" and insert "administrator"

3.31 Page 57, lines 9, 11, 13, 17, 20, 21, and 28, delete "commissioner" and insert "administrator"

3.33 Page 57, line 16, delete "commissioner of commerce's" and insert "administrator's"

Page 57, line 30, delete the first "commissioner" and insert "administrator"

3.35 Page 59, line 29, delete "\$....." and insert "\$25,000."

3.36 Page 61, line 34, delete "not" and insert "up"

4.1 Page 61, delete line 35

4.2 Page 61, line 36, delete "for more than one violation" and insert "\$10,000 for each violation"

4.4 Page 69, delete lines 25 to 28 and insert "\$10,000 or imprisoned not more than five years or both. Each of the acts specified constitutes a separate offense and a prosecution or conviction for any such offense does not bar prosecution or conviction for any other offense."

4.8 Page 78, delete lines 16 to 17 and insert:

4.9 "(6) impose a civil penalty up to \$10,000 for each violation; and"

4.10 Page 80, delete lines 18 to 19 and insert:

4.11 "(C) imposing a civil penalty up to \$10,000 for each violation; an"

4.12 Page 82, line 6, delete everything after "to" and insert "\$10,000 for each violation."

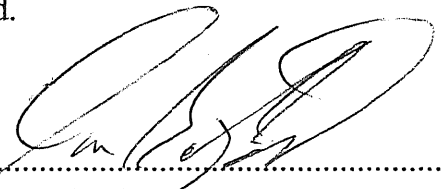
4.13 Page 82, delete line 7

4.14 Page 82, delete lines 29 to 30 and insert "contempt in an amount up to \$10,000 for each violation and may grant any other relief"

4.16 Page 92, line 24, delete "January 1, 2006" and insert "August 1, 2007"

4.17 Amend the title accordingly

4.18 And when so amended the bill do pass and be re-referred to the Committee on
4.19 Commerce. Amendments adopted. Report adopted.

4.20
4.21 (Committee Chair) 

4.22
4.23 (Date of Committee recommendation)

1.1 Senator moves to amend S.F. No. 2319 as follows:

1.2 Page 3, line 4, delete "commissioner" and insert "administrator"

1.3 Page 12, delete lines 28 to 30 and insert "controlled by, or in common control with, such person, but does not include a person whose primary duties are ministerial or clerical."

1.5 Page 16, delete lines 3 to 33 and insert "offer or sale, an issuer of such a note, bond, debenture, or other evidence of indebtedness is required to file a notice specifying the material terms of the proposed offer or sale and copies of any proposed sales and advertising literature to be used together with the fee required by section 80A.65 and provided that this exemption shall be effective if the administrator does not disallow the exemption in writing within 15 days following the date of the notice filing."

1.11 Page 24, delete lines 2 to 36 and insert:

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

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

2.1 (i) the issuer, before the completion of the sale of the securities, provides each
 2.2 offeree or purchaser disclosure materials that, to the extent material to an understanding of
 2.4 the issuer, its business, and the securities being offered, substantially meet the disclosure
 2.5 conditions and limitations found in rule 502(b) of Regulation D promulgated by the
 2.6 Securities and Exchange Commission, Code of Federal Regulations, title 17, section
 2.6 230.502; and

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

2.12 (C) a cooperative may, at or about the same time as offers or sales are being
 2.13 completed in reliance upon the exemptions from registration found in this subpart and as
 2.14 part of a common plan of financing, offer or sell its securities in reliance upon any other
 2.15 exemption from registration available under this chapter. The offer or sale of securities in
 2.16 reliance upon the exemptions found in this subpart will not be considered or deemed a part
 2.17 of or be integrated with any offer or sale of securities conducted by the cooperative in
 2.18 reliance upon any other exemption from registration available under this chapter, nor will
 2.19 offers or sales of securities by the cooperative in reliance upon any other exemption from
 2.20 registration available under this chapter be considered or deemed a part of or be integrated
 2.21 with any offer or sale conducted by the cooperative in reliance upon this paragraph."

2.22 Page 25, delete lines 1 to 17

2.23 Page 47, line 31, delete "or"

2.24 Page 47, after line 31, insert:

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

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

2.30 (11) an individual who represents one or more issuers with respect to an offer or sale
 2.31 of the issuer's securities if the offer or sale of the securities is exempted by section 80A.46
 2.32 and the individual complies with or satisfies each of the following conditions:

2.33 (A) the individual (i) would not be deemed disqualified pursuant to section 80A.50
 2.34 (b)(3)(D)(ii) to (iv); (ii) is not employed by or associated with a broker-dealer; and
 2.35 (iii) has not been the subject of (a) an action, order, or decision by any self-regulatory

3.1 organization, commodities exchange, or securities exchange resulting in a censure or
 3.2 other sanction within 12 months prior to the offer or sale or (b) a denial, revocation, or
 3.3 restriction of any license or membership by any self-regulatory organization, commodities
 3.4 exchange, or securities exchange that has been effective at any time within 12 months
 3.5 prior to the offer or sale;

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

3.8 (C) the individual files with the administrator a consent to service of process
 3.9 complying with Section 611 before commencing any such representation; and

3.10 (D) the individual files with the administrator a notice that contains (i) the full legal
 3.11 name, address, and phone of the individual; (ii) any other names used by the individual in
 3.12 the prior five years; (iii) a statement whether the individual is, or within the last prior years
 3.13 has been, licensed by or registered with any state or federal government, government
 3.14 agency, or any self-regulatory organization, commodities exchange, or securities exchange
 3.15 as a broker-dealer, registered representative, investment advisor, or investment advisor
 3.16 representative, including, if applicable, the individual's IARD/CRD number; (iv) an
 3.17 undertaking to notify the administrator in writing of a change in any of the foregoing
 3.18 within five business days of such change; and (v) any additional information that may be
 3.19 required by rule adopted or order issued under this chapter. This notice must be filed
 3.20 before the individual commences any issuer representation. The notice is effective through
 3.21 December 31 of the year following the year in which it is filed and may be renewed
 3.22 annually in such manner as prescribed by the administrator; and"

3.23 Page 47, line 32, delete "(9)" and insert "(12)"

3.24 Page 48, delete lines 23 to 26 and insert:

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

3.26 Page 55, lines 11, 12, 17, 28, 34, and 35, delete "commissioner" and insert "
 3.27 administrator"

3.28 Page 56, lines 2, 15, 20, 22, 27, and 33, delete "commissioner" and insert "
 3.29 administrator"

3.30 Page 57, lines 9, 11, 13, 17, 20, 21, and 28, delete "commissioner" and insert "
 3.31 administrator"

3.32 Page 57, line 16, delete "commissioner of commerce's" and insert "administrator's"

3.33 Page 57, line 30, delete the first "commissioner" and insert "administrator"

3.34 Page 59, line 29, delete "\$....." and insert "\$25,000."

4.1 Page 61, line 34, delete "not" and insert "up"

4.2 Page 61, delete line 35

4.3 Page 61, line 36, delete "for more than one violation" and insert "\$10,000 for each
4.4 violation"

4.5 Page 69, delete lines 25 to 28 and insert "\$10,000 or imprisoned not more than five
4.6 years or both. Each of the acts specified constitutes a separate offense and a prosecution
4.7 or conviction for any such offense does not bar prosecution or conviction for any other
4.8 offense."

4.9 Page 78, delete lines 16 to 17 and insert:

4.10 "(6) impose a civil penalty up to \$10,000 for each violation; and"

4.11 Page 80, delete lines 18 to 19 and insert:

4.12 "(C) imposing a civil penalty up to \$10,000 for each violation; an"

4.13 Page 82, line 6, delete everything after "to" and insert "\$10,000 for each violation."

4.14 Page 82, delete line 7

4.15 Page 82, delete lines 29 to 30 and insert "contempt in an amount up to \$10,000 for
4.16 each violation and may grant any other relief"

4.17 Page 92, line 24, delete "January 1, 2006" and insert "August 1, 2007"

4.18 ~~Renumber the sections in sequence and correct the internal references~~

4.19 Amend the title accordingly

1.1 Senator moves to amend S.F. No. 2319 as follows:

1.2 Page 2, delete lines 30 to 36

1.3 Page 3, line 2, delete "(D) credit union" and insert "(C) a depository institution"

1.4 Page 3, line 5, delete "(E)" and insert "(D)"

1.5 Page 3, line 6, delete "(F)" and insert "(E)"

Senator Betzold introduced--

S.F. No. 2319: Referred to the Committee on Judiciary.

A bill for an act

relating to securities; enacting and modifying the 2002 Uniform Securities Act of the National Conference of Commissioners on Uniform State Laws; prescribing criminal penalties; amending Minnesota Statutes 2004, sections 60A.077, subdivision 9; 82.23; 82.43, subdivision 7; 144A.01, subdivision 4; 245A.02, subdivision 5a; 302A.011, subdivision 26; 302A.251, subdivision 4; 308A.505; 308B.465, subdivision 2; 322B.03, subdivision 43; 322B.663, subdivision 4; 356A.06, subdivision 6; proposing coding for new law in Minnesota Statutes, chapter 80A; repealing Minnesota Statutes 2004, sections 80A.01; 80A.02; 80A.03; 80A.04; 80A.041; 80A.05; 80A.06; 80A.07; 80A.08; 80A.09; 80A.10; 80A.11; 80A.115; 80A.12; 80A.122; 80A.125; 80A.13; 80A.14; 80A.15; 80A.16; 80A.17; 80A.18; 80A.19; 80A.22; 80A.23; 80A.24; 80A.25; 80A.26; 80A.27; 80A.28; 80A.29; 80A.30; 80A.31.

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

ARTICLE 1

UNIFORM SECURITIES ACT

GENERAL PROVISIONS

Section 1. [80A.40] [SECTION 101; SHORT TITLE.]

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

Sec. 2. [80A.41] [SECTION 102; DEFINITIONS.]

In this chapter, unless the context otherwise requires:

(1) "Administrator" means the commissioner of commerce.

(2) "Agent" means an individual, other than a broker-dealer, who represents a broker-dealer in effecting or attempting to effect purchases or sales of securities or represents an issuer in effecting or attempting to effect

1 purchases or sales of the issuer's securities. But a partner,
2 officer, or director of a broker-dealer or issuer, or an
3 individual having a similar status or performing similar
4 functions is an agent only if the individual otherwise comes
5 within the term. The term does not include an individual
6 excluded by rule adopted or order issued under this chapter.

7 (3) "Bank" means:

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

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

11 (C) any other banking institution, whether incorporated or
12 not, doing business under the laws of a state or of the United
13 States, a substantial portion of the business of which consists
14 of receiving deposits or exercising fiduciary powers similar to
15 those permitted to be exercised by national banks under the
16 authority of the Comptroller of the Currency pursuant to Section
17 1 of Public Law 87-722 (12 U.S.C. Section 92a), and which is
18 supervised and examined by a state or federal agency having
19 supervision over banks, and which is not operated for the
20 purpose of evading this chapter; and

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

24 (4) "Broker-dealer" means a person engaged in the business
25 of effecting transactions in securities for the account of
26 others or for the person's own account. The term does not
27 include:

28 (A) an agent;

29 (B) an issuer;

30 (C) a bank or savings institution if its activities as a
31 broker-dealer are limited to those specified in subsections
32 3(a)(4)(B)(i) through (vi), (viii) through (x), and (xi) if
33 limited to unsolicited transactions; 3(a)(5)(B); and 3(a)(5)(C)
34 of the Securities Exchange Act of 1934 (15 U.S.C. Sections
35 78c(a)(4) and (5)) or a bank that satisfies the conditions
36 described in subsection 3(a)(4)(E) of the Securities Exchange

1 Act of 1934 (15 U.S.C. Section 78c(a)(4));

2 (D) credit union; provided such activities are conducted in
3 accordance with such rules as may be adopted by the
4 commissioner;

5 (E) an international banking institution; or

6 (F) a person excluded by rule adopted or order issued under
7 this chapter.

8 (5) "Depository institution" means:

9 (A) a bank; or

10 (B) a savings institution, trust company, credit union, or
11 similar institution that is organized or chartered under the
12 laws of a state or of the United States, authorized to receive
13 deposits, and supervised and examined by an official or agency
14 of a state or the United States if its deposits or share
15 accounts are insured to the maximum amount authorized by statute
16 by the Federal Deposit Insurance Corporation, the National
17 Credit Union Share Insurance Fund, or a successor authorized by
18 federal law. The term does not include:

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

21 (ii) a Morris Plan bank; or

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

26 (6) "Federal covered investment adviser" means a person
27 registered under the Investment Advisers Act of 1940.

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

33 (8) "Filing" means the receipt under this chapter of a
34 record by the administrator or a designee of the administrator.

35 (9) "Fraud," "deceit," and "defraud" are not limited to
36 common law deceit.

1 (10) "Guaranteed" means guaranteed as to payment of all
2 principal and all interest.

3 (11) "Institutional investor" means any of the following,
4 whether acting for itself or for others in a fiduciary capacity:

5 (A) a depository institution or international banking
6 institution;

7 (B) an insurance company;

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

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

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

13 (F) an employee pension, profit-sharing, or benefit plan if
14 the plan has total assets in excess of \$10,000,000 or its
15 investment decisions are made by a named fiduciary, as defined
16 in the Employee Retirement Income Security Act of 1974, that is
17 a broker-dealer registered under the Securities Exchange Act of
18 1934, an investment adviser registered or exempt from
19 registration under the Investment Advisers Act of 1940, an
20 investment adviser registered under this chapter, a depository
21 institution, or an insurance company;

22 (G) a plan established and maintained by a state, a
23 political subdivision of a state, or an agency or
24 instrumentality of a state or a political subdivision of a state
25 for the benefit of its employees, if the plan has total assets
26 in excess of \$10,000,000 or its investment decisions are made by
27 a duly designated public official or by a named fiduciary, as
28 defined in the Employee Retirement Income Security Act of 1974,
29 that is a broker-dealer registered under the Securities Exchange
30 Act of 1934, an investment adviser registered or exempt from
31 registration under the Investment Advisers Act of 1940, an
32 investment adviser registered under this chapter, a depository
33 institution, or an insurance company;

34 (H) a trust, if it has total assets in excess of
35 \$10,000,000, its trustee is a depository institution, and its
36 participants are exclusively plans of the types identified in

1 subparagraph (F) or (G), regardless of the size of their assets,
2 except a trust that includes as participants self-directed
3 individual retirement accounts or similar self-directed plans;
4 (I) an organization described in Section 501(c)(3) of the
5 Internal Revenue Code (26 U.S.C. Section 501(c)(3)),
6 corporation, Massachusetts trust or similar business trust,
7 limited liability company, or partnership, not formed for the
8 specific purpose of acquiring the securities offered, with total
9 assets in excess of \$10,000,000;

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

14 (K) a private business development company as defined in
15 Section 202(a)(22) of the Investment Advisers Act of 1940 (15
16 U.S.C. Section 80b-2(a)(22)) with total assets in excess of
17 \$10,000,000;

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

20 (M) a "qualified institutional buyer" as defined in Rule
21 144A(a)(1), other than Rule 144A(a)(1)(i)(H), adopted under the
22 Securities Act of 1933 (17 C.F.R. 230.144A);

23 (N) a "major U.S. institutional investor" as defined in
24 Rule 15a-6(b)(4)(i) adopted under the Securities Exchange Act of
25 1934 (17 C.F.R. 240.15a-6);

26 (O) any other person, other than an individual, of
27 institutional character with total assets in excess of
28 \$10,000,000 not organized for the specific purpose of evading
29 this chapter; or

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

32 (12) "Insurance company" means a company organized as an
33 insurance company whose primary business is writing insurance or
34 reinsuring risks underwritten by insurance companies and which
35 is subject to supervision by the insurance commissioner or a
36 similar official or agency of a state.

1 (13) "Insured" means insured as to payment of all principal
2 and all interest.

3 (14) "International banking institution" means an
4 international financial institution of which the United States
5 is a member and whose securities are exempt from registration
6 under the Securities Act of 1933.

7 (15) "Investment adviser" means a person that, for
8 compensation, engages in the business of advising others, either
9 directly or through publications or writings, as to the value of
10 securities or the advisability of investing in, purchasing, or
11 selling securities or that, for compensation and as a part of a
12 regular business, issues or promulgates analyses or reports
13 concerning securities. The term includes a financial planner or
14 other person that, as an integral component of other financially
15 related services, provides investment advice to others for
16 compensation as part of a business or that holds itself out as
17 providing investment advice to others for compensation. The
18 term does not include:

19 (A) an investment adviser representative;

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

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

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

30 (E) a federal covered investment adviser;

31 (F) a bank or savings institution;

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

34 or

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

1 (16) "Investment adviser representative" means an
2 individual employed by or associated with an investment adviser
3 or federal covered investment adviser and who makes any
4 recommendations or otherwise gives investment advice regarding
5 securities, manages accounts or portfolios of clients,
6 determines which recommendation or advice regarding securities
7 should be given, provides investment advice or holds herself or
8 himself out as providing investment advice, receives
9 compensation to solicit, offer, or negotiate for the sale of or
10 for selling investment advice, or supervises employees who
11 perform any of the foregoing. The term does not include an
12 individual who:

13 (A) performs only clerical or ministerial acts;

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

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

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

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

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

31 (17) "Issuer" means a person that issues or proposes to
32 issue a security, subject to the following:

33 (A) The issuer of a voting trust certificate, collateral
34 trust certificate, certificate of deposit for a security, or
35 share in an investment company without a board of directors or
36 individuals performing similar functions is the person

1 performing the acts and assuming the duties of depositor or
2 manager pursuant to the trust or other agreement or instrument
3 under which the security is issued.

4 (B) The issuer of an equipment trust certificate or similar
5 security serving the same purpose is the person by which the
6 property is or will be used or to which the property or
7 equipment is or will be leased or conditionally sold or that is
8 otherwise contractually responsible for assuring payment of the
9 certificate.

10 (C) The issuer of a fractional undivided interest in an
11 oil, gas, or other mineral lease or in payments out of
12 production under a lease, right, or royalty is the owner of an
13 interest in the lease or in payments out of production under a
14 lease, right, or royalty, whether whole or fractional, that
15 creates fractional interests for the purpose of sale.

16 (18) "Nonissuer transaction" or "nonissuer distribution"
17 means a transaction or distribution not directly or indirectly
18 for the benefit of the issuer.

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

24 (20) "Person" means an individual; corporation; business
25 trust; estate; trust; partnership; limited liability company;
26 association; joint venture; government; governmental
27 subdivision, agency, or instrumentality; public corporation; or
28 any other legal or commercial entity.

29 (21) "Place of business" of a broker-dealer, an investment
30 adviser, or a federal covered investment adviser means:

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

35 (B) any other location that is held out to the general
36 public as a location at which the broker-dealer, investment

1 adviser, or federal covered investment adviser provides
2 brokerage or investment advice or solicits, meets with, or
3 otherwise communicates with customers or clients.

4 (22) "Predecessor Act" means Minnesota Statutes 2002,
5 sections 80A.01 to 80A.31.

6 (23) "Price amendment" means the amendment to a
7 registration statement filed under the Securities Act of 1933
8 or, if an amendment is not filed, the prospectus or prospectus
9 supplement filed under the Securities Act of 1933 that includes
10 a statement of the offering price, underwriting and selling
11 discounts or commissions, amount of proceeds, conversion rates,
12 call prices, and other matters dependent upon the offering price.

13 (24) "Principal place of business" of a broker-dealer or an
14 investment adviser means the executive office of the
15 broker-dealer or investment adviser from which the officers,
16 partners, or managers of the broker-dealer or investment adviser
17 direct, control, and coordinate the activities of the
18 broker-dealer or investment adviser.

19 (24a) "Purchaser" does not include:

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

22 (B) any trust or estate in which a purchaser and any of the
23 persons related to him as specified in Regulation D, Rule
24 501(e)(1)(i) or (e)(1)(ii) collectively have more than 50
25 percent of the beneficial interest (excluding contingent
26 interests);

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

33 (D) any accredited investor as defined by Regulation D,
34 Rule 501(3).

35 A corporation, partnership, or other entity must be counted
36 as one purchaser. If, however, that entity is organized for the

1 specific purpose of acquiring the securities offered and is not
2 an accredited investor, then each beneficial owner of equity
3 securities or equity interests in the entity shall count as a
4 separate purchaser for all provisions of Regulation D, except to
5 the extent provided in Regulation D, Rule 501(e)(1).

6 A noncontributory employee benefit plan within the meaning
7 of Title I of the Employee Retirement Income Security Act of
8 1974 shall be counted as one purchaser where the trustee makes
9 all investment decisions for the plan.

10 (25) "Record," except in the phrases "of record," "official
11 record," and "public record," means information that is
12 inscribed on a tangible medium or that is stored in an
13 electronic or other medium and is retrievable in perceivable
14 form.

15 (26) "Sale" includes every contract of sale, contract to
16 sell, or disposition of, a security or interest in a security
17 for value, and "offer to sell" includes every attempt or offer
18 to dispose of, or solicitation of an offer to purchase, a
19 security or interest in a security for value.

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

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

26 (C) A sale or offer of a warrant or right to purchase or
27 subscribe to another security of the same or another issuer and
28 a sale or offer of a security that gives the holder a present or
29 future right or privilege to convert the security into another
30 security of the same or another issuer, are each considered to
31 include an offer of the other security.

32 (27) "Securities and Exchange Commission" means the United
33 States Securities and Exchange Commission.

34 (28) "Security" means a note; stock; treasury stock;
35 security future; bond; debenture; evidence of indebtedness;
36 certificate of interest or participation in a profit-sharing

1 agreement; collateral trust certificate; preorganization
2 certificate or subscription; transferable share; investment
3 contract; voting trust certificate; certificate of deposit for a
4 security; fractional undivided interest in oil, gas, or other
5 mineral rights; put, call, straddle, option, or privilege on a
6 security, certificate of deposit, or group or index of
7 securities, including an interest therein or based on the value
8 thereof; put, call, straddle, option, or privilege entered into
9 on a national securities exchange relating to foreign currency;
10 or, in general, an interest or instrument commonly known as a
11 "security"; or a certificate of interest or participation in,
12 temporary or interim certificate for, receipt for, guarantee of,
13 or warrant or right to subscribe to or purchase, any of the
14 foregoing. The term:

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

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

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

24 (D) includes as an "investment contract" an investment in a
25 common enterprise with the expectation of profits to be derived
26 primarily from the efforts of a person other than the investor
27 and a "common enterprise" means an enterprise in which the
28 fortunes of the investor are interwoven with those of either the
29 person offering the investment, a third party, or other
30 investors;

31 (E) includes as an "investment contract," among other
32 contracts, an interest in a limited partnership and a limited
33 liability company and an investment in a viatical settlement or
34 similar agreement; and

35 (F) does not include any equity interest of a closely held
36 corporation or other entity with not more than 35 holders of the

1 equity interest of such entity offered or sold pursuant to a
2 transaction in which 100 percent of the equity interest of such
3 entity is sold as a means to effect the sale of the business of
4 the entity if the transaction has been negotiated on behalf of
5 all purchasers and if all purchasers have access to inside
6 information regarding the entity before consummating the
7 transaction.

8 (29) "Self-regulatory organization" means a national
9 securities exchange registered under the Securities Exchange Act
10 of 1934, a national securities association of broker-dealers
11 registered under the Securities Exchange Act of 1934, a clearing
12 agency registered under the Securities Exchange Act of 1934, or
13 the Municipal Securities Rulemaking Board established under the
14 Securities Exchange Act of 1934.

15 (30) "Sign" means, with present intent to authenticate or
16 adopt a record:

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

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

20 (31) "State" means a state of the United States, the
21 District of Columbia, Puerto Rico, the United States Virgin
22 Islands, or any territory or insular possession subject to the
23 jurisdiction of the United States.

24 (32) "Associated with" with respect to a person means any
25 partner, officer, director, or manager of such person (or any
26 person occupying a similar status or performing similar
27 functions or any person directly or indirectly controlling,
28 controlled by, or in common control with such person, but shall
29 not include a person whose primary duties are ministerial or
30 clerical.

31 Sec. 3. [80A.42] [SECTION 103; REFERENCES TO FEDERAL
32 STATUTES.]

33 "Securities Act of 1933" (15 U.S.C. Section 77a et seq.),
34 "Securities Exchange Act of 1934" (15 U.S.C. Section 78a et
35 seq.), "Public Utility Holding Company Act of 1935" (15 U.S.C.
36 Section 79 et seq.), "Investment Company Act of 1940" (15 U.S.C.

1 Section 80a-1 et seq.), "Investment Advisers Act of 1940" (15
 2 U.S.C. Section 80b-1 et seq.), "Employee Retirement Income
 3 Security Act of 1974" (29 U.S.C. Section 1001 et seq.),
 4 "National Housing Act" (12 U.S.C. Section 1701 et seq.),
 5 "Commodity Exchange Act" (7 U.S.C. Section 1 et seq.), "Internal
 6 Revenue Code" (26 U.S.C. Section 1 et seq.), "Securities
 7 Investor Protection Act of 1970" (15 U.S.C. Section 78aaa et
 8 seq.), "Securities Litigation Uniform Standards Act of 1998"
 9 (112 Stat. 3227), "Small Business Investment Act of 1958" (15
 10 U.S.C. Section 661 et seq.), and "Electronic Signatures in
 11 Global and National Commerce Act" (15 U.S.C. Section 7001 et
 12 seq.) mean those statutes and the rules and regulations adopted
 13 under those statutes, as in effect on the date of enactment of
 14 this chapter, or as later amended.

15 Sec. 4. [80A.43] [SECTION 104; REFERENCES TO FEDERAL
 16 AGENCIES.]

17 A reference in this chapter to an agency or department of
 18 the United States is also a reference to a successor agency or
 19 department.

20 Sec. 5. [80A.44] [SECTION 105; ELECTRONIC RECORDS AND
 21 SIGNATURES.]

22 This chapter modifies, limits, and supersedes the federal
 23 Electronic Signatures in Global and National Commerce Act, but
 24 does not modify, limit, or supersede Section 101(c) of that act
 25 (15 U.S.C. Section 7001(c)) or authorize electronic delivery of
 26 any of the notices described in Section 103(b) of that act (15
 27 U.S.C. Section 7003(b)). This chapter authorizes the filing of
 28 records and signatures, when specified by provisions of this
 29 chapter or by a rule adopted or order issued under this chapter,
 30 in a manner consistent with Section 104(a) of that act (15
 31 U.S.C. Section 7004(a)).

32 EXEMPTIONS FROM REGISTRATION OF SECURITIES

33 Sec. 6. [80A.45] [SECTION 201; EXEMPT SECURITIES.]

34 The following securities are exempt from the requirements
 35 of sections 80A.49 through 80A.54 and 80A.71:

36 (1) a security, including a revenue obligation or a

1 separate security as defined in Rule 131 (17 C.F.R. 230.131)
2 adopted under the Securities Act of 1933, issued, insured, or
3 guaranteed by the United States; by a state; by a political
4 subdivision of a state; by a public authority, agency, or
5 instrumentality of one or more states; by a political
6 subdivision of one or more states or by a person controlled or
7 supervised by and acting as an instrumentality of the United
8 States under authority granted by Congress; or a certificate of
9 deposit for any of the foregoing;

10 (2) a security issued, insured, or guaranteed by a foreign
11 government with which the United States maintains diplomatic
12 relations, or any of its political subdivisions, if the security
13 is recognized as a valid obligation by the issuer, insurer, or
14 guarantor;

15 (3) a security issued by and representing or that will
16 represent an interest in or a direct obligation of, or be
17 guaranteed by:

18 (A) an international banking institution;

19 (B) a banking institution organized under the laws of the
20 United States; a member bank of the Federal Reserve System; or a
21 depository institution a substantial portion of the business of
22 which consists or will consist of receiving deposits or share
23 accounts that are insured to the maximum amount authorized by
24 statute by the Federal Deposit Insurance Corporation, the
25 National Credit Union Share Insurance Fund, or a successor
26 authorized by federal law or exercising fiduciary powers that
27 are similar to those permitted for national banks under the
28 authority of the Comptroller of Currency pursuant to Section 1
29 of Public Law 87-722 (12 U.S.C. Section 92a); or

30 (C) any other depository institution, unless by rule or
31 order the administrator proceeds under section 80A.48;

32 (4) a security issued by and representing an interest in,
33 or a debt of, or insured or guaranteed by, an insurance company
34 authorized to do business in this state;

35 (5) a security issued or guaranteed by a railroad, other
36 common carrier, public utility, or public utility holding

1 company that is:

2 (A) regulated in respect to its rates and charges by the
3 United States or a state;

4 (B) regulated in respect to the issuance or guarantee of
5 the security by the United states, a state, Canada, or a
6 Canadian province or territory; or

7 (C) a public utility holding company registered under the
8 Public Utility Holding Company Act of 1935 or a subsidiary of
9 such a registered holding company within the meaning of that
10 act;

11 (6) a federal covered security specified in Section
12 18(b)(1) of the Securities Act of 1933 (15 U.S.C. Section
13 77r(b)(1)) or by rule adopted under that provision or a security
14 listed or approved for listing on another securities market
15 specified by rule under this chapter; a put or a call option
16 contract; a warrant; a subscription right on or with respect to
17 such securities; or an option or similar derivative security on
18 a security or an index of securities or foreign currencies
19 issued by a clearing agency registered under the Securities
20 Exchange Act of 1934 and listed or designated for trading on a
21 national securities exchange, a facility of a national
22 securities exchange, or a facility of a national securities
23 association registered under the Securities Exchange Act of 1934
24 or an offer or sale, of the underlying security in connection
25 with the offer, sale, or exercise of an option or other security
26 that was exempt when the option or other security was written or
27 issued; or an option or a derivative security designated by the
28 Securities and Exchange Commission under Section 9(b) of the
29 Securities Exchange Act of 1934 (15 U.S.C. Section 78i(b));

30 (7) a security issued by a person organized and operated
31 exclusively for religious, educational, benevolent, fraternal,
32 charitable, social, athletic, or reformatory purposes, or as a
33 chamber of commerce, and not for pecuniary profit, no part of
34 the net earnings of which inures to the benefit of a private
35 stockholder or other person, or a security of a company that is
36 excluded from the definition of an investment company under

1 Section 3(c)(10)(B) of the Investment Company Act of 1940 (15
2 U.S.C. Section 80a-3(c)(10)(B)); except that with respect to the
3 offer or sale of a note, bond, debenture, or other evidence of
4 indebtedness issued by such a person, a rule may be adopted
5 under this chapter limiting the availability of this exemption
6 by classifying securities, persons, and transactions, imposing
7 different requirements for different classes, specifying with
8 respect to paragraph (B) the scope of the exemption and the
9 grounds for denial or suspension, and requiring an issuer:

10 (A) to file a notice specifying the material terms of the
11 proposed offer or sale and copies of any proposed sales and
12 advertising literature to be used and provide that the exemption
13 becomes effective if the administrator does not disallow the
14 exemption within the period established by the rule;

15 (B) to file a request for exemption authorization for which
16 a rule under this chapter may specify the scope of the
17 exemption, the requirement of an offering statement, the filing
18 of sales and advertising literature, the filing of consent to
19 service of process complying with section 80A.88, and grounds
20 for denial or suspension of the exemption; or

21 (C) to register under section 80A.52;

22 (8) a member's or owner's interest in, or a retention
23 certificate or like security given in lieu of a cash patronage
24 dividend issued by, a cooperative organized and operated as a
25 nonprofit membership cooperative under the cooperative laws of a
26 state, but not a member's or owner's interest, retention
27 certificate, or like security sold to persons other than bona
28 fide members of the cooperative; and

29 (9) an equipment trust certificate with respect to
30 equipment leased or conditionally sold to a person, if any
31 security issued by the person would be exempt under this section
32 or would be a federal covered security under Section 18(b)(1) of
33 the Securities Act of 1933 (15 U.S.C. Section 77r(b)(1)).

34 Sec. 7. [80A.46] [SECTION 202; EXEMPT TRANSACTIONS.]

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

1 (1) isolated nonissuer transactions, consisting of sale to
2 not more than ten purchasers in Minnesota during any period of
3 12 consecutive months, whether effected by or through a
4 broker-dealer or not;

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

12 (A) the issuer of the security is engaged in business, the
13 issuer is not in the organizational stage or in bankruptcy or
14 receivership, and the issuer is not a blank check, blind pool,
15 or shell company that has no specific business plan or purpose
16 or has indicated that its primary business plan is to engage in
17 a merger or combination of the business with, or an acquisition
18 of, an unidentified person;

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

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

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

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

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

33 (iii) an audited balance sheet of the issuer as of a date
34 within 18 months before the date of the transaction or, in the
35 case of a reorganization or merger when the parties to the
36 reorganization or merger each had an audited balance sheet, a

1 pro forma balance sheet for the combined organization; and

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

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

9 (i) the issuer of the security has a class of equity
10 securities listed on a national securities exchange registered
11 under Section 6 of the Securities Exchange Act of 1934 or
12 designated for trading on the National Association of Securities
13 Dealers Automated Quotation System;

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

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

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

25 (3) a nonissuer transaction by or through a broker-dealer
26 registered or exempt from registration under this chapter in a
27 security of a foreign issuer that is a margin security defined
28 in regulations or rules adopted by the Board of Governors of the
29 Federal Reserve System;

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

36 (5) a nonissuer transaction by or through a broker-dealer

1 registered or exempt from registration under this chapter in a
2 security that:

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

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

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

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

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

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

25 (8) a nonissuer transaction by a federal covered investment
26 adviser with investments under management in excess of
27 \$100,000,000 acting in the exercise of discretionary authority
28 in a signed record for the account of others;

29 (9) a transaction in a security, whether or not the
30 security or transaction is otherwise exempt, in exchange for one
31 or more bona fide outstanding securities, claims, or property
32 interests, or partly in such exchange and partly for cash, if
33 the terms and conditions of the issuance and exchange or the
34 delivery and exchange and the fairness of the terms and
35 conditions have been approved by the administrator after a
36 hearing;

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

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

7 (A) the note, bond, debenture, or other evidence of
8 indebtedness is offered and sold with the mortgage or other
9 security agreement as a unit;

10 (B) a general solicitation or general advertisement of the
11 transaction is not made; and

12 (C) a commission or other remuneration is not paid or
13 given, directly or indirectly, to a person not registered under
14 this chapter as a broker-dealer or as an agent;

15 (12) a transaction by an executor, administrator of an
16 estate, sheriff, marshal, receiver, trustee in bankruptcy,
17 guardian, or conservator;

18 (13) a sale or offer to sell to:

19 (A) an institutional investor;

20 (B) an accredited investor as that term is defined in
21 Regulation D, Rule 501(a);

22 (C) a federal covered investment adviser; or

23 (D) any other person exempted by rule adopted or order
24 issued under this chapter;

25 (14) a sale or an offer to sell securities by an issuer, if
26 the transaction is part of a single issue in which:

27 (A) not more than 35 purchasers are present in this state
28 during any 12 consecutive months, other than those designated in
29 paragraph (13);

30 (B) a general solicitation or general advertising is not
31 made in connection with the offer to sell or sale of the
32 securities;

33 (C) a commission or other remuneration is not paid or
34 given, directly or indirectly, to a person other than a
35 broker-dealer registered under this chapter or an agent
36 registered under this chapter for soliciting a prospective

1 purchaser in this state; and

2 (D) the issuer reasonably believes that all the purchasers
3 in this state, other than those designated in paragraph (13),
4 are purchasing for investment;

5 (15) a transaction under an offer to existing security
6 holders of the issuer, including persons that at the date of the
7 transaction are holders of convertible securities, options, or
8 warrants, if a commission or other remuneration, other than a
9 standby commission, is not paid or given, directly or
10 indirectly, for soliciting a security holder in this state;

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

13 (A) a registration or offering statement or similar record
14 as required under the Securities Act of 1933 has been filed, but
15 is not effective, or the offer is made in compliance with Rule
16 165 adopted under the Securities Act of 1933 (17 C.F.R.
17 230.165); and

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

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

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

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

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

34 (18) a transaction involving the distribution of the
35 securities of an issuer to the security holders of another
36 person in connection with a merger, consolidation, exchange of

1 securities, sale of assets, or other reorganization to which the
2 issuer, or its parent or subsidiary and the other person, or its
3 parent or subsidiary, are parties;

4 (19) a rescission offer, sale, or purchase under section
5 80A.77;

6 (20) an offer or sale of a security to a person not a
7 resident of this state and not present in this state if the
8 offer or sale does not constitute a violation of the laws of the
9 state or foreign jurisdiction in which the offeree or purchaser
10 is present and is not part of an unlawful plan or scheme to
11 evade this chapter;

12 (21) employees' stock purchase, savings, option,
13 profit-sharing, pension, or similar employees' benefit plan,
14 including any securities, plan interests, and guarantees issued
15 under a compensatory benefit plan or compensation contract,
16 contained in a record, established by the issuer, its parents,
17 its majority-owned subsidiaries, or the majority-owned
18 subsidiaries of the issuer's parent for the participation of
19 their employees including offers or sales of such securities to:

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

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

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

28 (D) insurance agents who are exclusive insurance agents of
29 the issuer, or the issuer's subsidiaries or parents, or who
30 derive more than 50 percent of their annual income from those
31 organizations;

32 (22) a transaction involving:

33 (A) a stock dividend or equivalent equity distribution,
34 whether the corporation or other business organization
35 distributing the dividend or equivalent equity distribution is
36 the issuer or not, if nothing of value is given by stockholders

1 or other equity holders for the dividend or equivalent equity
2 distribution other than the surrender of a right to a cash or
3 property dividend if each stockholder or other equity holder may
4 elect to take the dividend or equivalent equity distribution in
5 cash, property, or stock;

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

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

13 (23) a nonissuer transaction in an outstanding security by
14 or through a broker-dealer registered or exempt from
15 registration under this chapter, if the issuer is a reporting
16 issuer in a foreign jurisdiction designated by this paragraph or
17 by rule adopted or order issued under this chapter; has been
18 subject to continuous reporting requirements in the foreign
19 jurisdiction for not less than 180 days before the transaction;
20 and the security is listed on the foreign jurisdiction's
21 securities exchange that has been designated by this paragraph
22 or by rule adopted or order issued under this chapter, or is a
23 security of the same issuer that is of senior or substantially
24 equal rank to the listed security or is a warrant or right to
25 purchase or subscribe to any of the foregoing. For purposes of
26 this paragraph, Canada, together with its provinces and
27 territories, is a designated foreign jurisdiction and The
28 Toronto Stock Exchange, Inc., is a designated securities
29 exchange. After an administrative hearing in compliance with
30 chapter 14, the administrator, by rule adopted or order issued
31 under this chapter, may revoke the designation of a securities
32 exchange under this paragraph, if the administrator finds that
33 revocation is necessary or appropriate in the public interest
34 and for the protection of investors;

35 (24) any transaction effected by or through a Canadian
36 broker-dealer exempted from broker-dealer registration pursuant

1 to section 80A.56(b)(3); or
2 (25)(A) the offer and sale by a cooperative organized under
3 chapter 308A or under the laws of another state, of it
4 securities when the securities are offered and sold only to its
5 members, or when the purchase of the securities is necessary or
6 incidental to establishing membership in the cooperative, or
7 when such securities are issued as patronage dividends. This
8 paragraph applies to a cooperative organized under the laws of
9 another state only if the cooperative has filed with the
10 commissioner a consent to service of process under section
11 80A.88 and has, not less than ten days prior to the issuance or
12 delivery, furnished the administrator with a written general
13 description of the transaction and any other information that
14 the administrator requires by rule or otherwise;
15 (B) the offer and sale by a cooperative organized under
16 chapter 308B of its securities when the securities are offered
17 and sold to its existing members or when the purchase of the
18 securities is necessary or incidental to establishing patron
19 membership in the cooperative, or when such securities are
20 issued as patronage dividends. This paragraph applies to
21 securities, other than securities issued as patronage dividends,
22 only when:
23 (i) the issuer, prior to the completion of the sale of such
24 securities, provides each offeree or purchaser disclosure
25 materials that, to the extent material to an understanding of
26 the issuer, its business, and the securities being offered,
27 substantially meet the disclosure conditions and limitations
28 found in rule 502(b) of Regulation D promulgated by the
29 Securities and Exchange Commission, Code of Federal Regulations,
30 title 17, section 230.502; and
31 (ii) within 15 days after the completion of the first sale
32 in each offering completed in reliance upon this exemption, the
33 cooperative has filed with the administrator a consent to
34 service of process under section 80A.88 or has previously filed
35 such a consent, and has furnished the administrator with a
36 written general description of the transaction and any other

1 information that the administrator requires by rule or
2 otherwise; and

3 (C) a cooperative may, at or about the same time as offers
4 or sales are being completed in reliance upon the exemptions
5 from registration found in this paragraph and as part of a
6 common plan of financing, offer or sell its securities in
7 reliance upon any other exemption from registration available
8 under this chapter. The offer or sale of securities in reliance
9 upon the exemptions found in this paragraph shall not be
10 considered or deemed a part of or be integrated with any offer
11 or sale of securities conducted by the cooperative in reliance
12 upon any other exemption from registration available under this
13 chapter, nor shall offers or sales of securities by the
14 cooperative in reliance upon any other exemption from
15 registration available under this chapter be considered or
16 deemed a part of or be integrated with any offer or sale
17 conducted by the cooperative in reliance upon this paragraph.

18 Sec. 8. [80A.47] [SECTION 203; ADDITIONAL EXEMPTIONS AND
19 WAIVERS.]

20 A rule adopted or order issued under this chapter may
21 exempt a security, transaction, or offer; a rule under this
22 chapter may exempt a class of securities, transactions, or
23 offers from any or all of the requirements of sections 80A.49
24 through 80A.54 and 80A.71; and an order under this chapter may
25 wave, in whole or in part, any or all of the conditions for an
26 exemption or offer under sections 80A.45 and 80A.46.

27 Sec. 9. [80A.48] [SECTION 204; DENIAL, SUSPENSION,
28 REVOCATION, CONDITION, OR LIMITATION OF EXEMPTIONS.]

29 (a) [ENFORCEMENT RELATED POWERS.] Except with respect to a
30 federal covered security or a transaction involving a federal
31 covered security, an order under this chapter may deny, suspend
32 application of, condition, limit, or revoke an exemption created
33 under section 80A.45(3)(C), (7) or (8) or 80A.46 or an exemption
34 or waiver created under section 80A.47 with respect to a
35 specific security, transaction, or offer. An order under this
36 section may be issued only pursuant to the procedures in section

1 80A.54(d) or 80A.81 and only prospectively.

2 (b) [KNOWLEDGE OF ORDER REQUIRED.] A person does not
 3 violate sections 80A.49, 80A.51 through 80A.54, 80A.71, or
 4 80A.77 by an offer to sell, offer to purchase, sale, or purchase
 5 effected after the entry of an order issued under this section
 6 if the person did not know, and in the exercise of reasonable
 7 care could not have known, of the order.

8 REGISTRATION OF SECURITIES AND

9 NOTICE FILING OF FEDERAL COVERED SECURITIES

10 Sec. 10. [80A.49] [SECTION 301; SECURITIES REGISTRATION
 11 REQUIREMENT.]

12 It is unlawful for a person to offer or sell a security in
 13 this state unless:

14 (1) the security is a federal covered security;

15 (2) the security, transaction, or offer is exempted from
 16 registration under sections 80A.45 through 80A.47; or

17 (3) the security is registered under this chapter.

18 Sec. 11. [80A.50] [SECTION 302; FEDERAL COVERED
 19 SECURITIES; SMALL CORPORATE OFFERING REGISTRATION.]

20 (a) [FEDERAL COVERED SECURITIES.]

21 (1) [REQUIRED FILING OF RECORDS.] With respect to a federal
 22 covered security, as defined in Section 18(b)(2) of the
 23 Securities Act of 1933 (15 U.S.C. Section 77r(b)(2)), that is
 24 not otherwise exempt under sections 80A.45 through 80A.47, a
 25 rule adopted or order issued under this chapter may require the
 26 filing of any or all of the following records:

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

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

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

6 (2) [NOTICE FILING EFFECTIVENESS AND RENEWAL.] A notice
7 filing under subsection (a) is effective for one year commencing
8 on the later of the notice filing or the effectiveness of the
9 offering filed with the Securities and Exchange Commission. On
10 or before expiration, the issuer may renew a notice filing by
11 filing a copy of those records filed by the issuer with the
12 Securities and Exchange Commission that are required by rule or
13 order under this chapter to be filed. A previously filed
14 consent to service of process complying with section 80A.88 may
15 be incorporated by reference in a renewal. A renewed notice
16 filing becomes effective upon the expiration of the filing being
17 renewed.

18 (3) [NOTICE FILINGS FOR FEDERAL COVERED SECURITIES UNDER
19 SECTION 18(b)(4)(D).] With respect to a security that is a
20 federal covered security under Section 18(b)(4)(D) of the
21 Securities Act of 1933 (15 U.S.C. Section 77r(b)(4)(D)), a rule
22 under this chapter may require a notice filing by or on behalf
23 of an issuer to include a copy of Form D, including the
24 Appendix, as promulgated by the Securities and Exchange
25 Commission, and a consent to service of process complying with
26 section 80A.88 signed by the issuer not later than 15 days after
27 the first sale of the federal covered security in this state.

28 (4) [STOP ORDERS.] Except with respect to a federal
29 security under Section 18(b)(1) of the Securities Act of 1933
30 (15 U.S.C. Section 77r(b)(1)), if the administrator finds that
31 there is a failure to comply with a notice or fee requirement of
32 this section, the administrator may issue a stop order
33 suspending the offer and sale of a federal covered security in
34 this state. If the deficiency is corrected, the stop order is
35 void as of the time of its issuance and no penalty may be
36 imposed by the administrator.

1 (b) [SMALL CORPORATION OFFERING REGISTRATION.]

2 (1) [REGISTRATION REQUIRED.] A security meeting the
3 conditions set forth in this section may be registered as set
4 forth in this section.

5 (2) [AVAILABILITY.] Registration under this section is
6 available only to the issuer of securities and not to an
7 affiliate of the issuer or to any other person for resale of the
8 issuer's securities. The issuer must be organized under the
9 laws of one of the states or possessions of the United States.
10 The securities offered must be exempt from registration under
11 the Securities Act of 1933 pursuant to Rule 504 of Regulation D
12 (15 U.S.C. section 77c).

13 (3) [DISQUALIFICATION.] Registration under this section is
14 not available to any of the following issuers:

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

17 (B) an investment company;

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

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

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

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

1 (iii) is currently subject to a state administrative
2 enforcement order or judgment entered by a state securities
3 administrator or the Securities and Exchange Commission within
4 five years before the filing of the small corporate offering
5 registration application, or is subject to a federal or state
6 administrative enforcement order or judgment in which fraud or
7 deceit, including, but not limited to, making untrue statements
8 of material facts or omitting to state material facts, was found
9 and the order or judgment was entered within five years before
10 the filing of the small corporate offering registration
11 application;

12 (iv) is currently subject to an order, judgment, or decree
13 of a court of competent jurisdiction temporarily restraining or
14 enjoining, or is subject to an order, judgment, or decree of a
15 court of competent jurisdiction permanently restraining or
16 enjoining the party from engaging in or continuing any conduct
17 or practice in connection with the purchase or sale of any
18 security or involving the making of a false filing with a state
19 or with the Securities and Exchange Commission entered within
20 five years before the filing of the small corporate offering
21 registration application; or

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

26 (I) except that clauses (i) to (iv) do not apply if the
27 person subject to the disqualification is duly licensed or
28 registered to conduct securities-related business in the state
29 in which the administrative order or judgment was entered
30 against the person or if the dealer employing the party is
31 licensed or registered in this state and the form BD filed in
32 this state discloses the order, conviction, judgment, or decree
33 relating to the person, and

4 (II) except that the disqualification under this
35 subdivision is automatically waived if the state securities
36 administrator or federal agency that created the basis for

1 disqualification determines upon a showing of good cause that it
2 is not necessary under the circumstances to deny the
3 registration.

4 (4) [FILING AND EFFECTIVENESS OF REGISTRATION STATEMENT.] A
5 small corporate offering registration statement must be filed
6 with the administrator. If no stop order is in effect and no
7 proceeding is pending under section 80A.54, such registration
8 statement shall become effective automatically at the close of
9 business on the 20th day after filing of the registration
10 statement or the last amendment of the registration statement or
11 at such earlier time as the administrator may designate by rule
12 or order.

13 (5) [CONTENTS OF REGISTRATION STATEMENT.] A small corporate
14 offering registration statement under this section shall be on
15 Form U-7, including exhibits required by the instructions
16 thereto, as adopted by the North American Securities
17 Administrators Association, or such alternative form as may be
18 designated by the administrator by rule or order and must
19 include:

20 (A) a consent to service of process complying with section
21 80A.88;

22 (B) a statement of the type and amount of securities to be
23 offered and the amount of securities to be offered in this
24 state;

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

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

35 (E) the states (i) in which the securities are proposed to
36 be offered; (ii) in which a registration statement or similar

1 filing has been made in connection with the offering including
2 information as to effectiveness of each such filing; and (iii)
3 in which a stop order or similar proceeding has been entered or
4 in which proceedings or actions seeking such an order are
5 pending;

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

8 (G) a copy of any other pamphlet, circular, form letter,
9 advertisement, or other sales literature intended as of the
10 effective date to be used in connection with the offering and
11 any solicitation of interest used in compliance with section
12 80A.46(17)(B).

13 (6) [COPY TO PURCHASER.] A copy of the offering document as
14 filed with the administrator must be delivered to each person
15 purchasing the securities prior to sale of the securities to
16 such person.

17 Sec. 12. [80A.51] [SECTION 303; SECURITIES REGISTRATION BY
18 COORDINATION.]

19 (a) [REGISTRATION PERMITTED.] A security for which a
20 registration statement has been filed under the Securities Act
21 of 1933 in connection with the same offering may be registered
22 by coordination under this section.

23 (b) [REQUIRED RECORDS.] A registration statement and
24 accompanying records under this section must contain or be
25 accompanied by the following records in addition to the
26 information specified in section 80A.53 and a consent to service
27 of process complying with section 80A.88:

28 (1) a copy of the latest form of prospectus filed under the
29 Securities Act of 1933;

30 (2) a copy of the articles of incorporation and bylaws or
31 their substantial equivalents currently in effect; a copy of any
32 agreement with or among underwriters; a copy of any indenture or
33 other instrument governing the issuance of the security to be
4 registered; and a specimen, copy, or description of the security
35 that is required by rule adopted or order issued under this
36 chapter;

1 (3) copies of any other information or any other records
2 filed by the issuer under the Securities Act of 1933 requested
3 by the administrator; and

4 (4) an undertaking to forward each amendment to the federal
5 prospectus, other than an amendment that delays the effective
6 date of the registration statement, promptly after it is filed
7 with the Securities and Exchange Commission.

8 (c) [CONDITIONS FOR EFFECTIVENESS OF REGISTRATION
9 STATEMENT.] A registration statement under this section becomes
10 effective simultaneously with or subsequent to the federal
11 registration statement when all of the following conditions are
12 satisfied:

13 (1) a stop order under subsection (d) or section 80A.54 or
14 issued by the Securities and Exchange Commission is not in
15 effect and a proceeding is not pending against the issuer under
16 section 80A.54; and

17 (2) the registration statement has been on file for at
18 least 20 days or a shorter period provided by rule adopted or
19 order issued under this chapter.

20 (d) [NOTICE OF FEDERAL REGISTRATION STATEMENT
21 EFFECTIVENESS.] The registrant shall promptly notify the
22 administrator in a record of the date when the federal
23 registration statement becomes effective and the content of any
24 price amendment and shall promptly file a record containing the
25 price amendment. If the notice is not timely received, the
26 administrator may issue a stop order, without prior notice or
27 hearing, retroactively denying effectiveness to the registration
28 statement or suspending its effectiveness until compliance with
29 this section. The administrator shall promptly notify the
30 registrant of an order by telegram, telephone, or electronic
31 means and promptly confirm this notice by a record. If the
32 registrant subsequently complies with the notice requirement of
33 this section, the stop order is void as of the date of its
34 issuance.

35 (e) [EFFECTIVENESS OF REGISTRATION STATEMENT.] If the
36 federal registration statement becomes effective before each of

1 the conditions in this section is satisfied or is waived by the
2 administrator, the registration statement is automatically
3 effective under this chapter when all the conditions are
4 satisfied or waived. If the registrant notifies the
5 administrator of the date when the federal registration
6 statement is expected to become effective, the administrator
7 shall promptly notify the registrant by telegram, telephone, or
8 electronic means and promptly confirm this notice by a record,
9 indicating whether all the conditions are satisfied or waived
10 and whether the administrator intends the institution of a
11 proceeding under section 80A.54. The notice by the
12 administrator does not preclude the institution of such a
13 proceeding.

14 Sec. 13. [80A.52] [SECTION 304; SECURITIES REGISTRATION BY
15 QUALIFICATION.]

16 (a) [REGISTRATION PERMITTED.] A security may be registered
17 by qualification under this section.

18 (b) [REQUIRED RECORDS.] A registration statement under this
19 section must contain the information or records specified in
20 section 80A.53, a consent to service of process complying with
21 section 80A.88, and, if required by rule adopted under this
22 chapter, the following information or records:

23 (1) with respect to the issuer and any significant
24 subsidiary, its name, address, and form of organization; the
25 state or foreign jurisdiction and date of its organization; the
26 general character and location of its business; a description of
27 its physical properties and equipment; and a statement of the
28 general competitive conditions in the industry or business in
29 which it is or will be engaged;

30 (2) with respect to each director and officer of the
31 issuer, and other person having a similar status or performing
32 similar functions, the person's name, address, and principal
33 occupation for the previous five years; the amount of securities
34 of the issuer held by the person as of the 30th day before the
35 filing of the registration statement; the amount of the
36 securities covered by the registration statement to which the

1 person has indicated an intention to subscribe; and a
2 description of any material interest of the person in any
3 material transaction with the issuer or a significant subsidiary
4 effected within the previous three years or proposed to be
5 effected;

6 (3) with respect to persons covered by paragraph (2), the
7 aggregate sum of the remuneration paid to those persons during
8 the previous 12 months and estimated to be paid during the next
9 12 months, directly or indirectly, by the issuer, and all
10 predecessors, parents, subsidiaries, and affiliates of the
11 issuer;

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

17 (5) with respect to a promoter, if the issuer was organized
18 within the previous three years, the information or records
19 specified in paragraph (2), any amount paid to the promoter
20 within that period or intended to be paid to the promoter, and
21 the consideration for the payment;

22 (6) with respect to a person on whose behalf any part of
23 the offering is to be made in a nonissuer distribution, the
24 person's name and address; the amount of securities of the
25 issuer held by the person as of the date of the filing of the
26 registration statement; a description of any material interest
27 of the person in any material transaction with the issuer or any
28 significant subsidiary effected within the previous three years
29 or proposed to be effected, and a statement of the reasons for
30 making the offering;

31 (7) the capitalization and long-term debt, on both a
32 current and pro forma basis, of the issuer and any significant
33 subsidiary, including a description of each security outstanding
34 or being registered or otherwise offered, and a statement of the
35 amount and kind of consideration, whether in the form of cash,
36 physical assets, services, patents, goodwill, or anything else

1 of value, for which the issuer or any subsidiary has issued its
2 securities within the previous two years or is obligated to
3 issue its securities;

4 (8) the kind and amount of securities to be offered; the
5 proposed offering price or the method by which it is to be
6 computed; any variation at which a proportion of the offering is
7 to be made to a person or class of persons other than the
8 underwriters, with a specification of the person or class; the
9 basis on which the offering is to be made if otherwise than for
10 cash; the estimated aggregate underwriting and selling discounts
11 or commissions and finders' fees, including separately cash,
12 securities, contracts, or anything else of value to accrue to
13 the underwriters or finders in connection with the offering or,
14 if the selling discounts or commissions are variable, the basis
15 of determining them and their maximum and minimum amounts; the
16 estimated amounts of other selling expenses, including legal,
17 engineering, and accounting charges; the name and address of
18 each underwriter and each recipient of a finder's fee; a copy of
19 any underwriting or selling group agreement under which the
20 distribution is to be made or the proposed form of any such
21 agreement whose terms have not yet been determined; and a
22 description of the plan of distribution of any securities that
23 are to be offered otherwise than through an underwriter;

24 (9) the estimated monetary proceeds to be received by the
25 issuer from the offering; the purposes for which the proceeds
26 are to be used by the issuer; the estimated amount to be used
27 for each purpose; the order or priority in which the proceeds
28 will be used for the purposes stated; the amounts of any funds
29 to be raised from other sources to achieve the purposes stated;
30 the sources of the funds; and, if a part of the proceeds is to
31 be used to acquire property, including goodwill, otherwise than
32 in the ordinary course of business, the names and addresses of
33 the vendors, the purchase price, the names of any persons that
34 have received commissions in connection with the acquisition,
35 and the amounts of the commissions and other expenses in
36 connection with the acquisition, including the cost of borrowing

1 money to finance the acquisition;

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

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

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

18 (13) a copy of any prospectus, pamphlet, circular, form
19 letter, advertisement, or other sales literature intended as of
20 the effective date to be used in connection with the offering
21 and any solicitation of interest used in compliance with section
22 80A.46(17)(B);

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

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

34 (16) a signed or conformed copy of a consent of any
35 accountant, engineer, appraiser, or other person whose
36 profession gives authority for a statement made by the person,

1 if the person is named as having prepared or certified a report
2 or valuation, other than an official record, that is public,
3 which is used in connection with the registration statement;

4 (17) a balance sheet of the issuer as of a date within four
5 months before the filing of the registration statement; a
6 statement of income and a statement of cash flows for each of
7 the three fiscal years preceding the date of the balance sheet
8 and for any period between the close of the immediately previous
9 fiscal year and the date of the balance sheet, or for the period
10 of the issuer's and any predecessor's existence if less than
11 three years; and, if any part of the proceeds of the offering is
12 to be applied to the purchase of a business, the financial
13 statements that would be required if that business were the
14 registrant; and

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

17 (c) [CONDITIONS FOR EFFECTIVENESS OF REGISTRATION
18 STATEMENT.] A registration statement under this section becomes
19 effective 30 days, or any shorter period provided by rule
20 adopted or order issued under this chapter, after the date the
21 registration statement or the last amendment other than a price
22 amendment is filed, if:

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

25 (2) the administrator has not issued an order under section
26 80A.54 delaying effectiveness; and

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

29 (d) [DELAY OF EFFECTIVENESS OF REGISTRATION STATEMENT.] The
30 administrator may delay effectiveness once for not more than 90
31 days if the administrator determines the registration statement
32 is not complete in all material respects and promptly notifies
33 the applicant or registrant of that determination. The
34 administrator may also delay effectiveness for a further period
35 of not more than 30 days if the administrator determines that
36 the delay is necessary or appropriate.

1 (e) [PROSPECTUS DISTRIBUTION MAY BE REQUIRED.] A rule
2 adopted or order issued under this chapter may require as a
3 condition of registration under this section that a prospectus
4 containing a specified part of the information or record
5 specified in subsection (b) be sent or given to each person to
6 which an offer is made, before or concurrently, with the
7 earliest of:

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

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

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

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

18 Sec. 14. [80A.53] [SECTION 305; SECURITIES REGISTRATION
19 FILINGS.]

20 (a) [WHO MAY FILE.] A registration statement may be filed
21 by the issuer, a person on whose behalf the offering is to be
22 made, or a broker-dealer registered under this chapter.

23 (b) [STATUS OF OFFERING.] A registration statement filed
24 under section 80A.51 or 80A.52 must specify:

25 (1) the amount of securities to be offered in this state;

26 (2) the states in which a registration statement or similar
27 record in connection with the offering has been or is to be
28 filed; and

29 (3) any adverse order, judgment, or decree issued in
30 connection with the offering by a state securities regulator,
31 the Securities and Exchange Commission, or a court.

32 (c) [INCORPORATION BY REFERENCE.] A record filed under this
33 chapter or the predecessor act within five years preceding the
34 filing of a registration statement may be incorporated by
35 reference in the registration statement to the extent that the
36 record is currently accurate.

1 (d) [NONISSUER DISTRIBUTION.] In the case of a nonissuer
2 distribution, information or a record may not be required under
3 subsection (i) or section 80A.52, unless it is known to the
4 person filing the registration statement or to the person on
5 whose behalf the distribution is to be made or unless it can be
6 furnished by those persons without unreasonable effort or
7 expense.

8 (e) [ESCROW AND IMPOUNDMENT.] A rule adopted or order
9 issued under this chapter may require as a condition of
10 registration that a security issued within the previous five
11 years or to be issued to a promoter for a consideration
12 substantially less than the public offering price or to a person
13 for a consideration other than cash be deposited in escrow; and
14 that the proceeds from the sale of the registered security in
15 this state be impounded until the issuer receives a specified
16 amount from the sale of the security either in this state or
17 elsewhere. The conditions of any escrow or impoundment required
18 under this subsection may be established by rule adopted or
19 order issued under this chapter, but the administrator may not
20 reject a depository institution solely because of its location
21 in another state.

22 (f) [FORM OF SUBSCRIPTION.] A rule adopted or order issued
23 under this chapter may require as a condition of registration
24 that a security registered under this chapter be sold only on a
25 specified form of subscription or sale contract and that a
26 signed or conformed copy of each contract be filed under this
27 chapter or preserved for a period specified by the rule or
28 order, which may not be longer than five years.

29 (g) [EFFECTIVE PERIOD.] Except while a stop order is in
30 effect under section 80A.54, a registration statement is
31 effective for one year after its effective date, or for any
32 longer period designated in an order under this chapter during
33 which the security is being offered or distributed in a
34 nonexempted transaction by or for the account of the issuer or
35 other person on whose behalf the offering is being made or by an
36 underwriter or broker-dealer that is still offering part of an

1 unsold allotment or subscription taken as a participant in the
2 distribution. For the purposes of a nonissuer transaction, all
3 outstanding securities of the same class identified in the
4 registration statement as a security registered under this
5 chapter are considered to be registered while the registration
6 statement is effective. If any securities of the same class are
7 outstanding, a registration statement may not be withdrawn until
8 one year after its effective date. A registration statement may
9 be withdrawn only with the approval of the administrator.

10 (h) [PERIODIC REPORTS.] While a registration statement is
11 effective, a rule adopted or order issued under this chapter may
12 require the person that filed the registration statement to file
13 reports, not more often than quarterly, to keep the information
14 or other record in the registration statement reasonably current
15 and to disclose the progress of the offering.

16 (i) [POSTEFFECTIVE AMENDMENTS.] A registration statement
17 may be amended after its effective date. The posteffective
18 amendment becomes effective when the administrator so orders.
19 If a posteffective amendment is made to increase the number of
20 securities specified to be offered or sold, the person filing
21 the amendment shall pay a registration fee. A posteffective
22 amendment relates back to the date of the offering of the
23 additional securities being registered if, within one year after
24 the date of the sale, the amendment is filed and the additional
25 registration fee is paid.

26 Sec. 15. [80A.54] [SECTION 306; DENIAL, SUSPENSION, AND
27 REVOCAION OF SECURITIES REGISTRATION.]

28 (a) [STOP ORDERS.] The administrator may issue a stop order
29 denying effectiveness to, or suspending or revoking the
30 effectiveness of, a registration statement if the administrator
31 finds that the order is in the public interest and that:

32 (1) the registration statement as of its effective date or
33 before the effective date in the case of an order denying
34 effectiveness, an amendment under section 80A.53(j) as of its
35 effective date, or a report under section 80A.53(i), is
36 incomplete in a material respect or contains a statement that,

1 in the light of the circumstances under which it was made, was
2 false or misleading with respect to a material fact;

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

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

9 (B) the issuer;

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

12 (D) a promoter of the issuer;

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

15 (F) an underwriter;

16 (3) the security registered or sought to be registered is
17 the subject of a permanent or temporary injunction of a court of
18 competent jurisdiction or an administrative stop order or
19 similar order issued under any federal, foreign, or state law
20 other than this chapter applicable to the offering, but the
21 administrator may not institute a proceeding against an
22 effective registration statement under this paragraph more than
23 one year after the date of the order or injunction on which it
24 is based, and the administrator may not issue an order under
25 this paragraph on the basis of an order or injunction issued
26 under the securities act of another state unless the order or
27 injunction was based on conduct that would constitute, as of the
28 date of the order, a ground for a stop order under this section;

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

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

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

1 (b) [INSTITUTION OF STOP ORDER.] The administrator may not
2 institute a stop order proceeding against an effective
3 registration statement on the basis of conduct or a transaction
4 known to the administrator when the registration statement
5 became effective unless the proceeding is instituted within 30
6 days after the registration statement became effective.

7 (c) [SUMMARY PROCESS.] The administrator may summarily
8 revoke, deny, postpone, or suspend the effectiveness of a
9 registration statement pending final determination of an
10 administrative proceeding. Upon the issuance of the order, the
11 administrator shall promptly notify each person specified in
12 subsection (d) that the order has been issued; the reasons for
13 the revocation, denial, postponement, or suspension; and that
14 within 15 days after the receipt of a request in a record from
15 the person the matter will be scheduled for a hearing. If a
16 hearing is not requested and none is ordered by the
17 administrator, within 30 days after the date of service of the
18 order, the order becomes final. If a hearing is requested or
19 ordered, the administrator, after notice of and opportunity for
20 hearing for each person subject to the order, may modify or
21 vacate the order or extend the order until final determination.

22 (d) [PROCEDURAL REQUIREMENTS FOR STOP ORDER.] A stop order
23 may not be issued under this section without:

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

27 (2) an opportunity for hearing; and

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

30 (e) [MODIFICATION OR VACATION OF STOP ORDER.] The
31 administrator may modify or vacate a stop order issued under
32 this section if the administrator finds that the conditions that
33 caused its issuance have changed or that it is necessary or
34 appropriate in the public interest or for the protection of
35 investors.

36 Sec. 16. [80A.55] [SECTION 307; WAIVER AND MODIFICATION.]

1 The administrator may waive or modify, in whole or in part,
2 any or all of the requirements of sections 80A.50, 80A.51, and
3 80A.52(b) or the requirement of any information or record in a
4 registration statement or in a periodic report filed pursuant to
5 section 80A.53(i).

6 BROKER-DEALERS, AGENTS, INVESTMENT ADVISERS,
7 INVESTMENT ADVISER REPRESENTATIVES, AND FEDERAL
8 COVERED INVESTMENT ADVISERS

9 Sec. 17. [80A.56] [SECTION 401; BROKER-DEALER REGISTRATION
10 REQUIREMENT AND EXEMPTIONS.]

11 (a) [REGISTRATION REQUIREMENT.] It is unlawful for a person
12 to transact business in this state as a broker-dealer unless the
13 person is registered under this chapter as a broker-dealer or is
14 exempt from registration as a broker-dealer under subsection (b)
15 or (d).

16 (b) [EXEMPTIONS FROM REGISTRATION.] The following persons
17 are exempt from the registration requirement of subsection (a):

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

20 (A) the issuer of the securities involved in the
21 transactions;

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

24 (C) an institutional investor;

25 (D) a nonaffiliated federal covered investment adviser with
26 investments under management in excess of \$100,000,000 acting
27 for the account of others pursuant to discretionary authority in
28 a signed record;

29 (E) a bona fide preexisting customer whose principal place
30 of residence is not in this state and the person is registered
31 as a broker-dealer under the Securities Exchange Act of 1934 or
32 not required to be registered under the Securities Exchange Act
33 of 1934 and is registered under the securities act of the state
34 in which the customer maintains a principal place of residence;

35 (F) a bona fide preexisting customer whose principal place
36 of residence is in this state but was not present in this state

1 when the customer relationship was established, if:

2 (i) the broker-dealer is registered under the Securities
3 Exchange Act of 1934 or not required to be registered under the
4 Securities Exchange Act of 1934 and is registered under the
5 securities laws of the state in which the customer relationship
6 was established and where the customer had maintained a
7 principal place of residence; and

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

16 (G) not more than three customers in this state during the
17 previous 12 months, in addition to those customers specified in
18 subparagraphs (A) through (F) and under subparagraph (H), if the
19 broker-dealer is registered under the Securities Exchange Act of
20 1934 or not required to be registered under the Securities
21 Exchange Act of 1934 and is registered under the securities act
22 of the state in which the broker-dealer has its principal place
23 of business; and

24 (H) any other person exempted by rule adopted or order
25 issued under this chapter; and

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

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

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

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

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

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

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

16 (c) [LIMITS ON EMPLOYMENT OR ASSOCIATION.] It is unlawful
17 for a broker-dealer, or for an issuer engaged in offering,
18 offering to purchase, purchasing, or selling securities in this
19 state, directly or indirectly, to employ or associate with an
20 individual to engage in an activity related to securities
21 transactions in this state if the registration of the individual
22 is suspended or revoked or the individual is barred from
23 employment or association with a broker-dealer, an issuer, an
24 investment adviser, or a federal covered investment adviser by
25 an order of the administrator under this chapter, the Securities
26 and Exchange Commission, or a self-regulatory organization. A
27 broker-dealer or issuer does not violate this subsection if the
28 broker-dealer or issuer did not know and in the exercise of
29 reasonable care could not have known, of the suspension,
30 revocation, or bar. Upon request from a broker-dealer or issuer
31 and for good cause, an order under this chapter may modify or
32 waive, in whole or in part, the application of the prohibitions
33 of this subsection to the broker-dealer.

34 (d) [FOREIGN TRANSACTIONS.] A rule adopted or order issued
35 under this chapter may permit:

36 (1) a broker-dealer that is registered in Canada or other

1 foreign jurisdiction and that does not have a place of business
2 in this state to effect transactions in securities with or for,
3 or attempt to effect the purchase or sale of any securities by:

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

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

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

17 (2) an agent who represents a broker-dealer that is exempt
18 under this subsection to effect transactions in securities or
19 attempt to effect the purchase or sale of securities in this
20 state as permitted for a broker-dealer described in paragraph
21 (1).

22 Sec. 18. [80A.57] [SECTION 402; AGENT REGISTRATION
23 REQUIREMENT AND EXEMPTIONS.]

24 (a) [REGISTRATION REQUIREMENT.] It is unlawful for an
25 individual to transact business in the state as an agent unless
26 the individual is registered under this chapter as an agent or
27 is exempt from registration as an agent under subsection (b).

28 (b) [EXEMPTIONS FROM REGISTRATION.] The following
29 individuals are exempt from the registration requirement of
30 subsection (a):

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

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

1 (3) an individual who represents an issuer with respect to
2 an offer or sale of the issuer's own securities or those of the
3 issuer's parent or any of the issuer's subsidiaries, and who is
4 not compensated in connection with the individual's
5 participation by the payment of commissions or other
6 remuneration based, directly or indirectly, on transactions in
7 those securities;

8 (4) an individual who represents an issuer and who effects
9 transactions in the issuer's securities exempted by section
10 80A.46, other than section 80A.46(11) and (14);

11 (5) an individual who represents an issuer that effects
12 transactions solely in federal covered securities of the issuer,
13 but an individual who effects transactions in a federal covered
14 security under Section 18(b)(3) or 18(b)(4)(D) of the Securities
15 Act of 1933 (15 U.S.C. Section 77r(b)(3) or 77r(b)(4)(D)) is not
16 exempt if the individual is compensated in connection with the
17 agent's participation by the payment of commissions or other
18 remuneration based, directly or indirectly, on transactions in
19 those securities;

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

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

29 (8) an individual who represents an issuer and who
30 restricts participation to performing clerical or ministerial
31 acts; or

32 (9) any other individual exempted by rule adopted or order
33 issued under this chapter.

34 (c) [REGISTRATION EFFECTIVE ONLY WHILE EMPLOYED OR
35 ASSOCIATED.] The registration of an agent is effective only
36 while the agent is employed by or associated with a

1 broker-dealer registered under this chapter or an issuer that is
2 offering, selling, or purchasing its securities in this state.

3 (d) [LIMIT ON EMPLOYMENT OR ASSOCIATION.] It is unlawful
4 for a broker-dealer, or an issuer engaged in offering, selling,
5 or purchasing securities in this state, to employ or associate
6 with an agent who transacts business in the state on behalf of
7 broker-dealers or issuers unless the agent is registered under
8 subsection (a) or exempt from registration under subsection (b).

9 (e) [LIMIT ON AFFILIATIONS.] An individual may not act as
10 an agent for more than one broker-dealer or one issuer at a
11 time, unless the broker-dealer or the issuer for which the agent
12 acts are affiliated by direct or indirect common control or are
13 authorized by rule or order under this chapter.

14 Sec. 19. [80A.58] [SECTION 403; INVESTMENT ADVISER
15 REGISTRATION REQUIREMENT AND EXEMPTIONS.]

16 (a) [REGISTRATION REQUIREMENT.] It is unlawful for a person
17 to transact business in this state as an investment adviser
18 unless the person is registered under this chapter as an
19 investment adviser or is exempt from registration as an
20 investment adviser under subsection (b).

21 (b) [EXEMPTIONS FROM REGISTRATION.] The following persons
22 are exempt from the registration requirement of subsection (a):

23 (1) a person without a place of business in the state that
24 is registered under the securities act of the state in which the
25 person has its principal place of business if its only clients
26 in this state are:

27 (A) federal covered investment advisers, investment
28 advisers registered under this chapter, or broker-dealers
29 registered under this chapter;

30 (B) institutional investors;

31 (C) bona fide preexisting clients whose principal places of
32 residence are not in this state if the investment adviser is
33 registered under the securities act of the state in which the
34 clients maintain principal places of residence; or

35 (D) any other client exempted by rule adopted or order
36 issued under this chapter;

1 (2) a person without a place of business in this state if
2 the person has had, during the preceding 12 months, not more
3 than five clients that are resident in this state in addition to
4 those specified under paragraph (1); or

5 (3) any other person exempted by rule adopted or order
6 issued under this chapter.

7 (c) [LIMITS ON EMPLOYMENT OR ASSOCIATION.] It is unlawful
8 for an investment adviser, directly or indirectly, to employ or
9 associate with an individual to engage in an activity related to
10 investment advice in this state if the registration of the
11 individual is suspended or revoked or the individual is barred
12 from employment or association with an investment adviser,
13 federal covered investment adviser, or broker-dealer by an order
14 under this chapter, the Securities and Exchange Commission, or a
15 self-regulatory organization, unless the investment adviser did
16 not know, and in the exercise of reasonable care could not have
17 known, of the suspension, revocation, or bar. Upon request from
18 the investment adviser and for good cause, the administrator, by
19 order, may waive, in whole or in part, the application of the
20 prohibitions of this subsection to the investment adviser.

21 Sec. 20. [80A.60] [SECTION 405; FEDERAL COVERED INVESTMENT
22 ADVISER NOTICE FILING REQUIREMENT.]

23 (a) [NOTICE FILING REQUIREMENT.] Except with respect to a
24 federal covered investment adviser described in subsection (b),
25 it is unlawful for a federal covered investment adviser to
26 transact business in this state as a federal covered investment
27 adviser unless the federal covered investment adviser complies
28 with subsection (c).

29 (b) [NOTICE FILING REQUIREMENT NOT REQUIRED.] The following
30 federal covered investment advisers are not required to comply
31 with subsection (c):

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

34 (A) federal covered investment advisers, investment
35 advisers registered under this chapter, and broker-dealers
36 registered under this chapter;

1 (B) institutional investors;

2 (C) bona fide preexisting clients whose principal places of
3 residence are not in this state; or

4 (D) other clients specified by rule adopted or order issued
5 under this chapter;

6 (2) a federal covered investment adviser without a place of
7 business in this state if the person has had, during the
8 preceding 12 months, not more than five clients that are
9 resident in this state in addition to those specified under
10 paragraph (1); and

11 (3) any other person excluded by rule adopted or order
12 issued under this chapter.

13 (c) [NOTICE FILING PROCEDURE.] A person acting as a federal
14 covered investment adviser, not excluded under subsection (b),
15 shall file a notice, a consent to service of process complying
16 with section 80A.88, and such records as have been filed with
17 the Securities and Exchange Commission under the Investment
18 Advisers Act of 1940 required by rule adopted or order issued
19 under this chapter and pay the fees specified in section
20 80A.65(e).

21 (d) [EFFECTIVENESS OF FILING.] The notice under subsection
22 (c) becomes effective upon its filing.

23 Sec. 21. [80A.61] [SECTION 406; REGISTRATION BY
24 BROKER-DEALER, AGENT, AND INVESTMENT ADVISER.]

25 (a) [APPLICATION FOR INITIAL REGISTRATION.] A person shall
26 register as a broker-dealer, agent, or investment adviser by
27 filing an application and a consent to service of process
28 complying with section 80A.88, and paying the fee specified in
29 section 80A.65 and any reasonable fees charged by the designee
30 of the administrator for processing the filing. The application
31 must contain:

32 (1) the information or record required for the filing of a
33 uniform application; and

34 (2) upon request by the administrator, any other financial
35 or other information or record that the administrator determines
36 is appropriate.

1 (b) [AMENDMENT.] If the information or record contained in
2 an application filed under subsection (a) is or becomes
3 inaccurate or incomplete in a material respect, the registrant
4 shall promptly file a correcting amendment.

5 (c) [EFFECTIVENESS OF REGISTRATION.] If an order is not in
6 effect and a proceeding is not pending under section 80A.67,
7 registration becomes effective at noon on the 45th day after a
8 completed application is filed, unless the registration is
9 denied. A rule adopted or order issued under this chapter may
10 set an earlier effective date or may defer the effective date
11 until noon on the 45th day after the filing of any amendment
12 completing the application.

13 (d) [REGISTRATION RENEWAL.] A registration is effective
14 until midnight on December 31 of the year for which the
15 application for registration is filed. Unless an order is in
16 effect under section 80A.67, a registration may be automatically
17 renewed each year by filing such records as are required by rule
18 adopted or order issued under this chapter, by paying the fee
19 specified in section 80A.65, and by paying costs charged by the
20 designee of the administrator for processing the filings.

21 (e) [ADDITIONAL CONDITIONS OR WAIVERS.] A rule adopted or
22 order issued under this chapter may impose such other
23 conditions, not inconsistent with the National Securities
24 Markets Improvement Act of 1996. An order issued under this
25 chapter may waive, in whole or in part, specific requirements in
26 connection with registration as are in the public interest and
27 for the protection of investors.

28 Sec. 22. [80A.62] [SECTION 407; SUCCESSION AND CHANGE IN
29 REGISTRATION OF BROKER-DEALER OR INVESTMENT ADVISER.]

30 (a) [SUCCESSION.] A broker-dealer or investment adviser may
31 succeed to the current registration of another broker-dealer or
32 investment adviser or a notice filing of a federal covered
33 investment adviser, and a federal covered investment adviser may
34 succeed to the current registration of an investment adviser or
35 notice filing of another federal covered investment adviser, by
36 filing as a successor an application for registration pursuant

1 to section 80A.56 or 80A.58 or a notice pursuant to section
2 80A.60 for the unexpired portion of the current registration or
3 notice filing.

4 (b) [ORGANIZATIONAL CHANGE.] A broker-dealer or investment
5 adviser that changes its form of organization or state of
6 incorporation or organization may continue its registration by
7 filing an amendment to its registration if the change does not
8 involve a material change in its financial condition or
9 management. The amendment becomes effective when filed or on a
10 date designated by the registrant in its filing. The new
11 organization is a successor to the original registrant for the
12 purposes of this chapter. If there is a material change in
13 financial condition or management, the broker-dealer or
14 investment adviser shall file a new application for
15 registration. A predecessor registered under this chapter shall
16 stop conducting its securities business other than winding down
17 transactions and shall file for withdrawal of broker-dealer or
18 investment adviser registration within 45 days after filing its
19 amendment to effect succession.

20 (c) [NAME CHANGE.] A broker-dealer or investment adviser
21 that changes its name may continue its registration by filing an
22 amendment to its registration. The amendment becomes effective
23 when filed or on a date designated by the registrant.

24 (d) [CHANGE OF CONTROL.] A change of control of a
25 broker-dealer or investment adviser may be made in accordance
26 with a rule adopted or order issued under this chapter.

27 Sec. 23. [80A.63] [SECTION 408; TERMINATION OF EMPLOYMENT
28 OR ASSOCIATION OF AGENT AND TRANSFER OF EMPLOYMENT OR
29 ASSOCIATION.]

30 (a) [NOTICE OF TERMINATION.] If an agent registered under
31 this chapter terminates employment by or association with a
32 broker-dealer or issuer, or terminates activities that require
33 registration as an agent, the broker-dealer, or issuer shall
34 promptly file a notice of termination. If the registrant learns
35 that the broker-dealer or issuer has not filed the notice, the
36 registrant may do so.

1 (b) [TRANSFER OF EMPLOYMENT OR ASSOCIATION.] If an agent
2 registered under this chapter terminates employment by or
3 association with a broker-dealer registered under this chapter
4 and begins employment by or association with another
5 broker-dealer registered under this chapter, then upon the
6 filing by or on behalf of the registrant, within 30 days after
7 the termination, of an application for registration that
8 complies with the requirement of section 80A.61(a) and payment
9 of the filing fee required under section 80A.65, the
10 registration of the agent is:

11 (1) immediately effective as of the date of the completed
12 filing, if the agent's Central Registration Depository record or
13 successor record does not contain a new or amended disciplinary
14 disclosure within the previous 12 months; or

15 (2) temporarily effective as of the date of the completed
16 filing, if the agent's Central Registration Depository record or
17 successor record contains a new or amended disciplinary
18 disclosure within the preceding 12 months.

19 (c) [WITHDRAWAL OF TEMPORARY REGISTRATION.] The
20 administrator may withdraw a temporary registration if there are
21 or were grounds for discipline as specified in section 80A.67
22 and the administrator does so within 30 days after the filing of
23 the application. If the administrator does not withdraw the
24 temporary registration within the 30 day period, registration
25 becomes automatically effective on the 31st day after filing.

26 (d) [POWER TO PREVENT REGISTRATION.] The administrator may
27 prevent the effectiveness of a transfer of an agent under
28 subsection (b)(1) or (2) based on the public interest and the
29 protection of investors.

30 (e) [TERMINATION OF REGISTRATION OR APPLICATION FOR
31 REGISTRATION.] If the administrator determines that a registrant
32 or applicant for registration is no longer in existence or has
33 ceased to act as a broker-dealer, agent, or investment adviser,
34 or is the subject of an adjudication of incapacity or is subject
35 to the control of a committee, conservator, or guardian, or
36 cannot reasonably be located, a rule adopted or order issued

1 under this chapter may require the registration be canceled or
2 terminated or the application denied. The administrator may
3 reinstate a canceled or terminated registration, with or without
4 hearing, and may make the registration retroactive.

5 Sec. 24. [80A.64] [SECTION 409; WITHDRAWAL OF REGISTRATION
6 OF BROKER-DEALER, AGENT, AND INVESTMENT ADVISER.]

7 Withdrawal of registration by a broker-dealer, agent, or
8 investment adviser becomes effective 60 days after the filing of
9 the application to withdraw or within any shorter period as
10 provided by rule adopted or order issued under this chapter
11 unless a revocation or suspension proceeding is pending when the
12 application is filed. If a proceeding is pending, withdrawal
13 becomes effective when and upon such conditions as required by
14 rule adopted or order issued under this chapter. The
15 administrator may institute a revocation or suspension
16 proceeding under section 80A.67 within one year after the
17 withdrawal became effective automatically and issue a revocation
18 or suspension order as of the last date on which registration
19 was effective if a proceeding is not pending.

20 Sec. 25. [80A.65] [SECTION 410; FEES AND EXPENSES.]

21 Subdivision 1. [REGISTRATION OR NOTICE FILING FEE.] (a)
22 There shall be a filing fee of \$100 for every application for
23 registration or notice filing. There shall be an additional fee
24 of one-tenth of one percent of the maximum aggregate offering
25 price at which the securities are to be offered in this state,
26 and the maximum combined fees shall not exceed \$300.

27 (b) When an application for registration is withdrawn
28 before the effective date or a preeffective stop order is
29 entered under section 80A.54, all but the \$100 filing fee shall
30 be returned. If an application to register securities is
31 denied, the total of all fees received shall be retained.

32 (c) Where a filing is made in connection with a federal
33 covered security under section 18(b)(2) of the Securities Act of
34 1933, there is a fee of \$100 for every initial filing. If the
35 filing is made in connection with redeemable securities issued
36 by an open end management company or unit investment trust, as

1 defined in the Investment Company Act of 1940, there is an
2 additional annual fee of 1/20 of one percent of the maximum
3 aggregate offering price at which the securities are to be
4 offered in this state during the notice filing period. The fee
5 must be paid at the time of the initial filing and thereafter in
6 connection with each renewal no later than July 1 of each year
7 and must be sufficient to cover the shares the issuer expects to
8 sell in this state over the next 12 months. If during a current
9 notice filing the issuer determines it is likely to sell shares
10 in excess of the shares for which fees have been paid to the
11 commissioner, the issuer shall submit an amended notice filing
12 to the commissioner under section 80A.50, together with a fee of
13 1/20 of one percent of the maximum aggregate offering price of
14 the additional shares. Shares for which a fee has been paid,
15 but which have not been sold at the time of expiration of the
16 notice filing, may not be sold unless an additional fee to cover
17 the shares has been paid to the commissioner as provided in this
18 section and section 80A.50. If the filing is made in connection
19 with redeemable securities issued by such a company or trust,
20 there is no maximum fee for securities filings made according to
21 this paragraph. If the filing is made in connection with any
22 other federal covered security under Section 18(b)(2) of the
23 Securities Act of 1933, there is an additional fee of one-tenth
24 of one percent of the maximum aggregate offering price at which
25 the securities are to be offered in this state, and the combined
26 fees shall not exceed \$300. Beginning with fiscal year 2001 and
27 continuing each fiscal year thereafter, as of the last day of
28 each fiscal year, the commissioner shall determine the total
29 amount of all fees that were collected under this paragraph in
30 connection with any filings made for that fiscal year for
31 securities of an open-end investment company on behalf of a
32 security that is a federal covered security pursuant to section
33 18(b)(2) of the Securities Act of 1933. To the extent the total
34 fees collected by the commissioner in connection with these
35 filings exceed \$25,000,000 in a fiscal year, the commissioner
36 shall refund, on a pro rata basis, to all persons who paid any

1 fees for that fiscal year, the amount of fees collected by the
2 commissioner in excess of \$25,000,000. No individual refund is
3 required of amounts of \$100 or less for a fiscal year.

4 Subd. 2. [REGISTRATION APPLICATION AND RENEWAL FILING
5 FEE.] Every applicant for an initial or renewal registration
6 shall pay a filing fee of \$200 in the case of a broker-dealer,
7 \$50 in the case of an agent, and \$100 in the case of an
8 investment adviser. When an application is denied or withdrawn,
9 the filing fee shall be retained. A registered agent who has
10 terminated employment with one broker-dealer shall, before
11 beginning employment with another broker-dealer, pay a transfer
12 fee of \$25. The fee for a filing made according to section
13 80A.56 is \$100.

14 Subd. 3. [AMENDMENT FEE.] Any amendment to an existing
15 registration requiring an order of the commissioner shall
16 require payment of an amendment fee of \$25. If the amendment
17 increases the aggregate amount of securities to be registered,
18 there shall be an additional fee calculated in accordance with
19 subdivision 1, provided the maximum additional fees, if
20 applicable, have not previously been paid. The commissioner
21 shall by rule designate those amendments which require an order
22 of the commissioner.

23 Subd. 4. [PERIODIC REPORT FEE.] Every periodic report
24 required by section 80A.53 shall be accompanied by a fee of \$100.

25 Subd. 5. [EXEMPTION FILING FEE.] The filing of any
26 exemption for which notice is required to be given the
27 commissioner under section 80A.45 shall be accompanied by a fee
28 of \$50.

29 Subd. 6. [RESCISSION OFFER FILING FEE.] The filing of a
30 rescission offer under section 80A.77 shall be accompanied by
31 the fees as calculated in subdivision 1.

32 Subd. 7. [WRITTEN OPINION REQUEST FEE.] Every request for
33 a written opinion from the commissioner shall be accompanied by
34 a fee of \$50.

35 Subd. 7a. [EXCESS SECURITIES REGISTRATION FILING FEE.] If
36 securities of an issuer are sold in this state in excess of the

1 quantity registered, the excess securities may be registered by
2 paying a filing fee of \$100, and an additional fee in the amount
3 of three times that which is prescribed under subdivision 1, for
4 the excess securities to be registered. There shall be no
5 maximum combined fees under this subdivision, notwithstanding
6 the limitation set forth in subdivision 1, clause (a).

7 Registration of the excess securities shall be effective
8 retroactively to the date of sale.

9 Subd. 8. [EXPENSE DEPOSITS.] When the commissioner deems
10 it necessary to incur any expense in connection with any
11 application or registration, the commissioner shall have the
12 power to require the interested person to make an advance
13 deposit with the commissioner in an amount estimated as
14 sufficient to cover such expense. All such deposits shall be
15 covered into the state treasury and credited to the state
16 commissioner of commerce's investigation fund, from which fund
17 the commissioner shall have power to make disbursements to pay
18 for expenses necessarily incurred in the investigation. Any
19 unexpended portion shall be refunded. On field examinations
20 made by the commissioner or an employee away from the office of
21 the commissioner, a per diem of \$10 for each such person may be
22 charged in addition to actual expenses. Where additional
23 technical, expert, or special services are used, the actual cost
24 of such services may be charged in addition to actual expenses.

25 Subd. 9. [GENERALLY.] No filing for which a fee is
26 required shall be deemed to be filed or given any effect until
27 the proper fee is paid. All fees and charges collected by the
28 commissioner shall be covered into the state treasury. When any
29 person is entitled to a refund under this section, the
30 commissioner shall certify to the commissioner of finance the
31 amount of the fee to be refunded to the applicant, and the
32 commissioner of finance shall issue a warrant in payment thereof
33 out of the fund to which such fee was credited in the manner
34 provided by law. There is hereby appropriated to the person
35 entitled to such refunds from the fund in the state treasury to
36 which such fees were credited an amount to make such refunds and

1 payments.

2 Sec. 26. [80A.66] [SECTION 411; POSTREGISTRATION
3 REQUIREMENTS.]

4 (a) [FINANCIAL REQUIREMENTS.] Subject to Section 15(h) of
5 the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h))
6 or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C.
7 Section 80b-22), a rule adopted or order issued under this
8 chapter may establish minimum financial requirements for
9 broker-dealers registered or required to be registered under
10 this chapter and investment advisers registered or required to
11 be registered under this chapter.

12 (b) [FINANCIAL REPORTS.] Subject to Section 15(h) of the
13 Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or
14 Section 222(b) of the Investment Advisers Act of 1940 (15 U.S.C.
15 Section 80b-22), a broker-dealer registered or required to be
16 registered under this chapter and an investment adviser
17 registered or required to be registered under this chapter shall
18 file such financial reports as are required by a rule adopted or
19 order issued under this chapter. If the information contained
20 in a record filed under this subsection is or becomes inaccurate
21 or incomplete in a material respect, the registrant shall
22 promptly file a correcting amendment.

23 (c) [RECORD KEEPING.] Subject to Section 15(h) of the
24 Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h)) or
25 Section 222 of the Investment Advisers Act of 1940 (15 U.S.C.
26 Section 80b-22):

27 (1) a broker-dealer registered or required to be registered
28 under this chapter and an investment adviser registered or
29 required to be registered under this chapter shall make and
30 maintain the accounts, correspondence, memoranda, papers, books,
31 and other records required by rule adopted or order issued under
32 this chapter;

33 (2) broker-dealer records required to be maintained under
34 paragraph (1) may be maintained in any form of data storage
35 acceptable under Section 17(a) of the Securities Exchange Act of
36 1934 (15 U.S.C. Section 78q(a)) if they are readily accessible

1 to the administrator; and

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

6 (d) [AUDITS OR INSPECTIONS.] The records of a broker-dealer
7 registered or required to be registered under this chapter and
8 of an investment adviser registered or required to be registered
9 under this chapter are subject to such reasonable periodic,
10 special, or other audits or inspections by a representative of
11 the administrator, within or without this state, as the
12 administrator considers necessary or appropriate in the public
13 interest and for the protection of investors. An audit or
14 inspection may be made at any time and without prior notice.
15 The administrator may copy, and remove for audit or inspection
16 copies of, all records the administrator reasonably considers
17 necessary or appropriate to conduct the audit or inspection.
18 The administrator may assess a reasonable charge for conducting
19 an audit or inspection under this subsection.

20 (e) [CUSTODY AND DISCRETIONARY AUTHORITY BOND OR
21 INSURANCE.] Subject to Section 15(h) of the Securities Exchange
22 Act of 1934 (15 U.S.C. Section 78o(h)) or Section 222 of the
23 Investment Advisers Act of 1940 (15 U.S.C. Section 80b-22), a
24 rule adopted or order issued under this chapter may require a
25 broker-dealer or investment adviser that has custody of or
26 discretionary authority over funds or securities of a customer
27 or client to obtain insurance or post a bond or other
28 satisfactory form of security in an amount not to exceed
29 \$..... The administrator may determine the requirements of
30 the insurance, bond, or other satisfactory form of security.
31 Insurance or a bond or other satisfactory form of security may
32 not be required of a broker-dealer registered under this chapter
33 whose net capital exceeds, or of an investment adviser
34 registered under this chapter whose minimum financial
35 requirements exceed, the amounts required by rule or order under
36 this chapter. The insurance, bond, or other satisfactory form

1 of security must permit an action by a person to enforce any
2 liability on the insurance, bond, or other satisfactory form of
3 security if instituted within the time limitations in section
4 80A.76(j)(2).

5 (f) [REQUIREMENTS FOR CUSTODY.] Subject to Section 15(h) of
6 the Securities Exchange Act of 1934 (15 U.S.C. Section 78o(h))
7 or Section 222 of the Investment Advisers Act of 1940 (15 U.S.C.
8 Section 80b-22), an agent may not have custody of funds or
9 securities of a customer except under the supervision of a
10 broker-dealer and an investment adviser representative may not
11 have custody of funds or securities of a client except under the
12 supervision of an investment adviser or a federal covered
13 investment adviser. A rule adopted or order issued under this
14 chapter may prohibit, limit, or impose conditions on a
15 broker-dealer regarding custody of funds or securities of a
16 customer and on an investment adviser regarding custody of
17 securities or funds of a client.

18 (g) [INVESTMENT ADVISER BROCHURE RULE.] With respect to an
19 investment adviser registered or required to be registered under
20 this chapter, a rule adopted or order issued under this chapter
21 may require that information or other record be furnished or
22 disseminated to clients or prospective clients in this state as
23 necessary or appropriate in the public interest and for the
24 protection of investors and advisory clients.

25 (h) [CONTINUING EDUCATION.] A rule adopted or order issued
26 under this chapter may require an individual registered under
27 section 80A.57 or 80A.59 to participate in a continuing
28 education program approved by the Securities and Exchange
29 Commission and administered by a self-regulatory organization
30 or, in the absence of such a program, a rule adopted or order
31 issued under this chapter may require continuing education for
32 an individual registered under section 80A.59.

33 Sec. 27. [80A.67] [SECTION 412; DENIAL, REVOCATION,
34 SUSPENSION, WITHDRAWAL, RESTRICTION, CONDITION, OR LIMITATION OF
35 REGISTRATION.]

36 (a) [DISCIPLINARY CONDITIONS--APPLICANTS.] If the

1 administrator finds that the order is in the public interest and
2 subsection (d) authorizes the action, an order issued under this
3 chapter may deny an application, or may condition or limit
4 registration of an applicant to be a broker-dealer, agent, or
5 investment adviser, and, if the applicant is a broker-dealer or
6 investment adviser, of a partner, officer, director, or person
7 having a similar status or performing similar functions, or a
8 person directly or indirectly in control of the broker-dealer or
9 investment adviser.

10 (b) [DISCIPLINARY CONDITIONS-REGISTRANTS.] If the
11 administrator finds that the order is in the public interest and
12 subsection (d) authorizes the action an order issued under this
13 chapter may revoke, suspend, condition, or limit the
14 registration of a registrant and, if the registrant is a
15 broker-dealer or investment adviser, of a partner, officer,
16 director, or person having a similar status or performing
17 similar functions, or a person directly or indirectly in control
18 of the broker-dealer or investment adviser. However, the
19 administrator may not:

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

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

30 (c) [DISCIPLINARY PENALTIES-REGISTRANTS.] If the
31 administrator finds that the order is in the public interest and
32 subsection (d)(1) through (6), (8), (9), (10), or (12) and (13)
33 authorizes the action, an order under this chapter may censure,
4 impose a bar, or impose a civil penalty in an amount not to
35 exceed a maximum of \$..... for a single violation or \$.....
36 for more than one violation, on a registrant, and, if the

1 registrant is a broker-dealer or investment adviser, a partner,
2 officer, director, person having a similar status or performing
3 similar functions, or a person directly or indirectly in
4 control, of the broker-dealer or investment adviser.

5 (d) [GROUNDS FOR DISCIPLINE.] A person may be disciplined
6 under subsections (a) through (c) if the person:

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

15 (2) willfully violated or willfully failed to comply with
16 this chapter or the predecessor act or a rule adopted or order
17 issued under this chapter or the predecessor act within the
18 previous ten years;

19 (3) has been convicted of a felony or within the previous
20 ten years has been convicted of a misdemeanor involving a
21 security, a commodity future or option contract, or an aspect of
22 a business involving securities, commodities, investments,
23 franchises, insurance, banking, or finance;

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

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

33 (A) the securities, depository institution, insurance, or
34 other financial services regulator of a state or by the
35 Securities and Exchange Commission or other federal agency
36 denying, revoking, barring, or suspending registration as a

1 broker-dealer, agent, investment adviser, federal covered
2 investment adviser, or investment adviser representative;

3 (B) the securities regulator of a state or the Securities
4 and Exchange Commission against a broker-dealer, agent,
5 investment adviser, investment adviser representative, or
6 federal covered investment adviser;

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

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

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

14 (F) a depository institution regulator suspending or
15 barring the person from the depository institution business;

16 (6) is the subject of an adjudication or determination,
17 after notice and opportunity for hearing, by the Securities and
18 Exchange Commission, the Commodity Futures Trading Commission;
19 the Federal Trade Commission; a federal depository institution
20 regulator, or a depository institution, insurance, or other
21 financial services regulator of a state that the person
22 willfully violated the Securities Act of 1933, the Securities
23 Exchange Act of 1934, the Investment Advisers Act of 1940, the
24 Investment Company Act of 1940, or the Commodity Exchange Act,
25 the securities or commodities law of a state, or a federal or
26 state law under which a business involving investments,
27 franchises, insurance, banking, or finance is regulated;

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

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

1 or inspection under section 80A.66(d);

2 (9) has failed to reasonably supervise an agent, investment
3 adviser representative, or other individual, if the agent,
4 investment adviser representative, or other individual was
5 subject to the person's supervision and committed a violation of
6 this chapter or the predecessor act or a rule adopted or order
7 issued under this chapter or the predecessor act within the
8 previous ten years;

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

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

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

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

24 (C) to have been suspended or expelled from membership by
25 or participation in a securities exchange or securities
26 association operating under the securities laws of a foreign
27 jurisdiction;

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

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

35 (14) is not qualified on the basis of factors such as
36 training, experience, and knowledge of the securities business.

1 However, in the case of an application by an agent for a
2 broker-dealer that is a member of a self-regulatory organization
3 or by an individual for registration as an investment adviser
4 representative, a denial order may not be based on this
5 paragraph if the individual has successfully completed all
6 examinations required by subsection (e). The administrator may
7 require an applicant for registration under section 80A.57 or
8 80A.59 who has not been registered in a state within the two
9 years preceding the filing of an application in this state to
10 successfully complete an examination.

11 (e) [EXAMINATIONS.] A rule adopted or order issued under
12 this chapter may require that an examination, including an
13 examination developed or approved by an organization of
14 securities regulators, be successfully completed by a class of
15 individuals or all individuals. An order issued under this
16 chapter may waive, in whole or in part, an examination as to an
17 individual and a rule adopted under this chapter may waive, in
18 whole or in part, an examination as to a class of individuals if
19 the administrator determines that the examination is not
20 necessary or appropriate in the public interest and for the
21 protection of investors.

22 (f) [SUMMARY PROCESS.] The administrator may suspend or
23 deny an application summarily; restrict, condition, limit, or
24 suspend a registration; or censure, bar, or impose a civil
25 penalty on a registrant before final determination of an
26 administrative proceeding. Upon the issuance of an order, the
27 administrator shall promptly notify each person subject to the
28 order that the order has been issued, the reasons for the
29 action, and that within 15 days after the receipt of a request
30 in a record from the person the matter will be scheduled for a
31 hearing. If a hearing is not requested and none is ordered by
32 the administrator within 30 days after the date of service of
33 the order, the order becomes final by operation of law. If a
34 hearing is requested or ordered, the administrator, after notice
35 of and opportunity for hearing to each person subject to the
36 order, may modify or vacate the order or extend the order until

1 final determination.

2 (g) [PROCEDURAL REQUIREMENTS.] An order issued may not be
3 issued under this section, except under subsection (f), without:

4 (1) appropriate notice to the applicant or registrant;

5 (2) opportunity for hearing; and

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

8 (h) [CONTROL PERSON LIABILITY.] A person that controls,
9 directly or indirectly, a person not in compliance with this
10 section may be disciplined by order of the administrator under
11 subsections (a) through (c) to the same extent as the
12 noncomplying person, unless the controlling person did not know,
13 or knowingly or recklessly disregarded evidence, of the
14 existence of conduct that is a ground for discipline under this
15 section.

16 (i) [LIMIT ON INVESTIGATION OR PROCEEDING.] The
17 administrator may not institute a proceeding under subsection
18 (a), (b), or (c) based solely on material facts actually known
19 by the administrator unless an investigation or the proceeding
20 is instituted within one year after the administrator actually
21 acquires knowledge of the material facts.

22 FRAUD AND LIABILITIES

23 Sec. 28. [80A.68] [SECTION 501; GENERAL FRAUD.]

24 It is unlawful for a person, in connection with the offer,
25 sale, or purchase of a security, directly or indirectly:

26 (1) to employ a device, scheme, or artifice to defraud;

27 (2) to make an untrue statement of a material fact or to

28 omit to state a material fact necessary in order to make a
29 statement made, in the light of the circumstances under which it
30 is made, not misleading; or

31 (3) to engage in an act, practice, or course of business

32 that operates or would operate as a fraud or deceit upon another
33 person.

34 Sec. 29. [80A.69] [SECTION 502; PROHIBITED CONDUCT IN
35 PROVIDING INVESTMENT ADVICE.]

36 (a) [FRAUD IN PROVIDING INVESTMENT ADVICE.] It is unlawful

1 for a person that advises others for compensation, either
2 directly or indirectly or through publications or writings, as
3 to the value of securities or the advisability of investing in,
4 purchasing, or selling securities or that, for compensation and
5 as part of a regular business, issues or promulgates analyses or
6 reports relating to securities:

7 (1) to employ a device, scheme, or artifice to defraud
8 another person; or

9 (2) to engage in an act, practice, or course of business
10 that operates or would operate as a fraud or deceit upon another
11 person.

12 (b) [RULES DEFINING FRAUD.] A rule adopted under this
13 chapter may define an act, practice, or course of business of an
14 investment adviser or an investment adviser representative,
15 other than a supervised person of a federal covered investment
16 adviser, as fraudulent, deceptive, or manipulative, and
17 prescribe means reasonably designed to prevent investment
18 advisers and investment adviser representatives, other than
19 supervised persons of a federal covered investment adviser, from
20 engaging in acts, practices, and courses of business defined as
21 fraudulent, deceptive, or manipulative.

22 (c) [RULES SPECIFYING CONTENTS OF ADVISORY CONTRACT.] A
23 rule adopted under this chapter may specify the contents of an
24 investment advisory contract entered into, extended, or renewed
25 by an investment adviser.

26 Sec. 30. [80A.70] [SECTION 503; EVIDENTIARY BURDEN.]

27 (a) [CIVIL.] In a civil action or administrative proceeding
28 under this chapter, a person claiming an exemption, exception,
29 preemption, or exclusion has the burden to prove the
30 applicability of the claim.

31 (b) [CRIMINAL.] In a criminal proceeding under this
32 chapter, a person claiming an exemption, exception, preemption,
33 or exclusion has the burden of going forward with evidence of
34 the the claim.

35 Sec. 31. [80A.71] [SECTION 504; FILING OF SALES AND
36 ADVERTISING LITERATURE.]

1 (a) [FILING REQUIREMENT.] Except as otherwise provided in
2 subsection (b), a rule adopted or order issued under this
3 chapter may require the filing of a prospectus, pamphlet,
4 circular, form letter, advertisement, sales literature, or other
5 advertising record relating to a security or investment advice,
6 addressed or intended for distribution to prospective investors,
7 including clients or prospective clients of a person registered
8 or required to be registered as an investment adviser under this
9 chapter.

10 (b) [EXCLUDED COMMUNICATIONS.] This section does not apply
11 to sales and advertising literature specified in subsection (a)
12 which relates to a federal covered security, a federal covered
13 investment adviser, or a security or transaction exempted by
14 section 80A.45, 80A.46, or 80A.47 except as required pursuant to
15 section 80A.45(7).

16 Sec. 32. [80A.72] [SECTION 505; MISLEADING FILINGS.]

17 It is unlawful for a person to make or cause to be made, in
18 a record that is used in an action or proceeding or filed under
19 this chapter other than a contested case hearing, a statement
20 that, at the time and in the light of the circumstances under
21 which it is made, is false or misleading in a material respect,
22 or, in connection with the statement, to omit to state a
23 material fact necessary to make the statement made, in the light
24 of the circumstances under which it was made, not false or
25 misleading.

26 Sec. 33. [80A.73] [SECTION 506; MISREPRESENTATIONS
27 CONCERNING REGISTRATION OR EXEMPTION.]

28 The filing of an application for registration, a
29 registration statement, a notice filing under this chapter, the
30 registration of a person, the notice filing by a person, or the
31 registration of a security under this chapter does not
32 constitute a finding by the administrator that a record filed
33 under this chapter is true, complete, and not misleading. The
34 filing or registration or the availability of an exemption,
35 exception, preemption, or exclusion for a security or a
36 transaction does not mean that the administrator has passed upon

1 the merits or qualifications of, or recommended or given
2 approval to, a person, security, or transaction. It is unlawful
3 to make, or cause to be made, to a purchaser, customer, client,
4 or prospective customer or client a representation inconsistent
5 with this section.

6 Sec. 34. [80A.74] [SECTION 507; QUALIFIED IMMUNITY.]

7 A broker-dealer, agent, investment adviser, federal covered
8 investment adviser, or investment adviser representative is not
9 liable to another broker-dealer, agent, investment adviser,
10 federal covered investment adviser, or investment adviser
11 representative for defamation relating to a statement that is
12 contained in a record required by the administrator, or designee
13 of the administrator, the Securities and Exchange Commission, or
14 a self-regulatory organization, unless the person knew, or
15 should have known at the time that the statement was made, that
16 is was false in a material respect or the person acted in
17 reckless disregard of the statement's truth or falsity.

18 Sec. 35. [80A.75] [SECTION 508; CRIMINAL PENALTIES.]

19 (a) [CRIMINAL PENALTIES.] A person that willfully violates
20 this chapter, or a rule adopted or order issued under this
21 chapter, except section 80A.71 or the notice filing requirements
22 of section 80A.50 or 80A.60, or that willfully violates section
23 80A.72 knowing the statement made to be false or misleading in a
24 material respect, upon conviction, shall be fined not more than
25 \$..... or imprisoned not more than years, or both. An
26 individual convicted of violating a rule or order under this
27 chapter may be fined, but may not be imprisoned, if the
28 individual did not have knowledge of the rule or order.

29 (b) [CRIMINAL REFERENCE NOT REQUIRED.] The attorney general
30 with or without a reference from the administrator, may
31 institute criminal proceedings under this chapter.

32 (c) [NO LIMITATION ON OTHER CRIMINAL ENFORCEMENT.] This
33 chapter does not limit the power of this state to punish a
34 person for conduct that constitutes a crime under other laws of
35 this state.

36 Sec. 36. [80A.76] [SECTION 509; CIVIL LIABILITY.]

1 (a) [SECURITIES LITIGATION UNIFORM STANDARDS
2 ACT.] Enforcement of civil liability under this section is
3 subject to the Securities Litigation Uniform Standards Act of
4 1998.

5 (b) [LIABILITY OF SELLER TO PURCHASER.] A person is liable
6 to the purchaser if the person sells a security in violation of
7 section 80A.49 or, by means of an untrue statement of a material
8 fact or an omission to state a material fact necessary in order
9 to make the statement made, in light of the circumstances under
10 which it is made, not misleading, the purchaser not knowing the
11 untruth or omission and the seller not sustaining the burden of
12 proof that the seller did not know and, in the exercise of
13 reasonable care, could not have known of the untruth or
14 omission. An action under this subsection is governed by the
15 following:

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

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

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

33 (c) [LIABILITY OF PURCHASER TO SELLER.] A person is liable
34 to the seller if the person buys a security by means of an
35 untrue statement of a material fact or omission to state a
36 material fact necessary in order to make the statement made, in

1 light of the circumstances under which it is made, not
2 misleading, the seller not knowing of the untruth or omission,
3 and the purchaser not sustaining the burden of proof that the
4 purchaser did not know, and in the exercise of reasonable care,
5 could not have known of the untruth or omission. An action
6 under this subsection is governed by the following:

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

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

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

25 (d) [LIABILITY OF UNREGISTERED BROKER-DEALER AND AGENT.] A
26 person acting as a broker-dealer or agent that sells or buys a
27 security in violation of section 80A.56(a), 80A.57(a), or 80A.73
28 is liable to the customer. The customer, if a purchaser, may
29 maintain an action for recovery of actual damages as specified
30 in subsections (b)(1) through (3), or, if a seller, for a remedy
31 as specified in subsections (c)(1) through (3).

32 (e) [LIABILITY OF UNREGISTERED INVESTMENT ADVISER AND
33 INVESTMENT ADVISER REPRESENTATIVE.] A person acting as an
34 investment adviser or investment adviser representative that
35 provides investment advice for compensation in violation of
36 section 80A.58(a), 80A.59(a), or 80A.73 is liable to the

1 client. The client may maintain an action to recover the
2 consideration paid for the advice, interest from the date of
3 payment, costs, and reasonable attorneys' fees determined by the
4 court.

5 (f) [LIABILITY FOR INVESTMENT ADVICE.] A person that
6 receives directly or indirectly any consideration for providing
7 investment advice to another person and that employs a device,
8 scheme, or artifice to defraud the other person or engages in an
9 act, practice, or course of business that operates or would
10 operate as a fraud or deceit on the other person, is liable to
11 the other person. An action under this subsection is governed
12 by the following:

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

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

23 (g) [JOINT AND SEVERAL LIABILITY.] The following persons
24 are liable jointly and severally with and to the same extent as
25 persons liable under subsections (b) through (f):

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

32 (2) an individual who is a managing partner, executive
33 officer, or director of a person liable under subsections (b)
34 through (f), including an individual having a similar status or
35 performing similar functions, unless the individual sustains the
36 burden of proof that the individual did not know and, in the

1 exercise of reasonable care could have have known, of the
2 existence of conduct by reason of which the liability is alleged
3 to exist;

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

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

18 (h) [RIGHT OF CONTRIBUTION.] A person liable under this
19 section has a right of contribution as in cases of tort against
20 any other person liable under this section for the same conduct.

21 (i) [SURVIVAL OF CAUSE OF ACTION.] A cause of action under
22 this section survives the death of an individual who might have
23 been a plaintiff or defendant.

24 (j) [STATUTE OF LIMITATIONS.] A person may not obtain
25 relief:

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

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

34 (k) [NO ENFORCEMENT OF VIOLATIVE CONTRACT.] A person that
35 has made, or has engaged in the performance of, a contract in
36 violation of this chapter or a rule adopted or order issued

1 under this chapter, or that has acquired a purported right under
2 the contract with knowledge of conduct by reason of which its
3 making or performance was in violation of this chapter, may not
4 base an action on the contract.

5 (1) NO CONTRACTUAL WAIVER.] A condition, stipulation, or
6 provision binding a person purchasing or selling a security or
7 receiving investment advice to waive compliance with this
8 chapter or a rule adopted or order issued under this chapter is
9 void.

10 (m) [SURVIVAL OF OTHER RIGHT OR REMEDIES.] The rights and
11 remedies provided by this chapter are in addition to any other
12 rights or remedies that may exist, but this chapter does not
13 create a cause of action not specified in this section or
14 section 80A.66(e).

15 Sec. 37. [80A.77] [SECTION 510; RESCISSION OFFERS.]

16 A purchaser, seller, or recipient of investment advice may
17 not maintain an action under section 80A.76 if:

18 (1) the purchaser, seller, or recipient of investment
19 advice receives in a record, before the action is instituted:

20 (A) an offer stating the respect in which liability under
21 section 80A.76 may have arisen and fairly advising the
22 purchaser, seller, or recipient of investment advice of that
23 person's rights in connection with the offer, and any financial
24 or other information necessary to correct all material
25 misrepresentations or omissions in the information that was
26 required by this chapter to be furnished to that person at the
27 time of this purchase, sale, or investment advice;

28 (B) if the basis for relief under this section may have
29 been a violation of section 80A.76(b), an offer to repurchase
30 the security for cash, payable on delivery of the security,
31 equal to the consideration paid, and interest from the date of
32 the purchase, less the amount of any income received on the
33 security, or, if the purchaser no longer owns the security, an
34 offer to pay the purchaser upon acceptance of the offer damages
35 in an amount that would be recoverable upon a tender, less the
36 value of the security when the purchaser disposed of it, and

1 interest from the date of the purchase in cash equal to the
2 damages computed in the manner provided in this subsection.

3 (C) if the basis for relief under this section may have
4 been a violation of section 80A.76(c), an offer to tender the
5 security, on payment by the seller of an amount equal to the
6 purchase price paid, less income received on the security by the
7 purchaser and interest from the date of the sale; or if the
8 purchaser no longer owns the security, an offer to pay the
9 seller upon acceptance of the offer, in cash, damages in the
10 amount of the difference between the price at which the security
11 was purchased and the value the security would have had at the
12 time of the purchase in the absence of the purchaser's conduct
13 that may have caused liability and interest from the date of the
14 sale.

15 (D) if the basis for relief under this section may have
16 been a violation of section 80A.76(d); and if the customer is a
17 purchaser, an offer to pay as specified in subparagraph (B); or,
18 if the customer is a seller, an offer to tender or to pay as
19 specified in subparagraph (C);

20 (E) if the basis for relief under this section may have
21 been a violation of section 80A.76(e), an offer to reimburse in
22 cash the consideration paid for the advice and interest from the
23 date of payment; or

24 (F) if the basis for relief under this section may have
25 been a violation of section 80A.76(f), an offer to reimburse in
26 cash the consideration paid for the advice, the amount of any
27 actual damages that may have been caused by the conduct, and
28 interest from the date of the violation causing the loss;

29 (2) the offer under paragraph (1) states that it must be
30 accepted by the purchaser, seller, or recipient of investment
31 advice within 30 days after the date of its receipt by the
32 purchaser, seller, or recipient of investment advice or any
33 shorter period, of not less than three days, that the
administrator, by order, specifies;

35 (3) the offeror has the present ability to pay the amount
36 offered or to tender the security under paragraph (1);

1 (4) the offer under paragraph (1) is delivered to the
2 purchaser, seller, or recipient of investment advice, or sent in
3 a manner that ensures receipt by the purchaser, seller, or
4 recipient of investment advice; and

5 (5) the purchaser, seller, or recipient of investment
6 advice that accepts the offer under paragraph (1) in a record
7 within the period specified under paragraph (2) is paid in
8 accordance with the terms of the offer.

9 ADMINISTRATION AND JUDICIAL REVIEW

10 Sec. 38. [80A.78] [SECTION 601; ADMINISTRATION.]

11 (a) [ADMINISTRATION.] The administrator shall administer
12 this chapter.

13 (b) [UNLAWFUL USE OF RECORDS OR INFORMATION.] It is
14 unlawful for the administrator or an officer, employee, or
15 designee of the administrator to use for personal benefit or the
16 benefit of others records or other information obtained by or
17 filed with the administrator that are not public under section
18 80A.84(b). This chapter does not authorize the administrator or
19 an officer, employee, or designee of the administrator to
20 disclose the record or information, except in accordance with
21 section 80A.79, 80A.84(c), or 80A.85.

22 (c) [NO PRIVILEGE OR EXEMPTION CREATED OR DIMINISHED.] This
23 chapter does not create or diminish a privilege or exemption
24 that exists at common law, by statute or rule, or otherwise.

25 (d) [INVESTOR EDUCATION.] The administrator may develop and
26 implement investor education initiatives to inform the public
27 about investing in securities, with particular emphasis on the
28 prevention and detection of securities fraud. In developing and
29 implementing these initiatives, the administrator may
30 collaborate with public and nonprofit organizations with an
31 interest in investor education. The administrator may accept a
32 grant or donation from a person that is not affiliated with the
33 securities industry or from a nonprofit organization, regardless
34 of whether the organization is affiliated with the securities
35 industry, to develop and implement investor education
36 initiatives. This subsection does not authorize the

1 administrator to require participation or monetary contributions
2 of a registrant in an investor education program.

3 (e) [THE SECURITIES INVESTOR EDUCATION AND TRAINING
4 FUND.] The Securities Investor Education and Training Fund is
5 created to provide funds for the purposes specified in
6 subsection (d). All money received by the state by reason of
7 civil penalties pursuant to this chapter must be deposited in
8 the Securities Investor Education and Training Fund and are
9 appropriated to the administrator.

10 Sec. 39. [80A.79] [SECTION 602; INVESTIGATIONS AND
11 SUBPOENAS.]

12 (a) [AUTHORITY TO INVESTIGATE.] The administrator may:

13 (1) conduct public or private investigations within or
14 outside of this state which the administrator considers
15 necessary or appropriate to determine whether a person has
16 violated, is violating, or is about to violate this chapter or a
17 rule adopted or order issued under this chapter, or to aid in
18 the enforcement of this chapter or in the adoption of rules and
19 forms under this chapter;

20 (2) require or permit a person to testify, file a
21 statement, or produce a record, under oath or otherwise as the
22 administrator determines, as to all the facts and circumstances
23 concerning a matter to be investigated or about which an action
24 or proceeding is to be instituted; and

25 (3) publish a record concerning an action, proceeding, or
26 an investigation under, or a violation of, this chapter or a
27 rule adopted or order issued under this chapter if the
28 administrator determines it is necessary or appropriate in the
29 public interest and for the protection of investors.

30 (b) [ADMINISTRATOR POWERS TO INVESTIGATE.] For the purpose
31 of an investigation under this chapter, the administrator or its
32 designated officer may administer oaths and affirmations,
33 subpoena witnesses, seek compulsion of attendance, take
34 evidence, require the filing of statements, and require the
35 production of any records that the administrator considers
36 relevant or material to the investigation.

1 (c) [PROCEDURE AND REMEDIES FOR NONCOMPLIANCE.] If a person
2 does not appear or refuses to testify, file a statement, produce
3 records, or otherwise does not obey a subpoena as required by
4 the administrator under this chapter, the administrator may
5 refer the matter to the attorney general, who may apply to the
6 district court or a court of another state to enforce
7 compliance. The court may:

8 (1) hold the person in contempt;

9 (2) order the person to appear before the administrator;

10 (3) order the person to testify about the matter under
11 investigation or in question;

12 (4) order the production of records;

13 (5) grant injunctive relief, including restricting or
14 prohibiting the offer or sale of securities or the providing of
15 investment advice;

16 (6) impose a civil penalty of not less than \$..... and
17 not greater than \$..... for each violation; and

18 (7) grant any other necessary or appropriate relief.

19 (d) [APPLICATION FOR RELIEF.] This section does not
20 preclude a person from applying to the district court or a court
21 of another state for relief from a request to appear, testify,
22 file a statement, produce records, or obey a subpoena.

23 (e) [USE IMMUNITY PROCEDURE.] An individual is not excused
24 from attending, testifying, filing a statement, producing a
25 record or other evidence, or obeying a subpoena of the
26 administrator under this chapter or in an action or proceeding
27 instituted by the administrator under this chapter on the ground
28 that the required testimony, statement, record, or other
29 evidence, directly or indirectly, may tend to incriminate the
30 individual or subject the individual to a criminal fine,
31 penalty, or forfeiture. If the individual refuses to testify,
32 file a statement or produce a record or other evidence on the
33 basis of the individual's privilege against self-incrimination,
34 the administrator may apply to the district court to compel the
35 testimony, the filing of the statement, the production of the
36 record, or the giving of other evidence. The testimony, record,

1 or other evidence compelled under such an order may not be used,
2 directly or indirectly, against the individual in a criminal
3 case, except in a prosecution for perjury or contempt or
4 otherwise failing to comply with the order.

5 (f) [ASSISTANCE TO SECURITIES REGULATOR OF ANOTHER
6 JURISDICTION.] At the request of the securities regulator of
7 another state or a foreign jurisdiction, the administrator may
8 provide assistance if the requesting regulator states that it is
9 conducting an investigation to determine whether a person has
10 violated, is violating, or is about to violate a law or rule of
11 the other state or foreign jurisdiction relating to securities
12 matters that the requesting regulator administers or enforces.
13 The administrator may provide the assistance by using the
14 authority to investigate and the powers conferred by this
15 section as the administrator determines is necessary or
16 appropriate. The assistance may be provided without regard to
17 whether the conduct described in the request would also
18 constitute a violation of this chapter or other law of this
19 state if occurring in this state. In deciding whether to
20 provide the assistance, the administrator may consider whether
21 the requesting regulator is permitted and has agreed to provide
22 assistance reciprocally within its state or foreign jurisdiction
23 to the administrator on securities matters when requested;
24 whether compliance with the request would violate or prejudice
25 the public policy of this state; and the availability of
26 resources and employees of the administrator to carry out the
27 request for assistance.

28 Sec. 40. [80A.80] [SECTION 603; CIVIL ENFORCEMENT.]

29 (a) [CIVIL ACTION INSTITUTED BY ADMINISTRATOR.] If the
30 administrator believes that a person has engaged, is engaging,
31 or is about to engage in an act, practice, or course of business
32 constituting a violation of this chapter or a rule adopted or
33 order issued under this chapter or that a person has, is, or is
34 about to engage in an act, practice, or course of business that
35 materially aids a violation of this chapter or a rule adopted or
36 order issued under this chapter, the administrator may maintain

1 an action in the district court to enjoin the act, practice, or
2 course of business and to enforce compliance with this chapter
3 or a rule adopted or order issued under this chapter.

4 (b) [RELIEF AVAILABLE.] In an action under this section and
5 on a proper showing, the court may:

6 (1) issue a permanent or temporary injunction, restraining
7 order, or declaratory judgment;

8 (2) order other appropriate or ancillary relief, which may
9 include:

10 (A) an asset freeze, accounting, writ of attachment, writ
11 of general or specific execution, and appointment of a receiver
12 or conservator, that may be the administrator, for the defendant
13 or the defendant's assets;

14 (B) ordering the administrator to take charge and control
15 of a defendant's property, including investment accounts and
16 accounts in a depository institution, rents, and profits; to
17 collect debts; and to acquire and dispose of property;

18 (C) imposing a civil penalty up to \$..... for a single
19 violation or up to \$..... for more than one violation; an
20 order of rescission, restitution, or disgorgement directed to a
21 person that has engaged in an act, practice, or course of
22 business constituting a violation of this chapter or the
23 predecessor act or a rule adopted or order issued under this
24 chapter or the predecessor act; and

25 (D) ordering the payment of prejudgment and postjudgment
26 interest; or

27 (3) order such other relief as the court considers
28 appropriate.

29 (c) [NO BOND REQUIRED.] The administrator may not be
30 required to post a bond in an action or proceeding under this
31 chapter.

32 Sec. 41. [80A.81] [SECTION 604; ADMINISTRATIVE
33 ENFORCEMENT.]

34 (a) [ISSUANCE OF AN ORDER OR NOTICE.] If the administrator
35 determines that a person has engaged, is engaging, or is about
36 to engage in an act, practice, or course of business

1 constituting a violation of this chapter or a rule adopted or
2 order issued under this chapter or that a person has materially
3 aided, is materially aiding, or is about to materially aid an
4 act, practice, or course of business constituting a violation of
5 this chapter or a rule adopted or order issued under this
6 chapter, the administrator may:

7 (1) issue an order directing the person to cease and desist
8 from engaging in the act, practice, or course of business or to
9 take other action necessary or appropriate to comply with this
10 chapter;

11 (2) issue an order denying, suspending, revoking, or
12 conditioning the exemptions for a broker-dealer under section
13 80A.56(b)(1)(D) or (F) or an investment adviser under section
14 80A.58(b)(1)(C); or

15 (3) issue an order under section 80A.48.

16 (b) [SUMMARY PROCESS.] An order under subsection (a) is
17 effective on the date of issuance. Upon issuance of the order,
18 the administrator shall promptly serve each person subject to
19 the order with a copy of the order and a notice that the order
20 has been entered. The order must include a statement whether
21 the administrator will seek a civil penalty or costs of the
22 investigation, a statement of the reasons for the order, and
23 notice that, within 15 days after receipt of a request in a
24 record from the person, the matter will be scheduled for a
25 hearing. If a person subject to the order does not request a
26 hearing and none is ordered by the administrator within 30 days
27 after the date of service of the order, the order, which may
28 include a civil penalty or costs of the investigation if a civil
29 penalty or costs were sought in the statement accompanying the
30 order, becomes final as to that person by operation of law. If
31 a hearing is requested or ordered, the administrator, after
32 notice of an opportunity for hearing to each person subject to
33 the order, may modify or vacate the order or extend it until
4 final determination.

35 (c) [PROCEDURE FOR FINAL ORDER.] If a hearing is requested
36 or ordered pursuant to subsection (b), a hearing must be held

1 under chapter 14. A final order may not be issued unless the
2 administrator makes findings of fact and conclusions of law in a
3 record according to chapter 14. The final order may make final,
4 vacate, or modify the order issued under subsection (a).

5 (d) [CIVIL PENALTY.] In a final order under subsection (c),
6 the administrator may impose a civil penalty up to \$..... for
7 a single violation or up to \$..... for more than one violation.

8 (e) [COSTS.] In a final order, the administrator may charge
9 the actual cost of an investigation or proceeding for a
10 violation of this chapter or a rule adopted or order issued
11 under this chapter.

12 (f) [FILING OF CERTIFIED FINAL ORDER WITH COURT; EFFECT OF
13 FILING.] If a petition for judicial review of a final order is
14 not filed in accordance with section 80A.86, the administrator
15 may file a certified copy of the final order with the clerk of a
16 court of competent jurisdiction. The order so filed has the
17 same effect as a judgment of the court and may be recorded,
18 enforced, or satisfied in the same manner as a judgment of the
19 court.

20 (g) [ENFORCEMENT BY COURT; FURTHER CIVIL PENALTY.] If a
21 person does not comply with an order under this section, the
22 administrator may petition a court of competent jurisdiction to
23 enforce the order. The court may not require the administrator
24 to post a bond in an action or proceeding under this section.
25 If the court finds, after service and opportunity for hearing,
26 that the person was not in compliance with the order, the court
27 may adjudge the person in civil contempt of the order. The
28 court may impose a further civil penalty against the person for
29 contempt in an amount not less than \$..... but not greater
30 than \$..... for each violation and may grant any other relief
31 the court determines is just and proper in the circumstances.

32 Sec. 42. [80A.82] [SECTION 605; RULES, FORMS, ORDERS,
33 INTERPRETATIVE OPINIONS, AND HEARINGS.]

34 (a) [ISSUANCE AND ADOPTION OF FORMS, ORDERS, AND
35 RULES.] The administrator may:

36 (1) issue forms and orders and, after notice and comment,

1 may adopt and amend rules necessary or appropriate to carry out
2 this chapter and may repeal rules, including rules and forms
3 governing registration statements, applications, notice filings,
4 reports, and other records;

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

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

10 (b) [FINDINGS AND COOPERATION.] Under this chapter, a rule
11 or form may not be adopted or amended, or an order issued or
12 amended, unless the administrator finds that the rule, form,
13 order, or amendment is necessary or appropriate in the public
14 interest or for the protection of investors and is consistent
15 with the purposes intended by this chapter. In adopting,
16 amending, and repealing rules and forms, section 80A.85 applies
17 in order to achieve uniformity among the states and coordination
18 with federal laws in the form and content of registration
19 statements, applications, reports, and other records, including
20 the adoption of uniform rules, forms, and procedures.

21 (c) [FINANCIAL STATEMENTS.] Subject to Section 15(h) of the
22 Securities Exchange Act and Section 222 of the Investment
23 Advisers Act of 1940, the administrator may require that a
24 financial statement filed under this chapter be prepared in
25 accordance with generally accepted accounting principles in the
26 United States and comply with other requirements specified by
27 rule adopted or order issued under this chapter. A rule adopted
28 or order issued under this chapter may establish:

29 (1) subject to Section 15(h) of the Securities Exchange Act
30 and Section 222 of the Investment Advisers Act of 1940, the form
31 and content of financial statements required under this chapter;

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

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

36 (d) [INTERPRETATIVE OPINIONS.] The administrator may

1 provide interpretive opinions or issue determinations that the
2 administrator will not institute a proceeding or an action under
3 this chapter against a specified person for engaging in a
4 specified act, practice, or course of business if the
5 determination is consistent with this chapter. A rule adopted
6 or order issued under this chapter may establish a reasonable
7 charge for interpretative opinions or determinations that the
8 administrator will not institute an action or a proceeding under
9 this chapter.

10 (e) [EFFECT OF COMPLIANCE.] A penalty under this chapter
11 may not be imposed for, and liability does not arise from
12 conduct that is engaged in or omitted in good faith believing it
13 conforms to a rule, form, or order of the administrator under
14 this chapter.

15 (f) [PRESUMPTION FOR PUBLIC HEARINGS.] A hearing in an
16 administrative proceeding under this chapter must be conducted
17 in public unless the administrator for good cause consistent
18 with this chapter determines that the hearing will not be so
19 conducted.

20 Sec. 43. [80A.83] [SECTION 606; ADMINISTRATIVE FILES AND
21 OPINIONS.]

22 (a) [PUBLIC REGISTER OF FILINGS.] The administrator shall
23 maintain, or designate a person to maintain, a register of
24 applications for registration of securities; registration
25 statements; notice filings; applications for registration of
26 broker-dealers, agents, investment advisers, and investment
27 adviser representatives; notice filings by federal covered
28 investment advisers that are or have been effective under this
29 chapter or the predecessor act; notices of claims of exemption
30 from registration or notice filing requirements contained in a
31 record; orders issued under this chapter or the predecessor act;
32 and interpretative opinions or no action determinations issued
33 under this chapter.

34 (b) [PUBLIC AVAILABILITY.] The administrator shall make all
35 rules, forms, interpretative opinions, and orders available to
36 the public.

1 (c) [COPIES OF PUBLIC RECORDS.] The administrator shall
2 furnish a copy of a record that is a public record or a
3 certification that the public record does not exist to a person
4 that so requests. A rule adopted under this chapter may
5 establish a reasonable charge for furnishing the record or
6 certification. A copy of the record certified or a certificate
7 by the administrator of a record's nonexistence is prima facie
8 evidence of a record or its nonexistence.

9 Sec. 44. [80A.84] [SECTION 607; PUBLIC RECORDS;
10 CONFIDENTIALITY.]

11 (a) [PRESUMPTION OF PUBLIC RECORDS.] Except as otherwise
12 provided in subsection (b), records obtained by the
13 administrator or filed under this chapter, including a record
14 contained in or filed with a registration statement,
15 application, notice filing, or report, are public records and
16 are available for public examination.

17 (b) [NONPUBLIC RECORDS.] The following records are not
18 public records and are not available for public examination
19 under subsection (a):

20 (1) a record obtained by the administrator in connection
21 with an audit or inspection under section 80A.66(d) or an
22 investigation under section 80A.79;

23 (2) a part of a record filed in connection with a
24 registration statement under sections 80A.49 and 80A.51 through
25 80A.53 or a record under section 80A.66(d) that contains trade
26 secrets or confidential information if the person filing the
27 registration statement or report has asserted a claim of
28 confidentiality or privilege that is authorized by law;

29 (3) a record that is not required to be provided to the
30 administrator or filed under this chapter and is provided to the
31 administrator only on the condition that the record will not be
32 subject to public examination or disclosure;

33 (4) a nonpublic record received from a person specified in
34 section 80A.85(a);

35 (5) any social security number, residential address unless
36 used as a business address, and residential telephone number

1 contained in a record that is filed; and

2 (6) a record obtained by the administrator through a
3 designee of the administrator that a rule or order under this
4 chapter determines has been:

5 (A) expunged from the administrator's records by the
6 designee; or

7 (B) determined to be nonpublic or nondisclosable by that
8 designee if the administrator finds the determination to be in
9 the public interest and for the protection of investors.

10 (c) [ADMINISTRATOR DISCRETION TO DISCLOSE.] If disclosure
11 is for the purpose of a civil, administrative, or criminal
12 investigation, action, or proceeding or to a person specified in
13 section 80A.85(a), the administrator may disclose a record
14 obtained in connection with an audit or inspection under section
15 80A.66(d) or a record obtained in connection with an
16 investigation under section 80A.79.

17 Sec. 45. [80A.85] [SECTION 608; UNIFORMITY AND COOPERATION
18 WITH OTHER AGENCIES.]

19 (a) [OBJECTIVE OF UNIFORMITY.] The administrator shall, in
20 its discretion, cooperate, coordinate, consult, and, subject to
21 section 80A.84, share records and information with the
22 securities regulator of another state, Canada, a Canadian
23 province or territory, a foreign jurisdiction, the Securities
24 and Exchange Commission, the United States Department of
25 Justice, the Commodity Futures Trading Commission, the Federal
26 Trade Commission, the Securities Investor Protection
27 Corporation, a self-regulatory organization, a national or
28 international organization of securities regulators, a federal
29 or state banking and insurance regulator, and a governmental law
30 enforcement agency to effectuate greater uniformity in
31 securities matters among the federal government, self-regulatory
32 organizations, states, and foreign governments.

33 (b) [POLICIES TO CONSIDER.] In cooperating, coordinating,
34 consulting, and sharing records and information under this
35 section and in acting by rule, order, or waiver under this
36 chapter, the administrator shall, in its discretion, take into

1 consideration in carrying out the public interest the following
2 general policies:

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

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

7 (3) minimizing burdens on the business of capital
8 formation, without adversely effecting essentials of investor
9 protection.

10 (c) [SUBJECTS FOR COOPERATION.] The cooperation,
11 coordination, consultation, and sharing of records and
12 information authorized by this section includes:

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

17 (2) developing and maintaining uniform forms;

18 (3) conducting a joint examination or investigation;

19 (4) holding a joint administrative hearing;

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

22 (6) sharing and exchanging personnel;

23 (7) coordinating registrations under sections 80A.49 and
24 80A.56 through 80A.59 and exemptions under section 80A.47;

25 (8) sharing and exchanging records, subject to section
26 80A.84;

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

29 (10) formulating common systems and procedures;

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

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

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

4 Sec. 46. [80A.86] [SECTION 609; JUDICIAL REVIEW.]

5 (a) [JUDICIAL REVIEW OF ORDERS.] A final order issued by
6 the administrator under this chapter is subject to judicial
7 review in accordance with chapter 14.

8 (b) [JUDICIAL REVIEW OF RULES.] A rule adopted under this
9 chapter is subject to judicial review in accordance with chapter
10 14.

11 Sec. 47. [80A.87] [SECTION 610; JURISDICTION.]

12 (a) [SALES AND OFFERS TO SELL.] Sections 80A.49, 80A.50,
13 80A.56(a), 80A.57(a), 80A.58(a), 80A.59(a), 80A.68, 80A.73,
14 80A.76, and 80A.77 do not apply to a person that sells or offers
15 to sell a security unless the offer to sell or the sale is made
16 in this state or the offer to purchase or the purchase is made
17 and accepted in this state.

18 (b) [PURCHASES AND OFFERS TO PURCHASE.] Sections 80A.56(a),
19 80A.57(a), 80A.58(a), 80A.59(a), 80A.68, 80A.73, 80A.76, and
20 80A.77 do not apply to a person that purchases or offers to
21 purchase a security unless the offer to purchase or the purchase
22 is made in this state or the offer to sell or the sale is made
23 and accepted in this state.

24 (c) [OFFERS IN THIS STATE.] For the purpose of this
25 section, an offer to sell or to purchase a security is made in
26 this state, whether or not either party is then present in this
27 state, if the offer:

28 (1) originates from within this state; or

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

31 (d) [ACCEPTANCES IN THIS STATE.] For the purpose of this
32 section, an offer to purchase or to sell is accepted in this
33 state, whether or not either party is then present in this
34 state, if the acceptance:

35 (1) is communicated to the offeror in this state and the
36 offeree reasonably believes the offeror to be present in this

1 state and the acceptance is received at the place in this state
2 to which it is directed; and

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

5 (e) [PUBLICATIONS, RADIO, TELEVISION, OR ELECTRONIC
6 COMMUNICATIONS.] An offer to sell or to purchase is not made in
7 this state when a publisher circulates or there is circulated on
8 the publisher's behalf in this state a bona fide newspaper or
9 other publication of general, regular, and paid circulation that
10 is not published in this state, or that is published in this
11 state but has had more than two-thirds of its circulation
12 outside this state during the previous 12 months or when a radio
13 or television program or other electronic communication
14 originating outside this state is received in this state. A
15 radio or television program, or other electronic communication
16 is considered as having originated in this state if either the
17 broadcast studio or the originating source of transmission is
18 located in this state, unless:

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

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

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

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

34 (f) [INVESTMENT ADVICE AND MISREPRESENTATIONS.] Sections
35 80A.58(a), 80A.59(a), 80A.60(a), 80A.69, 80A.72, and 80A.73
36 apply to a person if the person engages in an act, practice, or

1 course of business instrumental in effecting prohibited or
2 actionable conduct in this state, whether or not either party is
3 then present in this state.

4 Sec. 48. [80A.88] [SECTION 611; SERVICE OF PROCESS.]

5 (a) [SIGNED CONSENT TO SERVICE OF PROCESS.] A consent to
6 service of process complying with this section required by this
7 chapter must be signed and filed in the form required by a rule
8 or order under this chapter. A consent appointing the
9 administrator the person's agent for service of process in a
10 noncriminal action or proceeding against the person, or the
11 person's successor or personal representative under this chapter
12 or a rule adopted or order issued under this chapter after the
13 consent is filed, has the same force and validity as if the
14 service were made personally on the person filing the consent.
15 A person that has filed a consent complying with this subsection
16 in connection with a previous application for registration or
17 notice filing need not file an additional consent.

18 (b) [CONDUCT CONSTITUTING APPOINTMENT OF AGENT FOR
19 SERVICE.] If a person, including a nonresident of this state,
20 engages in an act, practice, or course of business prohibited or
21 made actionable by this chapter or a rule adopted or order
22 issued under this chapter and the person has not filed a consent
23 to service of process under subsection (a), the act, practice,
24 or course of business constitutes the appointment of the
25 administrator as the person's agent for service of process in a
26 noncriminal action or proceeding against the person or the
27 person's successor or personal representative.

28 (c) [PROCEDURE FOR SERVICE OF PROCESS.] Service under
29 subsection (a) or (b) may be made by providing a copy of the
30 process to the office of the administrator, but it is not
31 effective unless:

32 (1) the plaintiff, which may be the administrator, promptly
33 sends notice of the service and a copy of the process, return
34 receipt requested, to the defendant or respondent at the address
35 set forth in the consent to service of process or, if a consent
36 to service of process has not been filed, at the last known

1 address, or takes other reasonable steps to give notice; and
2 (2) the plaintiff files an affidavit of compliance with
3 this subsection in the action or proceeding on or before the
4 return day of the process, if any, or within the time that the
5 court, or the administrator in a proceeding before the
6 administrator, allows.

7 (d) [SERVICE IN ADMINISTRATIVE PROCEEDINGS OR CIVIL ACTIONS
8 BY ADMINISTRATOR.] Service pursuant to subsection (c) may be
9 used in a proceeding before the administrator or by the
10 administrator in a civil action in which the administrator is
11 the moving party.

12 (e) [OPPORTUNITY TO DEFEND.] If process is served under
13 subsection (c), the court, or the administrator in a proceeding
14 before the administrator, shall order continuances as are
15 necessary or appropriate to afford the defendant or respondent
16 reasonable opportunity to defend.

17 Sec. 49. [80A.89] [SECTION 612; SEVERABILITY CLAUSE.]

18 If any provision of this chapter or its application to any
19 person or circumstances is held invalid, the invalidity does not
20 affect other provisions or applications of this chapter that can
21 be given effect without the invalid provision or application,
22 and to this end the provisions of this chapter are severable.

23 TRANSITION

24 Sec. 50. [80A.90] [SECTION 703; APPLICATION OF ACT TO
25 EXISTING PROCEEDING AND EXISTING RIGHTS AND DUTIES.]

26 (a) [APPLICABILITY OF PREDECESSOR ACT TO PENDING
27 PROCEEDINGS AND EXISTING RIGHTS.] The predecessor act
28 exclusively governs all actions or proceedings that are pending
29 on the effective date of this chapter or may be instituted on
30 the basis of conduct occurring before the effective date of this
31 chapter, but a civil action may not be maintained to enforce any
32 liability under the predecessor act unless instituted within any
33 period of limitation that applied when the cause of action
34 accrued or within five years after the effective date of this
35 chapter, whichever is earlier.

36 (b) [CONTINUED EFFECTIVENESS UNDER PREDECESSOR ACT.] All

1 effective registrations under the predecessor act, all
 2 administrative orders relating to the registrations, rules,
 3 statements of policy, interpretative opinions, declaratory
 4 rulings, no action determinations, and conditions imposed on the
 5 registrations under the predecessor act remain in effect while
 6 they would have remained in effect if this chapter had not been
 7 enacted. They are considered to have been filed, issued, or
 8 composed under this chapter, but are exclusively governed by the
 9 predecessor act.

10 (c) [APPLICABILITY OF PREDECESSOR ACT TO OFFERS OR
 11 SALES.] The predecessor act exclusively applies to an offer or
 12 sale made within one year after the effective date of this
 13 chapter pursuant to an offering made in good faith before the
 14 effective date of this chapter on the basis of an exemption
 15 available under the predecessor act.

16 Sec. 51. [REPEALER.]

17 Minnesota Statutes 2004, sections 80A.01; 80A.02; 80A.03;
 18 80A.04; 80A.041; 80A.05; 80A.06; 80A.07; 80A.08; 80A.09; 80A.10;
 19 80A.11; 80A.115; 80A.12; 80A.122; 80A.125; 80A.13; 80A.14;
 20 80A.15; 80A.16; 80A.17; 80A.18; 80A.19; 80A.22; 80A.23; 80A.24;
 21 80A.25; 80A.26; 80A.27; 80A.28; 80A.29; 80A.30; and 80A.31, are
 22 repealed.

23 Sec. 52. [EFFECTIVE DATE.]

24 This act is effective January 1, 2006.

25 ARTICLE 2

26 CONFORMING CHANGES

27 Section 1. Minnesota Statutes 2004, section 60A.077,
 28 subdivision 9, is amended to read:

29 Subd. 9. [MEMBERSHIP INTERESTS.] A membership interest in
 30 a domestic mutual insurance holding company does not constitute
 31 a security as defined in section ~~80A.147-subdivision-18~~
 32 80A.41(28). No member of a mutual insurance holding company may
 33 transfer or pledge membership in the mutual insurance holding
 34 company or any right arising from the membership except as
 35 attendant to the valid transfer or assignment of the member's
 36 policy in any reorganized company that gave rise to the member's

1 membership interest. A member of a mutual insurance holding
2 company is not, as a member, personally liable for the acts,
3 debts, liabilities, or obligations of the company. No
4 assessments of any kind may be imposed upon the members of a
5 mutual insurance holding company by the directors or members, or
6 because of any liability of any company owned or controlled by
7 the mutual insurance holding company or because of any act,
8 debt, or liability of the mutual insurance holding company. A
9 member's interest in the mutual insurance holding company shall
10 automatically terminate upon cancellation, nonrenewal,
11 expiration, or termination of the member's policy in any
12 insurance company that gave rise to the member's membership
13 interest.

14 Sec. 2. Minnesota Statutes 2004, section 82.23, is amended
15 to read:

16 82.23 [EXCEPTIONS.]

17 Unless a person is licensed or otherwise required to be
18 licensed under this chapter, the term real estate broker does
19 not include:

20 (a) a licensed practicing attorney if the attorney complies
21 in all respects with the trust account provisions of this
22 chapter;

23 (b) a receiver, trustee, administrator, guardian, executor,
24 or other person appointed by or acting under the judgment or
25 order of any court;

26 (c) any person owning and operating a cemetery and selling
27 lots therein solely for use as burial plots;

28 (d) any custodian, janitor, or employee of the owner or
29 manager of a residential building who leases residential units
30 in the building;

31 (e) any bank, trust company, savings association,
32 industrial loan and thrift company, regulated lender under
33 chapter 56, public utility, or land mortgage or farm loan
34 association organized under the laws of this state or the United
35 States, when engaged in the transaction of business within the
36 scope of its corporate powers as provided by law;

1 (f) public officers while performing their official duties;
2 (g) employees of persons enumerated in clauses (b), (e),
3 and (f), when engaged in the specific performance of their
4 duties;

5 (h) any person who acts as an auctioneer bonded in
6 conformity with section 330.02, when that person is engaged in
7 the specific performance of duties as an auctioneer, and when
8 that person has been employed to auction real estate by a person
9 licensed under this chapter or when the auctioneer has engaged a
10 licensed attorney to supervise the real estate transaction;

11 (i) any person who acquires real estate for the purpose of
12 engaging in and does engage in, or who is engaged in the
13 business of constructing residential, commercial or industrial
14 buildings for the purpose of resale if no more than 25 such
15 transactions occur in any 12-month period and the person
16 complies with section 82.50;

17 (j) any person who is licensed as a securities
18 broker-dealer or is licensed as a securities agent representing
19 a broker-dealer pursuant to chapter 80A and who offers to sell
20 or sells an interest or estate in real estate which is a
21 security as defined in section ~~80A.47-subdivision-18~~
22 80A.41(28), and is registered or exempt from registration or
23 part of a transaction exempt from registration pursuant to
24 chapter 80A, when acting solely as an incident to the sale of
25 these securities;

26 (k) any person who offers to sell or sells a business
27 opportunity which is a franchise registered pursuant to chapter
28 80C, when acting solely to sell the franchise;

29 (l) any person who contracts with or solicits on behalf of
30 a provider a contract with a resident or prospective resident to
31 provide continuing care in a facility, pursuant to the
32 Continuing Care Facility Disclosure and Rehabilitation Act
33 (chapter 80D), when acting solely as incident to the contract;

34 (m) any broker-dealer or agent of a broker-dealer when
35 participating in a transaction in which all or part of a
36 business opportunity or business, including any interest

1 therein, is conveyed or acquired pursuant to an asset purchase,
2 merger, exchange of securities, or other business combination,
3 if the agent or broker-dealer is licensed pursuant to chapter
4 80A;

5 (n) an accountant acting incident to the practice of the
6 accounting profession if the accountant complies in all respects
7 with the trust account provisions of this chapter.

8 Sec. 3. Minnesota Statutes 2004, section 82.43,
9 subdivision 7, is amended to read:

10 Subd. 7. [APPLICATION FOR RECOVERY.] When any aggrieved
11 person obtains a final judgment in any court of competent
12 jurisdiction regardless of whether the judgment has been
13 discharged by a bankruptcy court against an individual licensed
14 under this chapter, on grounds of fraudulent, deceptive, or
15 dishonest practices, or conversion of trust funds arising
16 directly out of any transaction when the judgment debtor was
17 licensed and performed acts for which a license is required
18 under this chapter, or performed acts permitted by section
19 327B.04, subdivision 5, the aggrieved person may, upon the
20 judgment becoming final, and upon termination of all
21 proceedings, including reviews and appeals, file a verified
22 application in the court in which the judgment was entered. The
23 application shall state with specificity the grounds upon which
24 the application seeks to recover from the fund, and request an
25 order directing payment out of the fund of the amount of actual
26 and direct out of pocket loss in the transaction, but excluding
27 any attorney's fees, interest on the loss and on any judgment
28 obtained as a result of the loss, up to the sum of \$150,000 of
29 the amount unpaid upon the judgment, provided that nothing in
30 this chapter shall be construed to obligate the fund for more
31 than \$150,000 per claimant, per transaction, subject to the
32 limitations set forth in subdivision 14, regardless of the
33 number of persons aggrieved or parcels of real estate involved
34 in the transaction, provided that regardless of the number of
35 claims against a licensee, nothing in this chapter may obligate
36 the fund for more than \$250,000 per licensee. An aggrieved

1 person who has a cause of action under section ~~80A.23~~ 80A.76
2 shall first seek recovery as provided in section ~~80A.057~~
3 ~~subdivision-5~~ 80A.66(e), before the commissioner may order
4 payment from the recovery fund. For purposes of this section,
5 persons who are joint tenants or tenants in common are deemed to
6 be a single claimant. A copy of the verified application shall
7 be served upon the commissioner and upon the judgment debtor,
8 and a certificate or affidavit of service filed with the court.
9 For the purpose of this section, "aggrieved person" does not
10 include a government agency, financial institution, or other
11 entity that purchases, guarantees, or insures a loan secured by
12 real estate, and does not include a licensee unless (1) the
13 licensee is acting in the capacity of principal in the sale of
14 interests in real property owned by the licensee; or (2) the
15 licensee is acting in the capacity of principal in the purchase
16 of interests in real property to be owned by the licensee.
17 Under no circumstances shall a licensee be entitled to payment
18 under this section for the loss of a commission or similar fee.

19 For the purposes of this section, recovery is limited to
20 transactions where the property involved is intended for the
21 direct personal habitation or commercial use of the buyer.

22 Except for securities permitted to be sold by a licensee
23 pursuant to section 82.41, subdivision 8, for any action
24 commenced after July 1, 1993, recovery under this section is not
25 available where the buyer's participation is for investment
26 purposes only, and is limited to providing capital to fund the
27 transaction.

28 Sec. 4. Minnesota Statutes 2004, section 144A.01,
29 subdivision 4, is amended to read:

30 Subd. 4. [CONTROLLING PERSON.] "Controlling person" means
31 any public body, governmental agency, business entity, officer,
32 nursing home administrator, or director whose responsibilities
33 include the direction of the management or policies of a nursing
34 home. "Controlling person" also means any person who, directly
35 or indirectly, beneficially owns any interest in:

36 (a) Any corporation, partnership or other business

1 association which is a controlling person;

2 (b) The land on which a nursing home is located;

3 (c) The structure in which a nursing home is located;

4 (d) Any mortgage, contract for deed, or other obligation
5 secured in whole or part by the land or structure comprising a
6 nursing home; or

7 (e) Any lease or sublease of the land, structure, or
8 facilities comprising a nursing home.

9 "Controlling person" does not include:

10 (a) A bank, savings bank, trust company, savings
11 association, credit union, industrial loan and thrift company,
12 investment banking firm, or insurance company unless the entity
13 directly or through a subsidiary operates a nursing home;

14 (b) An individual state official or state employee, or a
15 member or employee of the governing body of a political
16 subdivision of the state which operates one or more nursing
17 homes, unless the individual is also an officer or director of a
18 nursing home, receives any remuneration from a nursing home, or
19 owns any of the beneficial interests not excluded in this
20 subdivision;

21 (c) A natural person who is a member of a tax-exempt
22 organization under section 290.05, subdivision 1, clause (i),
23 unless the individual is also an officer or director of a
24 nursing home, or owns any of the beneficial interests not
25 excluded in this subdivision; and

26 (d) A natural person who owns less than five percent of the
27 outstanding common shares of a corporation:

28 (1) whose securities are exempt by virtue of section
29 ~~80A.157-subdivision-17-clause-(f)~~ 80A.45(6); or

30 (2) whose transactions are exempt by virtue of section
31 ~~80A.157-subdivision-27-clause-(b)~~ 80A.46(7).

32 Sec. 5. Minnesota Statutes 2004, section 245A.02,
33 subdivision 5a, is amended to read:

4 Subd. 5a. [CONTROLLING INDIVIDUAL.] "Controlling
35 individual" means a public body, governmental agency, business
36 entity, officer, owner, or managerial official whose

1 responsibilities include the direction of the management or
2 policies of a program. For purposes of this subdivision, owner
3 means an individual who has direct or indirect ownership
4 interest in a corporation, partnership, or other business
5 association issued a license under this chapter. For purposes
6 of this subdivision, managerial official means those individuals
7 who have the decision-making authority related to the operation
8 of the program, and the responsibility for the ongoing
9 management of or direction of the policies, services, or
10 employees of the program. Controlling individual does not
11 include:

12 (1) a bank, savings bank, trust company, savings
13 association, credit union, industrial loan and thrift company,
14 investment banking firm, or insurance company unless the entity
15 operates a program directly or through a subsidiary;

16 (2) an individual who is a state or federal official, or
17 state or federal employee, or a member or employee of the
18 governing body of a political subdivision of the state or
19 federal government that operates one or more programs, unless
20 the individual is also an officer, owner, or managerial official
21 of the program, receives remuneration from the program, or owns
22 any of the beneficial interests not excluded in this
23 subdivision;

24 (3) an individual who owns less than five percent of the
25 outstanding common shares of a corporation:

26 (i) whose securities are exempt under section ~~80A.157~~
27 ~~subdivision-17-clause-(f)~~ 80A.45(6); or

28 (ii) whose transactions are exempt under section ~~80A.157~~
29 ~~subdivision-27-clause-(b)~~ 80A.46(2); or

30 (4) an individual who is a member of an organization exempt
31 from taxation under section 290.05, unless the individual is
32 also an officer, owner, or managerial official of the program or
33 owns any of the beneficial interests not excluded in this
34 subdivision. This clause does not exclude from the definition
35 of controlling individual an organization that is exempt from
36 taxation.

1 Sec. 6. Minnesota Statutes 2004, section 302A.011,
2 subdivision 26, is amended to read:

3 Subd. 26. [SECURITY.] "Security" has the meaning given it
4 in section ~~80A.14, subdivision 18~~ 80A.41(28).

5 Sec. 7. Minnesota Statutes 2004, section 302A.251,
6 subdivision 4, is amended to read:

7 Subd. 4. [ELIMINATION OR LIMITATION OF LIABILITY.] A
8 director's personal liability to the corporation or its
9 shareholders for monetary damages for breach of fiduciary duty
10 as a director may be eliminated or limited in the articles. The
11 articles shall not eliminate or limit the liability of a
12 director:

13 (a) for any breach of the director's duty of loyalty to the
14 corporation or its shareholders;

15 (b) for acts or omissions not in good faith or that involve
16 intentional misconduct or a knowing violation of law;

17 (c) under section 302A.559 or ~~80A.23~~ 80A.76;

18 (d) for any transaction from which the director derived an
19 improper personal benefit; or

20 (e) for any act or omission occurring prior to the date
21 when the provision in the articles eliminating or limiting
22 liability becomes effective.

23 Sec. 8. Minnesota Statutes 2004, section 308A.505, is
24 amended to read:

25 308A.505 [SUBJECT TO SECURITIES LAW.]

26 Cooperatives are subject to the provisions of chapter 80A,
27 except as specifically provided in ~~section-80A.15~~ sections
28 80A.45 and 80A.46.

29 Sec. 9. Minnesota Statutes 2004, section 308B.465,
30 subdivision 2, is amended to read:

31 Subd. 2. [RESTRICTIONS ON LIABILITY LIMITATION.] The
32 articles or bylaws may not eliminate or limit the liability of a
33 director:

34 (1) for a breach of the director's duty of loyalty to the
35 cooperative or its members;

36 (2) for acts or omissions that are not in good faith or

1 involve intentional misconduct or a knowing violation of law;
2 (3) for knowing violations of securities laws ~~under-section~~
3 ~~80A.23~~ or for illegal distributions;
4 (4) for a transaction from which the director derived an
5 improper personal benefit; or
6 (5) for an act or omission occurring before the date when
7 the provision in the articles or bylaws eliminating or limiting
8 liability becomes effective.

9 Sec. 10. Minnesota Statutes 2004, section 322B.03,
10 subdivision 43, is amended to read:

11 Subd. 43. [SECURITY.] "Security" has the meaning given it
12 in section ~~80A.14, subdivision 18~~ 80A.41(28).

13 Sec. 11. Minnesota Statutes 2004, section 322B.663,
14 subdivision 4, is amended to read:

15 Subd. 4. [ELIMINATION OR LIMITATION OF LIABILITY.] A
16 governor's personal liability to the limited liability company
17 or its members for monetary damages for breach of fiduciary duty
18 as a governor may be eliminated or limited in the articles of
19 organization or a member control agreement. Neither the
20 articles nor a member control agreement may eliminate or limit
21 the liability of a governor:

22 (1) for any breach of the governor's duty of loyalty to the
23 limited liability company or its members;

24 (2) for acts or omissions not in good faith or that involve
25 intentional misconduct or a knowing violation of law;

26 (3) under section ~~80A.23~~ 80A.76 or 322B.56;

27 (4) for any transaction from which the governor derived an
28 improper personal benefit; or

29 (5) for any act or omission occurring before the date when
30 the provision in the articles of organization or a member
31 control agreement eliminating or limiting liability becomes
32 effective.

33 Sec. 12. Minnesota Statutes 2004, section 356A.06,
34 subdivision 6, is amended to read:

35 Subd. 6. [LIMITED LIST OF AUTHORIZED INVESTMENT
36 SECURITIES.] (a) Except to the extent otherwise authorized by

1 law, a covered pension plan may invest its assets only in
2 investment securities authorized by this subdivision if the plan
3 does not:

4 (1) have assets with a book value in excess of \$1,000,000;

5 (2) use the services of an investment advisor registered
6 with the Securities and Exchange Commission in accordance with
7 the Investment Advisers Act of 1940, or ~~licensed~~ registered as
8 an investment advisor in accordance with sections ~~80A-047~~
9 ~~subdivision-4~~ 80A.58, and ~~80A-147-subdivision-9~~ 80A.59, for the
10 investment of at least 60 percent of its assets, calculated on
11 book value;

12 (3) use the services of the State Board of Investment for
13 the investment of at least 60 percent of its assets, calculated
14 on book value; or

15 (4) use a combination of the services of an investment
16 advisor meeting the requirements of clause (2) and the services
17 of the State Board of Investment for the investment of at least
18 75 percent of its assets, calculated on book value.

19 (b) Investment securities authorized for a pension plan
20 covered by this subdivision are:

21 (1) certificates of deposit issued, to the extent of
22 available insurance or collateralization, by a financial
23 institution that is a member of the Federal Deposit Insurance
24 Corporation or the Federal Savings and Loan Insurance
25 Corporation, is insured by the National Credit Union
26 Administration, or is authorized to do business in this state
27 and has deposited with the chief administrative officer of the
28 plan a sufficient amount of marketable securities as collateral
29 in accordance with section 118A.03;

30 (2) savings accounts, to the extent of available insurance,
31 with a financial institution that is a member of the Federal
32 Deposit Insurance Corporation or the Federal Savings and Loan
33 Insurance Corporation;

34 (3) governmental obligations, including bonds, notes,
35 bills, or other fixed obligations, issued by the United States,
36 an agency or instrumentality of the United States, an

1 organization established and regulated by an act of Congress or
2 by a state, state agency or instrumentality, municipality, or
3 other governmental or political subdivision that:

4 (i) for the obligation in question, issues an obligation
5 that equals or exceeds the stated investment yield of debt
6 securities not exempt from federal income taxation and of
7 comparable quality;

8 (ii) for an obligation that is a revenue bond, has been
9 completely self-supporting for the last five years; and

10 (iii) for an obligation other than a revenue bond, has
11 issued an obligation backed by the full faith and credit of the
12 applicable taxing jurisdiction and has not been in default on
13 the payment of principal or interest on the obligation in
14 question or any other nonrevenue bond obligation during the
15 preceding ten years;

16 (4) corporate obligations, including bonds, notes,
17 debentures, or other regularly issued and readily marketable
18 evidences of indebtedness issued by a corporation organized
19 under the laws of any state that during the preceding five years
20 has had on average annual net pretax earnings at least 50
21 percent greater than the annual interest charges and principal
22 payments on the total issued debt of the corporation during that
23 period and that, for the obligation in question, has issued an
24 obligation rated in one of the top three quality categories by
25 Moody's Investors Service, Incorporated, or Standard and Poor's
26 Corporation; and

27 (5) shares in an open-end investment company registered
28 under the federal Investment Company Act of 1940, if the
29 portfolio investments of the company are limited to investments
30 that meet the requirements of clauses (1) to (4).

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80A.01 SALES AND PURCHASES.

It is unlawful for any person, in connection with the offer, sale or purchase of any security, directly or indirectly:

- (a) to employ any device, scheme, or artifice to defraud;
- (b) to make any untrue statement of a material fact or to omit to state material facts necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading; or
- (c) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon any person.

80A.02 PROHIBITED ACTIVITIES.

Subdivision 1. **Advisory activities and principal transactions.** (a) It is unlawful for any person who receives, directly or indirectly, any consideration from another primarily for advising the other as to the value of securities or their purchase or sale:

- (1) to employ any device, scheme, or artifice to defraud the other; or
- (2) to engage in any act, practice, or course of business which operates or would operate as a fraud or deceit upon the other.

(b) It is unlawful for an investment adviser to knowingly sell any security to or purchase any security from a client while acting as principal for the person's own account or knowingly effect any sale or purchase of any security for the account of a client while acting as broker for one other than the client, unless the person discloses to the client in writing before the execution of the transaction the capacity in which the person is acting and obtains the consent of the client to the transaction.

Subd. 1a. **Solicitation activities.** In the solicitation of advisory clients, it is unlawful for any person to make any untrue statements of material facts, or, in light of the circumstances under which they are made, to omit to state material facts necessary in order to make the statements made not misleading.

Subd. 2. **Contract activities.** It is unlawful for any investment adviser to enter into, extend, or renew any investment advisory contract the terms of which are in contravention of rules the commissioner prescribes as necessary or appropriate in the public interest or for the protection of investors.

Subd. 3. **Activities as custodian of certain funds.** It is unlawful for any investment adviser to take or have custody of any securities or funds of any client in contravention of rules the commissioner prescribes as necessary or appropriate in the public interest or for the protection of investors.

80A.03 UNLAWFUL ACTIVITIES.

It is unlawful for any person to effect any transaction in, or to induce the purchase or sale of any security by means of any manipulative, deceptive or other fraudulent device or contrivance, including any fictitious quotation. The terms "manipulative, deceptive, or other fraudulent device or contrivance" shall include, but shall not be limited to, the following practices:

- (a) effecting any transaction in a security which involves no change in the beneficial ownership thereof, or entering any

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order or orders for the purchase or sale of any security with the knowledge that an order or orders of substantially the same size, at substantially the same time, and at substantially the same price, for the sale or purchase of the security, have been or will be entered by or for the same or affiliated persons, for the purpose of creating a false or misleading appearance of active trading in the security or a false or misleading appearance with respect to the market for the security;

(b) effecting, alone or with one or more other persons, a series of transactions in any security creating actual or apparent active trading in the security or raising or depressing the price of the security, for the purpose of inducing the purchase or sale of the security by others; or

(c) inducing the purchase or sale of any security by the circulation or dissemination of information to the effect that the price of the security will or is likely to rise or fall because of market operations of any one or more persons conducted for the purpose of raising or depressing the price of the security, if the person circulating or disseminating the information is selling or offering to sell or purchasing or offering to purchase the security or is receiving a consideration, directly or indirectly, from any person to whom the information is circulated or disseminated.

80A.04 LICENSING.

Subdivision 1. Requirement. It is unlawful for any person to transact

business in this state as a broker-dealer or agent unless licensed under this chapter.

Subd. 2. Agent license. It is unlawful for any broker-dealer or issuer to

employ an agent as a representative in this state unless the agent is licensed. The licensing of an agent is not effective during any period when the agent is not associated with a specified broker-dealer licensed under this chapter or a specified issuer. No agent shall at any time represent more than one broker-dealer or issuer, except that where broker-dealers affiliated by direct common control are licensed under this chapter, an agent may represent the broker-dealer. When an agent begins or terminates employment with a broker-dealer or issuer, or begins or terminates those activities which make that person an agent, the agent as well as the broker-dealer or issuer shall promptly notify the commissioner or the commissioner's designated representative.

A broker-dealer or investment adviser is affiliated by direct common control when 80 percent or more of the equity of each broker-dealer or investment adviser is beneficially owned by the same person or group of persons.

Subd. 3. Investment adviser license. It is unlawful for any person to transact

business in this state as an investment adviser unless that person is so licensed or licensed as a broker-dealer as described in section 80A.14, subdivision 9, clause (3), or unless: (1) that person's only clients in this state are investment companies as defined in the Investment Company Act of 1940, other investment advisers, broker-dealers, banks, trust companies, savings associations, federal covered advisers insurance companies, corporations with a class of equity securities registered under section 12(b) or 12(g) of the Securities Exchange Act of 1934, small business investment

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companies, and government agencies or instrumentalities, whether acting for themselves or as trustees with investment control, or other institutional buyers; or (2) that person has no place of business in this state and during the preceding 12-month period has had fewer than six clients who are residents of this state.

Subd. 4. **Renewal.** Every license or notice filing expires on December 31 of each year unless an application for renewal has been received by the commissioner by November 15.

Subd. 5. **Federal covered adviser limitations.** Except with respect to advisers whose only clients are those described in subdivision 3, it is unlawful for a federal covered adviser to conduct advisory business in this state unless the person complies with section 80A.05, subdivision 1a.

80A.041 EXEMPTION.

A real estate broker or agent licensed under chapter 82 who arranges for the sale of a contract for deed is exempt from the license requirement of section 80A.04 if the real estate broker or agent receives no compensation in addition to the brokerage commission or fee and represents the seller, buyer, lessor, or lessee in the sale, lease, or exchange of the subject property.

80A.05 LICENSING PROCEDURE.

Subdivision 1. **Broker-dealer, agent, or investment adviser.** A broker-dealer, agent, or investment adviser may obtain an initial or renewal license by filing with the commissioner or a designee an application together with a consent to service of process pursuant to section 80A.27, subdivision 7. The application shall be on a form prescribed by the commissioner and shall contain whatever information the commissioner requires concerning such matters as the applicant's form and place of organization, proposed method of doing business and financial condition, the qualifications and experience of the applicant, including, in the case of a broker-dealer or investment adviser, the qualifications and experience of any partner, officer, director or controlling person, any injunction or administrative order or conviction of a misdemeanor involving securities and any conviction of a felony. The commissioner may by order, with respect to any particular application, require the submission of information concerning any other matters which the commissioner determines are relevant to the application. The commissioner may by rule or order require an applicant for an initial license to publish an announcement of the application in one or more specified newspapers published in this state.

If no denial order is in effect, no proceeding is pending under section 80A.07, and all of the requirements of this subdivision and subdivision 3 have been complied with, the licensing becomes effective 30 days after an application is filed. The commissioner may by rule or order specify an earlier effective date, and may by order defer the effective date until 30 days after the filing of any amendment.

An application that is incomplete will be considered withdrawn if no activity occurs with respect to the application for a period of 120 days. Notwithstanding section 80A.28, subdivision 1, paragraph (c), no part of the filing fee shall be returned if a registration statement is withdrawn according to this subdivision.

Subd. 1a. **Federal covered advisers.** Except with respect to federal covered advisers whose only clients are those

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described in section 80A.04, subdivision 3, clause (2), a federal covered adviser shall file with the commissioner, before acting as a federal covered adviser in this state, all documents required by the commissioner that have been filed with the Securities and Exchange Commission. Notwithstanding any other provision of this section, until October 10, 1999, the commissioner may require the registration of any federal covered investment adviser who has failed to promptly pay the fees required by section 80A.28 after being notified in writing by the commissioner of the nonpayment or underpayment of such fees. A person shall be considered to have promptly paid such fees if the fees are remitted to the commissioner within 15 days following the receipt of written notification from the commissioner.

Subd. 2. **Successors.** A licensed broker-dealer or investment adviser may file an application for licensing of a successor, whether or not the successor is then in existence, for the unexpired portion of the license. There shall be no filing fee.

Subd. 3. **Examination and training; rulemaking.** The commissioner may by rule prescribe standards of qualification with respect to training, experience and knowledge of the securities business and provide for examinations, which may be written or oral or both, to be taken by any class of or all applicants, as well as persons who represent or will represent an investment adviser, and the commissioner may by order require an examination of a licensed broker-dealer, agent or investment adviser for due cause.

Subd. 4. **Financial requirements; rulemaking.** The commissioner may by rule require a minimum capital for broker-dealers, subject to the limitations of section 15 of the Securities Act of 1934, and establish minimum financial requirements for investment advisers, subject to the limitations of section 222 of the Investment Advisers Act of 1940 which may include different requirements for those investment advisers who maintain custody of clients' funds or securities or who have discretionary authority over the funds or securities and those investment advisers who do not.

Subd. 5. **Surety bonds; rulemaking.** The commissioner may by rule require licensed broker-dealers, agents and investment advisers who have custody of or discretionary authority over client funds or securities, to post surety bonds in amounts as the commissioner may prescribe subject to the limitations of section 15 of the Securities Exchange Act of 1934 for broker-dealers and section 222 of the Investment Advisers Act of 1940 for investment advisers and may by rule or order determine their conditions. Any appropriate deposit of cash or securities shall be accepted in lieu of any bond so required. No bond may be required of any broker-dealer whose net capital, which may be defined by rule, exceeds the amounts required by the commissioner. Every bond shall provide for suit thereon by any person who has a cause of action under section 80A.23 and, if the commissioner by rule or order requires, by any person who has a cause of action not arising under sections 80A.01 to 80A.31. Every bond shall provide that no suit may be maintained to enforce any liability on the bond unless brought within three years after the sale or other act upon which it is based.

Subd. 6. **General authority of commissioner.** The commissioner may by rule or order impose other conditions in

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connection with the issuance of licenses under this chapter as the commissioner deems appropriate in the public interest and for the protection of investors.

80A.06 POSTLICENSING PROVISIONS.

Subdivision 1. **Record keeping.** Every licensed broker-dealer and investment adviser shall make and keep all accounts, correspondence, memoranda, papers, books and other records which the commissioner by rule prescribes by rule or order, except as provided by section 15 of the Securities Act of 1934 in the case of a broker-dealer and section 222 of the Investment Advisers Act of 1940 in the case of an investment adviser. All records required shall be preserved for three years unless the commissioner by rule prescribes otherwise for particular types of records. All required records shall be kept within the state or shall, at the request of the commissioner, be made available at any time for examination by the commissioner either in the principal office of the licensee or by production of exact copies thereof in this state.

Subd. 2. **Reports.** Every licensed broker-dealer and investment adviser shall file such reports as the commissioner by rule or order prescribes except as provided in section 15 of the Securities Exchange Act of 1934 in the case of a broker-dealer and section 222 of the Investment Advisers Act of 1940 in the case of an investment adviser.

Subd. 3. **Correcting amendments.** If the information contained in any document filed with the commissioner is or becomes inaccurate or incomplete in any material respect, the licensee or federal covered adviser shall within 30 days file a correcting amendment unless notification of the correction has been given under section 80A.04, subdivision 2.

Subd. 4. **Examinations.** The commissioner shall make periodic examinations, within or without this state, of the business and records of each licensed broker-dealer and investment adviser, at such times and in such scope as the commissioner determines. The examinations may be made without prior notice to the broker-dealer or investment adviser. For the purpose of avoiding unnecessary duplication of examinations, the commissioner, insofar as the commissioner deems it practicable in administering this subdivision, may cooperate with securities administrators of other states, the securities and exchange commission, and any national securities exchange or national securities association registered under the Securities Exchange Act of 1934.

Subd. 5. **Remuneration and charges.** (a) Except as otherwise provided in paragraph (b), no investment adviser who shall recommend the purchase or sale of a security to a client, and no licensed broker-dealer acting as a broker-dealer for a customer in the purchase or sale of a security shall take or accept any remuneration or other thing of value from any person other than the client or customer in connection with the purchase or sale unless, prior to or contemporaneously with the recommendation in the case of an investment adviser and prior to or contemporaneously with the confirmation of the transaction in the case of a licensed broker-dealer so acting, written disclosure to the client or customer is made of the acceptance or intended acceptance of the

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remuneration or other thing of value and of the amount of it. All charges made by an investment adviser for services and all charges by a licensed broker-dealer for services rendered as a broker-dealer or for advice with respect to securities shall be reasonable, and except in compliance with rules adopted by the commissioner, no charges shall be based upon or measured by profits accrued or to accrue from transactions recommended or carried out by an investment adviser, or licensed broker-dealer. This subdivision shall not be construed to prohibit charges by an investment adviser based upon the total value of the assets under management averaged over a definite period, or as of definite dates, or taken as of a definite date, nor charges based upon the performance of the managed assets as compared to an established index in compliance with rules adopted by the commissioner.

(b) Disclosure of payment received by a licensed investment advisor or licensed broker-dealer for directing order flow need not comply with paragraph (a) if the disclosure is made in compliance with rules governing disclosure of payments for directing order flow adopted by the securities and exchange commission.

80A.07 DENIAL, SUSPENSION, AND REVOCATION OF LICENSES.

Subdivision 1. General grounds. The commissioner may by order deny, suspend, or revoke any license or may censure the licensee, if the commissioner finds (a) that the order is in the public interest and (b) that the applicant or licensee or, in the case of a broker-dealer or investment adviser, any partner, officer, or director, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling the broker-dealer or investment adviser:

(1) has filed an application for license which as of its effective date, or as of any date after filing in the case of an order denying effectiveness, was incomplete in any material respect or contained any statement which was, in light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) has willfully violated or failed to comply with any provision of this chapter or a predecessor law or any provision of the Securities Act of 1933, the Securities Exchange Act of 1934, the Investment Advisers Act of 1940, the Investment Company Act of 1940, the Commodity Exchange Act, or any rule or order under any of these statutes, of which that person has notice and is subject;

(3) has been convicted, within the past ten years, of any misdemeanor involving a security or any aspect of the securities business, or any felony;

(4) is permanently or temporarily enjoined by any court of competent jurisdiction from engaging in or continuing any conduct or practice involving any aspect of the securities business;

(5) is the subject of an order of the commissioner denying, suspending, or revoking a license as a broker-dealer, agent or investment adviser;

(6) is the subject of an order entered within the past five years by the securities administrator of any other state or by the Securities and Exchange Commission, or any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, denying or revoking registration or license as a broker-dealer, agent, or

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investment adviser, or is the subject of an order of the Securities and Exchange Commission or any national securities exchange or national securities association registered under the Securities Exchange Act of 1934, suspending, barring, or expelling that person from a national securities exchange or association registered under the Securities Exchange Act of 1934, or is the subject of a United States post office fraud order. The commissioner may not institute a revocation or suspension proceeding under this clause more than one year from the date of the order relied on, and may not enter an order under this clause on the basis of an order under another state law unless the order was based on facts which would currently constitute a ground for an order under this section;

(7) has engaged in dishonest or fraudulent practices in the securities business;

(8) has failed to maintain the minimum net capital or to comply with the limitation on aggregate indebtedness which the commissioner by rule prescribes;

(9) is not qualified on the basis of such factors as training, experience, and knowledge of the securities business;

(10) has failed reasonably to supervise agents, investment adviser representatives, or employees to assure their compliance with this chapter;

(11) has failed to pay the proper filing fee, but the commissioner shall vacate the order when the deficiency has been corrected;

(12) has offered or sold securities in this state through any unlicensed agent;

(13) has made any material misrepresentation to the commissioner, or upon request reasonably made by the commissioner, has withheld or concealed information from, or refused to furnish information to, the commissioner;

(14) has failed to reasonably supervise agents, investment adviser representatives, or employees if that person has assumed or has been designated to carry out the supervisory procedures of the broker-dealer or investment adviser; or

(15) has failed, within 20 business days after receiving written instructions from a customer, to do any of the following:

(a) transfer or deliver securities that have been purchased;

(b) transfer or deliver any free credit balances reflecting completed transactions; or

(c) transfer or deliver a customer's account securities positions and balances to another broker-dealer.

This clause shall not serve as a basis for denial, suspension, or revocation of a broker-dealer's or agent's license if: (i) the transfer or delivery is between broker-dealers and meets the rules and requirements established by the New York Stock Exchange with regard to the transfer or delivery; or (ii) the delivery of securities to a customer cannot be accomplished within 20 business days, and the broker-dealer or agent has notified the customer in writing of the inability to deliver the securities and the reasons for the nondelivery within 20 business days of receiving the customer's written instructions.

Subd. 1a. Investment adviser representatives. The commissioner, by order, shall censure or place limitations on the activities of any investment adviser representative or person seeking to become an investment adviser representative, or suspend or bar any person from being an investment adviser

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representative, if the commissioner finds, after notice and opportunity for hearing, that the censure, placing of limitations, suspension, or bar is in the public interest and that the person has committed or omitted any act or omission enumerated in subdivision 1. It shall be unlawful for any person as to whom an order suspending or barring that person from being an investment adviser representative is in effect willfully to become, or to be, associated with an investment adviser without the consent of the commissioner, and it shall be unlawful for any investment adviser to permit this person to become, or remain, an investment adviser representative without the consent of the commissioner, if the investment adviser knew, or in the exercise of reasonable care, should have known of the order.

Subd. 2. **Limitation.** The commissioner may not institute a suspension or revocation proceeding solely on the basis of a fact or transaction known to the commissioner when the initial license was issued unless the proceeding is instituted within the next 30 days after the issuance of the initial license.

Subd. 3. **Order to show cause.** The commissioner may issue an order requiring a licensee or an applicant for a license to show cause why the license should not be revoked or the application denied. The order shall be calculated to give reasonable notice of the time and place for hearing thereon, and shall state the reasons for the entry of the order. The commissioner may by order summarily suspend a license, or in the case of an investment adviser representative or person seeking to become an investment adviser representative, summarily suspend or bar that person from acting in that capacity, pending final determination of any order to show cause. If a license is suspended pending final determination of an order to show cause, a hearing on the merits shall be held within 30 days of the issuance of the order of suspension. All hearings shall be conducted in accordance with the provisions of chapter 14. After the hearing, the commissioner shall enter an order making a disposition of the matter as the facts require. If the licensee or applicant fails to appear at a hearing of which that person has been duly notified, the person shall be deemed in default and the proceeding may be determined against that person upon consideration of the order to show cause, the allegations of which may be deemed to be true. The commissioner may adopt rules of procedure concerning all proceedings conducted pursuant to this subdivision.

Subd. 4. **Specific grounds.** If the commissioner finds that any licensee or applicant is no longer in existence or has ceased to do business as a broker-dealer, agent or investment adviser, or is subject to an adjudication of mental incompetence or to the control of a committee, conservator or guardian, or cannot be located after reasonable search, the commissioner may by order revoke the license or deny the application.

Subd. 5. **Withdrawals.** Withdrawal from the status of a licensed broker-dealer, agent or investment adviser becomes effective 30 days after receipt of an application to withdraw or within such shorter period as the commissioner determines unless a revocation or suspension proceeding is pending when the application is filed or a proceeding to revoke or suspend or to impose conditions upon the withdrawal is instituted within 30 days after the application is filed. If a proceeding is pending

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or instituted, withdrawal becomes effective at such time and upon such conditions as the commissioner by order determines. If no proceeding is pending or instituted and withdrawal automatically becomes effective, the commissioner may institute a revocation or suspension proceeding under subdivision 1, clause (b) within two years after withdrawal became effective and enter a revocation or suspension order as of the last date on which the license was in effect.

80A.08 REGISTRATION REQUIREMENT.

It is unlawful for any person to offer or sell any security in this state unless (a) it is registered under sections 80A.01 to 80A.31 or (b) the security or transaction is exempted under section 80A.15 or (c) it is a federal covered security.

80A.09 REGISTRATION BY NOTIFICATION.

Subdivision 1. **Authority.** The following securities may be registered by notification: any securities issued by a person organized exclusively for social, religious, educational, benevolent, fraternal, charitable, reformatory, athletic, chamber of commerce, trade, industrial development, or professional association purposes and not for pecuniary gain, and no part of the net earnings of which inures to the benefit of any private stockholder or individual; provided that no securities issued by any person offering and furnishing a burial service or funeral benefit, directly or indirectly for financial consideration, may be registered under this section.

Subd. 2. **Contents.** A registration statement under this section shall contain the consent to service of process required by section 80A.27, subdivision 7, and such additional information as the commissioner by rule or otherwise requires.

Subd. 3. **When effective.** If no stop order is in effect, no proceeding is pending under section 80A.13, and no order has been issued under subdivision 4, a registration statement under this section automatically becomes effective at 5:00 in the afternoon on the fifth full business day after the filing of the registration statement or the last amendment, or at such earlier time as the commissioner by order determines.

Subd. 4. **Condition of registration.** The commissioner may by order require that any security otherwise permitted to be registered under this section be registered by qualification under section 80A.11 if the commissioner determines that registration by qualification is in the public interest and is necessary for the protection of investors.

Subd. 5. **Withdrawal.** A registration statement that is incomplete will be considered withdrawn if no activity occurs with respect to the application for a period of 120 days. Notwithstanding section 80A.28, subdivision 1, paragraph (c), no part of the filing fee shall be returned if a registration statement is withdrawn according to this subdivision.

80A.10 REGISTRATION BY COORDINATION.

Subdivision 1. **Authority.** Any security for which a registration statement has been filed under the Securities Act of 1933 in connection with the same offering may be registered by coordination.

Subd. 2. **Contents.** A registration statement under this section shall contain the following information and be accompanied by the following documents in addition to the information specified in section 80A.12 and the consent to service of process required by section 80A.27, subdivision 7:

(a) one copy of the latest form of prospectus filed under

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the Securities Act of 1933;

(b) if the commissioner by rule or otherwise requires, a copy of the articles of incorporation and bylaws (or their substantial equivalent) currently in effect, a copy of any agreements with or among underwriters, a copy of any indenture or other instrument governing the issuance of the security to be registered, and a specimen or copy of the security;

(c) if the commissioner requests, any other information, or copies of any other documents, filed under the Securities Act of 1933; and

(d) an undertaking to forward all amendments to the federal prospectus, other than an amendment which merely delays the effective date of the registration statement, not later than the first business day after the day they are forwarded to or filed with the Securities and Exchange Commission or such longer period as the commissioner permits.

Subd. 3. When effective. A registration statement under this section automatically becomes effective at the moment the federal registration statement becomes effective if all the following conditions are satisfied: (a) no stop order is in effect and no proceeding is pending under section 80A.13; (b) the registration statement has been on file with the commissioner for at least 20 days; and (c) a statement of the maximum proposed offering prices and the maximum underwriting discounts and commissions has been on file for two full business days or such shorter period as the commissioner permits by rule or otherwise and the offering is made within those limitations. The registrant shall promptly notify the commissioner by telephone or telegram or similar electronic means of communication of the date and time when the federal registration statement became effective and the content of the price amendment, if any, and shall promptly file an amendment containing the information and documents in the price amendment. "Price amendment" means the final federal amendment which includes a statement of the offering price, underwriting and selling discounts or commissions, amount of proceeds, conversion rates, call prices and other matters dependent upon the offering price. Upon failure to receive the required notification with respect to the price amendment, the commissioner may enter a stop order, without notice or hearing, retroactively denying effectiveness to the registration statement or suspending its effectiveness until compliance with this subsection, if the commissioner promptly notifies the registrant by telephone or telegram or similar electronic means of communication (and promptly confirms by letter or telegram when the commissioner notifies by telephone) of the issuance of the order. If the registrant proves compliance with the requirements of this subdivision as to notice and price amendment, the stop order is void as of the time of its entry. The commissioner may by rule or otherwise waive either or both of the conditions specified in clauses (b) and (c). If the federal registration statement becomes effective before all the conditions in this subdivision are satisfied and they are not waived, the registration statement automatically becomes effective as soon as all the conditions are satisfied. If the registrant advises the commissioner of the date when the federal registration statement is expected to become effective, the commissioner shall promptly advise the registrant by telephone or telegram or similar electronic means of communication, at the

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registrant's expense, whether all the conditions are satisfied and whether the commissioner then contemplates the institution of a proceeding under section 80A.13; but this advice by the commissioner does not preclude the institution of such a proceeding at any time.

Subd. 4. **Withdrawal.** A registration statement that is pending effectiveness will be considered withdrawn if no activity occurs with respect to the application for a period of 120 days. Notwithstanding section 80A.28, subdivision 1, paragraph (c), no part of the filing fee shall be returned if a registration statement is withdrawn according to this subdivision.

80A.11 REGISTRATION BY QUALIFICATION.

Subdivision 1. **Authority.** Any security may be registered by qualification.

Subd. 2. **Contents.** A registration statement under this section shall contain the information specified in section 80A.12 and the consent to service of process required by section 80A.27, subdivision 7, and shall contain such further information and be accompanied by such further documents as the commissioner by rule or otherwise requires.

Subd. 3. **When effective.** A registration statement under this section becomes effective when the commissioner so orders.

Subd. 4. **Condition of registration.** The commissioner may by rule or order require as a condition of registration under this section that a prospectus containing any designated part of the information specified in subdivision 2 be sent or given to each person to whom an offer is made before or concurrently with (a) the first written offer made to that person (otherwise than by means of a public advertisement) by or for the account of the issuer or any other person on whose behalf the offering is being made, or by any underwriter or broker-dealer who is offering part of an unsold allotment or subscription taken by that person as a participant in the distribution, (b) the confirmation of any sale made by or for the account of any such person, (c) payment pursuant to any such sale, or (d) delivery of the security pursuant to any such sale, whichever first occurs.

Subd. 5. **Withdrawal.** A registration statement that is pending effectiveness will be considered withdrawn if no activity occurs with respect to the application for a period of 120 days. Notwithstanding section 80A.28, subdivision 1, paragraph (c), no part of the filing fee shall be returned if a registration statement is withdrawn according to this subdivision.

80A.115 SMALL CORPORATE OFFERING REGISTRATION.

Subdivision 1. **Filing requirements.** A security meeting the conditions set forth in this section may be registered by filing a small corporate offering registration form otherwise known as a form U-7 adopted by the North American Securities Administrators Association as a uniform state securities registration form.

Subd. 2. **Availability.** Registration under this section is available only to the issuer of the securities and not to an affiliate of that issuer or to any other person for resale of the issuer's securities. The issuer must be a corporation organized under the laws of one of the states or possessions of the United States. Registration under this

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section is not available to any of the following issuers:

(1) an issuer that engages in or proposes to engage in the business of petroleum exploration or production or mining or other extractive industries;

(2) an investment company, including a mutual fund;

(3) an issuer subject to the reporting requirements of section 13 or 15(d) of the Securities Exchange Act of 1934;

(4) a direct participation program;

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

(6) an issuer seeking to register a debt offering unless the commissioner finds that the issuer has demonstrated a reasonable ability to service the debt.

Subd. 3. Disqualification. (a) An issuer is disqualified from registration under this section if the issuer or any of its officers, directors, ten-percent stockholders, promoters, or any selling agents of the securities to be offered, or any officer, director, or partner of the selling agent:

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

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

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

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

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

Clauses (1) to (4) do not apply if the person subject to the disqualification is duly licensed or registered to conduct securities-related business in the state in which the

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administrative order or judgment was entered against the person or if the dealer employing the party is licensed or registered in this state and the form BD filed in this state discloses the order, conviction, judgment, or decree relating to the person.

(b) No person disqualified under this subdivision may act in any capacity other than that for which the person is licensed or registered. A disqualification under this subdivision is automatically waived if the state securities administrator or federal agency that created the basis for disqualification determines upon a showing of good cause that it is not necessary under the circumstances to deny the registration.

Subd. 4. Conditions. In order to register under this section, all of the following conditions must be satisfied:

(1) the offering price for common stock and the exercise price, if the securities offered are options, warrants, or rights for common stock, and the conversion price if the securities are convertible into common stock must be equal to or greater than \$1 per share;

(2) the aggregate offering price of the securities offered, within or outside this state, may not exceed \$1,000,000 less the aggregate offering price of all securities sold within the 12 months before the start of and during the offering of the securities under Securities and Exchange Commission Rule 504 in reliance on an exemption under section 3(b) of the Securities Act of 1933. The issuer may not split its common stock, or declare a stock dividend for two years after effectiveness of the registration, except that in connection with a subsequent public offering, the issuer may upon application and consent of the commissioner take this action;

(3) unless an issuer or its predecessors have demonstrated profitable operations for two of the three fiscal years prior to registration, determined in accordance with generally accepted accounting principles, after taxes and excluding extraordinary items, the fair value of the equity investment, as defined by the commissioner by rule, of such issuer shall be at least five percent of the equity investment, as defined by the commissioner by rule, that would result from the sale of all the securities proposed to be offered; and

(4) the maximum quantity of cheap stock, as defined by the commissioner by rule, allowable, expressed as a percentage of the total number of shares to be outstanding after the proposed offering, shall be determined by calculating the fair value of equity investment as a percentage of equity investment in accordance with the following formulations. If the percentage is 20 percent or less, the maximum quantity of cheap stock allowable shall be 50 percent. If the percentage is greater than 20 percent, the maximum quantity of cheap stock allowable shall be two times the percentage plus ten percent. The maximum quantity of cheap stock allowable shall not exceed 90 percent of the total number of shares to be outstanding after the proposed offering.

Subd. 5. Contents of registration form. The small corporate offering registration form (form U-7) must comply with and contain all exhibits required by the Instructions for Use of Form U-7 as adopted by the North American Securities Administrators Association. The registration must include financial statements prepared in accordance with generally accepted accounting principles. An issuer that has not conducted significant operations shall provide statements of

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receipts and disbursements in lieu of statements of income. Interim financial statements may be unaudited. All other financial statements shall be audited by independent certified public accountants. Financial statements may be unaudited if reviewed by independent certified public accountants in accordance with the accounting and review service standards promulgated by the American Institute of Certified Public Accountants and:

(1) the issuer has not previously sold securities through an offering involving the general solicitation of prospective investors by means of advertising, mass mailings, public meetings, cold call telephone solicitation, or any other method directed toward the public;

(2) the issuer has not been previously required under federal or state securities laws to provide audited financial statements in connection with any sale of its securities; and

(3) the aggregate amount of all previous sales of securities by the issuer, exclusive of debt financing with banks and similar commercial lenders does not exceed \$1,000,000.

Subd. 6. **Stop orders.** The commissioner may in the commissioner's discretion issue a stop order for any of the following additional reasons:

(1) the issuer's principal place of business is not in this state or in North Dakota, South Dakota, Iowa, or Wisconsin;

(2) at least 50 percent of the issuer's full-time employees are not located in this state or in North Dakota, South Dakota, Iowa, or Wisconsin; or

(3) at least 80 percent of the net proceeds of the offering are not going to be used in connection with the operations of the issuer in this state or in North Dakota, South Dakota, Iowa, or Wisconsin.

Subd. 7. **Suitability.** The commissioner may, in the commissioner's discretion, require investors in a particular offering to meet suitability standards relating to annual gross income, net worth, or other factors to determine the suitability of the investment for the investor.

Subd. 8. **Financial reporting requirements.** The issuer shall deliver to investors on an annual basis financial statements prepared in accordance with generally accepted accounting principles.

Subd. 9. **Effective date.** If no stop order is in effect and no proceeding is pending under section 80A.13, a registration statement under this section becomes effective automatically at 5:00 p.m. on the 20th full business day after the filing of the registration statement or the last amendment of it, or at such earlier time as the commissioner by order determines.

80A.12 PROVISIONS APPLICABLE TO REGISTRATION GENERALLY.

Subdivision 1. **Filing.** A registration statement may be filed by the issuer, any other person on whose behalf the offering is to be made, or a licensed broker-dealer.

Subd. 2. **Contents.** Every registration statement shall specify (a) the amount of securities to be offered in this state; (b) the states in which a registration statement or similar document in connection with the offering has been or is to be filed; and (c) any adverse order, judgment or decree entered in connection with the offering by the regulatory authorities in each state or by

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any court or the Securities and Exchange Commission.

Subd. 3. **Incorporations by reference.** Any document filed under sections 80A.01 to 80A.31 or a predecessor act within three years preceding the filing of a registration statement may be incorporated by reference in the registration statement to the extent that the document is currently accurate.

Subd. 4. **Permitted omissions.** The commissioner may by rule or otherwise permit the omission of any item of information or document from any registration statement.

Subd. 5. **Conditions; registration by qualification or coordination; escrow or impounding.** The commissioner may by rule or order require as a condition of registration by qualification or coordination (a) that any security issued within the past three years or to be issued to a promoter for a consideration substantially different from the public offering price, or to any person for a consideration other than cash, be deposited in escrow; and (b) that the proceeds from the sale of the registered security in this state be impounded until the issuer receives a specified amount from the sale of the security either in this state or elsewhere. The commissioner may by rule or order determine the conditions of any escrow or impounding required hereunder, but may reject a depository solely because of location in another state only if the offering is not being registered under the Securities Act of 1933 and the principal place of business of the registrant is in this state.

Subd. 6. **Conditions; registration by qualification or coordination; contract requirements.** The commissioner may by rule or order require as a condition of registration that any security registered by qualification or coordination be sold only on a specified form of subscription or sale contract, and that a signed or conformed copy of each contract be filed with the commissioner or preserved for any period up to three years specified in the rule or order.

Subd. 7. **Effective date.** Every registration statement shall be effective, for the purpose of any nonissuer distribution until withdrawn, suspended or revoked. All outstanding securities of the same class as a registered security are considered to be registered for the purpose of any nonissuer transaction so long as the registration statement is effective. A registration statement may not be withdrawn for one year from its effective date if any securities of the same class are outstanding.

Subd. 8. **Periodic reports.** So long as a registration statement is effective, the commissioner may by rule or order require the person who filed the registration statement to file reports, not more often than quarterly, to keep reasonably current the information contained in the registration statement, to disclose the progress of the offering and the use of any proceeds received therefrom, and to submit reports of sales. The commissioner may by rule or order require that the issuer distribute annual reports to its shareholders.

Subd. 9. **Certain investment companies; amendments.** A registration statement relating to a security issued by a face amount certificate company or a redeemable

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security issued by an open end management company or unit investment trust, as those terms are defined in the Investment Company Act of 1940, may be amended after its effective date so as to increase the securities specified as proposed to be offered. Such an amendment becomes effective when the commissioner so orders. Every person filing such an amendment shall pay a filing fee, calculated in the manner specified in section 80A.28 with respect to the additional securities proposed to be offered.

Subd. 10. Annual report. So long as a registration statement is effective the issuer shall file an annual report in such form as the commissioner by rule prescribes. Every annual report shall be due on the 90th day following the end of the issuer's fiscal year, unless extended in writing for good cause by the commissioner. Failure to file the annual report within 30 days after its due date shall be deemed a request for withdrawal.

Subd. 11. Withdrawal, suspension, or revocation notice. Within two business days after receipt of an order of the commissioner withdrawing, suspending, or revoking effectiveness of an issuer's registration statement, the issuer must notify all persons making a market in the issuer's securities of the termination of the effectiveness of the registration statement. Failure to provide this notice may result in the imposition of a civil penalty not to exceed \$2,000 per violation.

Subd. 12. Coordinated registration. The commissioner may enter into cooperative and reciprocal agreements with members of a national securities regulatory organization composed of securities administrators of this and other states to participate in a coordinated review of securities offerings in lieu of conducting the commissioner's own review.

80A.122 FEDERAL COVERED SECURITIES.

Subdivision 1. 18(b)(2) filings. The commissioner may, by rule or otherwise, require the filing of any or all of the following documents with respect to a federal covered security under section 18(b)(2) of the Securities Act of 1933:

(1) prior to the initial offer of a federal covered security in this state, all documents that are part of a current federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, together with a fee and a consent to service of process;

(2) after the initial offer of a federal covered security in this state, all documents that are part of an amendment to a current federal registration statement filed with the Securities and Exchange Commission under the Securities Act of 1933, which must be filed concurrently with the commissioner;

(3) notices that increase the aggregate amount of securities offered or sold in this state, together with the fee.

Subd. 2. 18(b)(4)(d) filings. With respect to a security that is a federal covered security under section 18(b)(4)(D) of the Securities Act of 1933, the commissioner, by rule or otherwise, may require the issuer to file a notice on form D of the Securities and Exchange Commission, together with a fee and a consent to service of process no later than 15 days after the first sale of the covered security in this state.

Subd. 3. 18(b)(3) or (4) filings. The commissioner, by rule or otherwise, may require the filing of any document

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filed with the Securities and Exchange Commission under the Securities Act of 1933 with respect to a federal covered security under section 18(b)(3) or (4) of the Securities Act of 1933 together with the fee.

Subd. 4. **Registration.** Notwithstanding any other provision of this section, until October 10, 1999, the commissioner may require registration of a federal covered security for which the fees required by section 80A.28 have not been promptly paid after the issuer of such securities has been notified in writing by the commissioner of the nonpayment or underpayment of such fees. An issuer shall be considered to have promptly paid such fees if the fees are remitted to the commissioner within 15 days following the receipt of written notification from the commissioner.

Subd. 4a. **Expiration.** (a) A filing made in connection with the securities of an open-end investment company under subdivision 1 expires the next June 30 unless renewed. To renew a notice filing, an issuer shall:

(1) before expiration of a current notice filing, file with the commissioner the documents specified by the commissioner under subdivision 1, clause (2), together with any fees required by section 80A.28, subdivision 1, paragraph (c); and

(2) no later than September 1 following expiration, file a sales report for the prior fiscal year with the commissioner specifying:

(i) the registered sales;

(ii) the actual sales; and

(iii) the balance that could be sold without an additional filing under section 80A.28, subdivision 1, paragraph (c).

(b) No portion of the unsold balance of shares indicated on the issuer's sales report may be lawfully sold in this state in connection with a renewed notice filing until fees have been paid to renew the shares.

Subd. 5. **Stop orders.** The commissioner may issue a stop order suspending the offer and sale of a federal covered security, except a federal covered security under section 18(b)(1) of the Securities Act of 1933, if the commissioner finds that: (1) the order is in the public interest; and (2) there is a failure to comply with any condition established under this section.

Subd. 6. **Commissioner's waiver.** The commissioner may, by rule or otherwise, waive any or all of the provisions of this section.

80A.125 PROHIBITION; NONRECOURSE LOANS.

No part of the offering proceeds resulting from the sale of bonds or similar interest-bearing securities issued by the United States, any state, any political subdivision of any state, or any corporate or other instrumentality of one or more of those entities may be loaned to a person on a nonrecourse basis. This prohibition does not apply to bonds or similar interest-bearing securities:

(1) exempt from registration under section 80A.15;

(2) rated in one of the top four-letter rating categories by Fitch Investors Service, Inc., Standard and Poor's Corporation, or Moody's Investor Services, Inc.; or

(3) issued to provide housing facilities with respect to which low income tax credits are to be obtained.

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80A.13 DENIAL, SUSPENSION AND REVOCATION OF REGISTRATION.

Subdivision 1. Stop order. The commissioner may issue a stop order

denying effectiveness to, or suspending or revoking the effectiveness of, any registration statement if the commissioner finds (a) that the order is in the public interest and (b) that

(1) the registration statement as of its effective date or as of any earlier date in the case of an order denying effectiveness, or any amendment under section 80A.12, subdivision 9, as of its effective date, or any report under section 80A.12, subdivision 8, is incomplete in any material respect or contains any statement which was, in the light of the circumstances under which it was made, false or misleading with respect to any material fact;

(2) any provision of sections 80A.01 to 80A.31 or any rule, order, or condition lawfully imposed under sections 80A.01 to 80A.31 has been willfully violated in connection with the offering, by (i) the person filing the registration statement, (ii) the issuer, any partner, officer, or director of the issuer, any person occupying a similar status or performing similar functions, or any person directly or indirectly controlling or controlled by the issuer, but only if the person filing the registration statement is directly or indirectly controlled by or acting for the issuer, or (iii) any underwriter;

(3) the security registered or sought to be registered is the subject of an administrative stop order or similar order or a permanent or temporary injunction of any court of competent jurisdiction entered under any other federal or state act applicable to the offering; but (i) the commissioner may not institute a proceeding against an effective registration statement under this clause more than one year from the date of the order or injunction relied on, and (ii) may not enter an order under this clause on the basis of an order or injunction entered under any other state act unless that order or injunction was based on facts which would currently constitute a ground for a stop order under this section;

(4) the issuer's enterprise or method of business includes or would include activities which are illegal where performed;

(5) the offering has worked or tended to work a fraud upon purchasers or would so operate;

(6) except with respect to securities which are being registered by notification, the terms of the securities are unfair and inequitable; provided, however, that the commissioner may not determine that an offering is unfair and inequitable solely on the grounds that the securities are to be sold at an excessive price where the offering price has been determined by arm's-length negotiation between nonaffiliated parties. The selling price of any security being sold by a broker-dealer licensed in this state shall be presumed to have been determined by arm's-length negotiation;

(7) when a security is sought to be registered by coordination there has been a failure to comply with the undertaking required by section 80A.10, subdivision 2, clause (d);

(8) the applicant or registrant has failed to pay the proper filing fee; but the commissioner may enter only a denial order under this clause and shall vacate any such order when the deficiency has been corrected; or

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(9) the offering of securities sought to be registered is not firmly underwritten and (i) the minimum amount of proceeds from the sale of the securities is not more than \$500,000, and (ii) the maximum amount of proceeds is more than 200 percent of the minimum amount of proceeds required to go forward with the offering.

The commissioner may not institute a stop order proceeding against an effective registration statement solely on the basis of a fact or transaction known to the commissioner when the registration statement became effective unless the proceeding is instituted within the next 30 days.

Subd. 2. Order to show cause. The commissioner may issue an order requiring the person for whom a registration was made to show cause why the registration should not be revoked. The order shall be calculated to give reasonable notice of the time and place for hearing thereon, and shall state the reasons for the issuance of the order. The commissioner may by order summarily suspend a registration pending final determination of any order to show cause. If the registration is suspended pending final determination of an order to show cause, a hearing on the merits shall be held within 30 days of the issuance of the order or suspension. All hearings shall be conducted in accordance with the provisions of chapter 14. After the hearing, the commissioner shall enter an order making such disposition of the matter as the facts require. If the person for whom the registration was made fails to appear at a hearing of which the person has been duly notified, such person shall be deemed in default and the proceeding may be determined against the person upon consideration of the order to show cause, the allegations of which may be deemed to be true. The commissioner may adopt rules of procedure concerning all proceedings conducted pursuant to this subdivision.

80A.14 DEFINITIONS.

Subdivision 1. Terms. When used in sections 80A.01 to 80A.31, the terms defined in this section have the meanings given them unless the context otherwise requires.

Subd. 2. Affiliate. "Affiliate" of another person means any person directly or indirectly controlling, controlled by, or under common control with the other person.

Subd. 3. Agent. "Agent" means any individual other than a broker-dealer who represents a broker-dealer or issuer in effecting or attempting to effect purchases or sales of securities. "Agent" does not include:

(a) an individual who represents an issuer in:

(1) effecting transactions in a security exempted by section 80A.15, subdivision 1;

(2) effecting transactions exempted by section 80A.15, subdivision 2;

(3) effecting transactions with existing employees, partners or directors of the issuer if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state;

(4) effecting other transactions, if the individual is an officer or director of the issuer, no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state, and, upon application, the individual is specifically authorized by name in an order issued by the commissioner;

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(5) effecting transactions in securities registered by notification under section 80A.09 if no commission or other remuneration is paid or given directly or indirectly for soliciting any person in this state; or

(6) effecting transactions in a federal covered security as described in sections 18(b)(3) and 18(b)(4) of the Securities Act of 1933; or

(b) an individual who represents a broker-dealer in effecting transactions in the state limited to those transactions described in section 15(h)(2) of the Securities Exchange Act of 1934.

A partner, officer or director of a broker-dealer or issuer, or a person occupying a similar status or performing similar functions, is an agent only if that person otherwise comes within this definition.

Subd. 4. **Broker-dealer.** "Broker-dealer" means any person engaged in the business of effecting transactions in securities for the account of others or for that person's own account. "Broker-dealer" does not include:

(1) an agent;

(2) an issuer;

(3) a trust company; or

(4) a bank, savings institution, savings association, credit union:

(i) acting for the account of others, provided that such activities are conducted in compliance with such rules as may be adopted by the commissioner;

(ii) acting for its own account; or

(iii) acting in a fiduciary capacity pursuant to the powers and privileges described by sections 48.36 to 48.49 or United States Code, title 12, section 92(a);

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

(6) other persons not within the intent of this subsection whom the commissioner by rule or order designates.

Subd. 5. **Commissioner.** "Commissioner" means the commissioner of commerce.

Subd. 5a. **Federal covered adviser.** "Federal covered adviser" means a person who is: (1) registered under section 203 of the Investment Act of 1940; or (2) is excluded from the definition of "investment adviser" under section 202(a)(11).

Subd. 5b. **Federal covered security.** "Federal covered security" means a security that is a covered security under section 18(b) of the Securities Act of 1933 or regulations adopted under that act.

Subd. 6. **Fraud, deceit, defraud.** "Fraud," "deceit" and "defraud" are not limited to common law deceit.

Subd. 7. **Guaranteed.** "Guaranteed" means guaranteed as to payment of principal and interest or principal and dividends.

Subd. 8a. **Institutional buyer.** For the purposes of sections 80A.04, subdivision 3; 80A.14, subdivision 4, clause

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(5); and 80A.15, subdivision 2, paragraph (g), "institutional buyer" includes, but is not limited to, a corporation with a class of equity securities registered under section 12(b) or 12(g) of the Securities Exchange Act of 1934, as amended, a "qualified institutional buyer" within the meaning of rule 144A, and an "accredited investor" within the meaning of rule 501(a) of regulation D.

Subd. 9. **Investment adviser.** "Investment adviser" means any person who, for compensation, engages in the business of advising others, either directly or through publications, writings or electronic means, as to the value of securities or as to the advisability of investing in, purchasing, or selling securities, or who, for compensation and as a part of a regular business, issues or promulgates analyses or reports concerning securities. "Investment adviser" does not include:

(1) a bank, savings institution, credit union, or trust company;

(2) a lawyer, accountant, engineer, or teacher whose performance of these services is solely incidental to the practice of that person's profession;

(3) a broker-dealer whose performance of these services is solely incidental to the conduct of the business as a broker-dealer and who receives no special compensation for them;

(4) a publisher of any newspaper, news column, newsletter, news magazine, or business or financial publication or service, whether communicated in hard copy form, or by electronic means, or otherwise, that does not consist of the rendering of advice on the basis of the specific investment situation of each client; or

(5) other persons not within the intent of this subdivision as the commissioner may by rule or order designate.

Subd. 9a. **Investment adviser representative.**

"Investment adviser representative" means any partner, officer, or director of an investment adviser, or any person performing similar functions, or any person, directly or indirectly, controlling or controlled by an investment adviser, including any employee of an investment adviser who provides investment advice to clients.

Subd. 10. **Investment metal.** "Investment metal" means any object which contains gold, silver, platinum, indium, chromium, or germanium, or any other metal which the commissioner may specify by rule upon a showing that such other metal is being purchased and sold by the public as an investment.

Subd. 11. **Investment gem.** "Investment gem" means any gem which the commissioner may specify by rule upon a showing that the gem is being purchased and sold by the public as an investment.

Subd. 12. **Investment metal contract.** (a) "Investment metal contract" or "investment gem contract" means:

(i) a sale of an investment metal or investment gem in which the seller or an affiliate of the seller retains possession of the investment metal or investment gem; or

(ii) a contract of purchase or sale which provides for the future delivery of an investment metal or investment gem, or any option to purchase or option to sell such a contract; or

(iii) a sale of an investment metal or investment gem pursuant to a contract known to the trade as a margin account, margin contract, leverage account, or leverage contract.

(b) "Investment metal contract" or "investment gem contract"

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shall not include:

(i) the sale of an investment metal or investment gem where the seller has reasonable grounds to believe that the investment metal or investment gem is being acquired for manufacturing, commercial or industrial purposes; or

(ii) the sale, or contract for the future purchase or sale, of jewelry, art objects or other manufactured or crafted goods other than bullion or bulk sales of coins; or

(iii) the sale of an investment metal or investment gem where full payment is made to the seller, and delivery of the investment metal or investment gem is made to the purchaser, or to a bank, savings institution, trust company, broker-dealer, or safe deposit company designated by the purchaser, within 20 days of the date of purchase, if the bank, savings institution, trust company, broker-dealer, or safe deposit company is located within this state, and is, where required, licensed under the laws of this state, provided that a safe deposit company accepting such delivery may not be an affiliate of the seller; or

(iv) any futures contracts traded on a commodities exchange registered under the Federal Commodity Futures Trading Commission Act of 1974.

Subd. 13. **Issuer.** "Issuer" means any person who issues or proposes to issue any security and any promoter who acts for an issuer to be formed, except:

(1) with respect to certificates of deposit or trust certificates, issuer means the person performing the act and assuming the duties of depositor, manager or trustee pursuant to the provisions of the trust or other instrument under which the security is issued;

(2) with respect to certificates of interest or participation in oil, gas or mining rights, titles or leases, issuer means the owner of any such right, title or lease, who creates fractional interest therein for the purposes of sale.

Subd. 14. **Nonissuer.** "Nonissuer" means not directly or indirectly for the benefit of the issuer or an affiliate of the issuer.

Subd. 15. **Person.** "Person" means an individual, corporation, a partnership, an association, a joint stock company, a trust where the interests of the beneficiaries are evidenced by a security, an unincorporated organization, a government, a political subdivision of a government or any other entity.

Subd. 16. **Purchasing for investment.** "Purchasing for investment" means a purchase made for investment and not for the purpose of resale. In determining whether securities have been purchased for investment, the length of the period for which the securities are held will be one of the factors considered. Securities held for two years after their purchase shall be conclusively deemed to have been purchased for investment.

Subd. 17. **Sale, sell.** (1) "Sale" or "sell" includes every contract of sale of, contract to sell, or disposition of, a security or interest in a security for value.

(2) "Offer" or "offer to sell" includes every attempt or offer to dispose of, or solicitation of an offer to buy, a security or interest in a security for value.

(3) Any security given or delivered with, or as a bonus on account of, any purchase of securities or any other thing is considered to constitute part of the subject of the purchase and

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to have been offered and sold for value.

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

(5) Every sale or offer of a warrant or right to purchase or subscribe to another security of the same or another issuer, as well as every sale or offer of a security which gives the holder a present or future right or privilege to convert into another security of the same or another issuer, is considered to include an offer of the other security.

(6) The terms defined in this subdivision do not include (i) any bona fide pledge or loans; (ii) any stock dividend, whether the corporation or other entity distributing the dividend is the issuer of the stock or not; or (iii) a dividend on equity distributed by a cooperative organized under chapter 308B.

Subd. 18. **Security.** (a) "Security" means any note; stock; treasury stock; bond; debenture; evidence of indebtedness; certificate of interest or participation in any profit sharing agreement; collateral trust certificate; preorganization certificate or subscription; transferable shares; investment contract; investment metal contract or investment gem contract; voting trust certificate; certificate of deposit for a security; certificate of interest or participation in an oil, gas or mining right, title or lease or in payments out of production under the right, title or lease; or, in general, any interest or instrument commonly known as a security, or any certificate of interest or participation in, temporary or interim certificate for, receipt for guarantee of, or warrant or right to subscribe to or purchase, any of the foregoing. "Security" does not include:

(1) any insurance or endowment policy or annuity contract under which an insurance company promises to pay money either in a lump sum or periodically for life or for some other specified period; or

(2) stock of a closely held corporation offered or sold pursuant to a transaction in which 100 percent of the stock of that corporation is sold as a means to effect the sale of the business of the corporation if the transaction has been negotiated on behalf of all purchasers, and if all purchasers have access to inside information regarding the corporation before consummating the transaction.

(b) A security that is offered and sold pursuant to section 4(5) of the Securities Act of 1933 or that is a "mortgage related security" (as defined in section 3(a)(41) of the Securities Exchange Act of 1934) is not a security exempt from registration under section 80A.15, subdivision 1, paragraph (a), in the same manner as obligations issued or guaranteed as to principal and interest by the United States or its agencies or instrumentalities. This provision specifically overrides the preemption of state law contained in section 106(c) of the Secondary Mortgage Market Enhancement Act of 1984, Public Law 98-440.

Subd. 19. **State.** "State" means any state, territory or possession of the United States, the District of Columbia and Puerto Rico.

Subd. 20. **Qualified charity.** "Qualified charity" means an organization that is described in section 501(c)(3) of the Internal Revenue Code and that is not a private foundation as described in section 509 of the Internal Revenue Code.

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Subd. 21. **Internal Revenue Code.** "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, United States Code, title 26, section 1 et seq.

Subd. 22. **Pooled income fund.** "Pooled income fund" means a trust that meets the requirements of a pooled income fund as defined in section 642(C)(5) of the Internal Revenue Code, provided that the remainder beneficiary is a qualified charity.

Subd. 23. **Charitable remainder trust.** "Charitable remainder trust" means a trust that meets the requirements of either a charitable remainder annuity trust or a charitable remainder unitrust as defined in section 664 of the Internal Revenue Code, provided that the remainder beneficiary is a qualified charity.

Subd. 24. **Charitable lead trust.** "Charitable lead trust" means a trust that meets the requirements of a charitable lead trust as described in section 170(F)(2) of the Internal Revenue Code, provided that the lead beneficiary is a qualified charity.

Subd. 25. **Charitable gift annuity.** "Charitable gift annuity" means an annuity that meets the requirements of a charitable gift annuity as defined in section 501(m)(5) of the Internal Revenue Code.

80A.15 EXEMPTIONS.

Subdivision 1. **Securities exempted.** The following securities are exempted from sections 80A.08 and 80A.16:

(a) Any security, including a revenue obligation, issued or guaranteed by the United States, any state, any political subdivision of a state, or any agency or corporate or other instrumentality of one or more of the foregoing; but this exemption does not apply to a security issued by any of the foregoing that is payable solely from payments to be received in respect of property or money used under a lease, sale, or loan arrangement by or for a nongovernmental industrial or commercial enterprise. Pursuant to section 106(c) of the Secondary Mortgage Market Enhancement Act of 1984, Public Law 98-440, this exemption does not apply to a security that is offered or sold pursuant to section 106(a)(1) or (2) of that act.

(b) Any security issued or guaranteed by Canada, any Canadian province, any political subdivision of any province, any agency or corporate or other instrumentality of one or more of the foregoing, if the security is recognized as a valid obligation by the issuer or guarantor; but this exemption shall not include any revenue obligation payable solely from payments to be made in respect of property or money used under a lease, sale or loan arrangement by or for a nongovernmental industrial or commercial enterprise.

(c) Any security issued by and representing an interest in or a debt of, or guaranteed by, any bank organized under the laws of the United States, or any bank, savings institution or trust company organized under the laws of any state and subject to regulation in respect of the issuance or guarantee of its securities by a governmental authority of that state.

(d) Any security issued by and representing an interest in or a debt of, or guaranteed by, any federal savings association, or any savings association or similar association organized under the laws of any state and authorized to do business in this state.

(e) Any security issued or guaranteed by any federal credit

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union or any credit union, or similar association organized and supervised under the laws of this state.

(f) Any security listed or approved for listing upon notice of issuance on the New York Stock Exchange, the American Stock Exchange, the Midwest Stock Exchange, the Pacific Stock Exchange, or the Chicago Board Options Exchange; any other security of the same issuer which is of senior or substantially equal rank; any security called for by subscription rights or warrants so listed or approved; or any warrant or right to purchase or subscribe to any of the foregoing. This exemption does not apply to second tier listings on any of the exchanges in this paragraph.

(g) Any commercial paper which arises out of a current transaction or the proceeds of which have been or are to be used for current transactions, and which evidences an obligation to pay cash within nine months of the date of issuance, exclusive of days of grace, or any renewal of the paper which is likewise limited, or any guarantee of the paper or of any renewal which are not advertised for sale to the general public in newspapers or other publications of general circulation or otherwise, or by radio, television or direct mailing.

(h) Any interest in any employee's savings, stock purchase, pension, profit sharing or similar benefit plan, or a self-employed person's retirement plan.

(i) Any security issued or guaranteed by any railroad, other common carrier or public utility which is subject to regulation in respect to the issuance or guarantee of its securities by a governmental authority of the United States.

(j) Any interest in a common trust fund or similar fund maintained by a state bank or trust company organized and operating under the laws of Minnesota, or a national bank wherever located, for the collective investment and reinvestment of funds contributed thereto by the bank or trust company in its capacity as trustee, executor, administrator, or guardian; and any interest in a collective investment fund or similar fund maintained by the bank or trust company, or in a separate account maintained by an insurance company, for the collective investment and reinvestment of funds contributed thereto by the bank, trust company or insurance company in its capacity as trustee or agent, which interest is issued in connection with an employee's savings, pension, profit sharing or similar benefit plan, or a self-employed person's retirement plan.

(k) Any security which meets all of the following conditions:

(1) If the issuer is not organized under the laws of the United States or a state, it has appointed a duly authorized agent in the United States for service of process and has set forth the name and address of the agent in its prospectus;

(2) A class of the issuer's securities is required to be and is registered under section 12 of the Securities Exchange Act of 1934, and has been so registered for the three years immediately preceding the offering date;

(3) Neither the issuer nor a significant subsidiary has had a material default during the last seven years, or for the period of the issuer's existence if less than seven years, in the payment of (i) principal, interest, dividend, or sinking fund installment on preferred stock or indebtedness for borrowed money, or (ii) rentals under leases with terms of three years or more;

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(4) The issuer has had consolidated net income, before extraordinary items and the cumulative effect of accounting changes, of at least \$1,000,000 in four of its last five fiscal years including its last fiscal year; and if the offering is of interest bearing securities, has had for its last fiscal year, net income, before deduction for income taxes and depreciation, of at least 1-1/2 times the issuer's annual interest expense, giving effect to the proposed offering and the intended use of the proceeds. For the purposes of this clause "last fiscal year" means the most recent year for which audited financial statements are available, provided that such statements cover a fiscal period ended not more than 15 months from the commencement of the offering;

(5) If the offering is of stock or shares other than preferred stock or shares, the securities have voting rights and the rights include (i) the right to have at least as many votes per share, and (ii) the right to vote on at least as many general corporate decisions, as each of the issuer's outstanding classes of stock or shares, except as otherwise required by law; and

(6) If the offering is of stock or shares, other than preferred stock or shares, the securities are owned beneficially or of record, on any date within six months prior to the commencement of the offering, by at least 1,200 persons, and on that date there are at least 750,000 such shares outstanding with an aggregate market value, based on the average bid price for that day, of at least \$3,750,000. In connection with the determination of the number of persons who are beneficial owners of the stock or shares of an issuer, the issuer or broker-dealer may rely in good faith for the purposes of this clause upon written information furnished by the record owners.

(l) Any certificate of indebtedness sold or issued for investment, other than a certificate of indebtedness pledged as a security for a loan made contemporaneously therewith, and any savings account or savings deposit issued, by an industrial loan and thrift company.

(m) Any security designated or approved for designation upon notice of issuance on the NASDAQ/National Market System; any other security of the same issuer that is of senior or substantially equal rank; any security called for by subscription rights or warrants so designated or approved; or any warrant or right to purchase or subscribe to any of the securities referred to in this paragraph; provided that the National Market System provides the commissioner with notice of any material change in its designation requirements. The commissioner may revoke this exemption if the commissioner determines that the designation requirements are not enforced or are amended in a manner that lessens protection to investors.

Subd. 2. Transactions exempted. The following transactions are exempted from sections 80A.08 and 80A.16:

(a) Any sales, whether or not effected through a broker-dealer, provided that:

(1) no person shall make more than ten sales of securities in Minnesota of the same issuer pursuant to this exemption, exclusive of sales according to clause (2), during any period of 12 consecutive months; provided further, that in the case of sales by an issuer, except sales of securities registered under the Securities Act of 1933 or exempted by section 3(b) of that act, (i) the seller reasonably believes that all buyers are

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purchasing for investment, and (ii) the securities are not advertised for sale to the general public in newspapers or other publications of general circulation or otherwise, or by radio, television, electronic means or similar communications media, or through a program of general solicitation by means of mail or telephone; or

(2) no issuer shall make more than 25 sales of its securities in Minnesota according to this exemption, exclusive of sales pursuant to clause (1), during any period of 12 consecutive months; provided further, that the issuer meets the conditions in clause (1) and, in addition meets the following additional conditions: (i) files with the commissioner, ten days before a sale according to this clause, a statement of issuer on a form prescribed by the commissioner; and (ii) no commission or other remuneration is paid or given directly or indirectly for soliciting any prospective buyers in this state in connection with a sale according to this clause except reasonable and customary commissions paid by the issuer to a broker-dealer licensed under this chapter.

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

(c) The execution of any orders by a licensed broker-dealer for the purchase or sale of any security, pursuant to an unsolicited offer to purchase or sell; provided that the broker-dealer acts as agent for the purchaser or seller, and has no direct material interest in the sale or distribution of the security, receives no commission, profit, or other compensation from any source other than the purchaser and seller and delivers to the purchaser and seller written confirmation of the transaction which clearly itemizes the commission, or other compensation.

(d) Any nonissuer sale of notes or bonds secured by a mortgage lien if the entire mortgage, together with all notes or bonds secured thereby, is sold to a single purchaser at a single sale.

(e) Any judicial sale, exchange, or issuance of securities made pursuant to an order of a court of competent jurisdiction.

(f) The sale, by a pledge holder, of a security pledged in good faith as collateral for a bona fide debt.

(g) Any offer or sale to a bank, savings institution, trust company, insurance company, investment company as defined in the Investment Company Act of 1940, or other financial institution or institutional buyer, or to a broker-dealer, whether the purchaser is acting for itself or in some fiduciary capacity.

(h) An offer or sale of securities by an issuer made in reliance on the exemptions provided by Rule 505 or 506 of Regulation D promulgated by the Securities and Exchange

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Commission, Code of Federal Regulations, title 17, sections 230.501 to 230.508, subject to the conditions and definitions provided by Rules 501 to 503 of Regulation D, if the offer and sale also satisfies the conditions and limitations in clauses (1) to (10).

(1) The exemption under this paragraph is not available for the securities of an issuer if any of the persons described in Rule 252(c) to (f) of Regulation A promulgated by the Securities and Exchange Commission, Code of Federal Regulations, title 17, sections 230.251 to 230.263:

(i) has filed a registration statement that is the subject of a currently effective order entered against the issuer, its officers, directors, general partners, controlling persons, or affiliates, according to any state's law within five years before the filing of the notice required under clause (5), denying effectiveness to, or suspending or revoking the effectiveness of, the registration statement;

(ii) has been convicted, within five years before the filing of the notice required under clause (5), of a felony or misdemeanor in connection with the offer, sale, or purchase of a security or franchise, or a felony involving fraud or deceit, including but not limited to forgery, embezzlement, obtaining money under false pretenses, larceny, or conspiracy to defraud;

(iii) is subject to an effective administrative order or judgment entered by a state securities administrator within five years before the filing of the notice required under clause (5), that prohibits, denies, or revokes the use of an exemption from securities registration, that prohibits the transaction of business by the person as a broker-dealer or agent, that is based on fraud, deceit, an untrue statement of a material fact, or an omission to state a material fact; or

(iv) is subject to an order, judgment, or decree of a court entered within five years before the filing of the notice required under clause (5), temporarily, preliminarily, or permanently restraining or enjoining the person from engaging in or continuing any conduct or practice in connection with the offer, sale, or purchase of a security, or the making of a false filing with a state.

A disqualification under paragraph (h) involving a broker-dealer or agent is waived if the broker-dealer or agent is or continues to be licensed in the state in which the administrative order or judgment was entered against the person or if the broker-dealer or agent is or continues to be licensed in this state as a broker-dealer or agent after notifying the commissioner of the act or event causing disqualification.

The commissioner may waive a disqualification under paragraph (h) upon a showing of good cause that it is not necessary under the circumstances that use of the exemption be denied.

A disqualification under paragraph (h) may be waived if the state securities administrator or agency of the state that created the basis for disqualification has determined, upon a showing of good cause, that it is not necessary under the circumstances that an exemption from registration of securities under the state's laws be denied.

It is a defense to a violation of paragraph (h) based upon a disqualification if the issuer sustains the burden of proof to establish that the issuer did not know, and in the exercise of reasonable care could not have known, that a disqualification

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under paragraph (h) existed.

(2) This exemption must not be available to an issuer with respect to a transaction that, although in technical compliance with this exemption, is part of a plan or scheme to evade registration or the conditions or limitations explicitly stated in paragraph (h).

(3) No commission, finder's fee, or other remuneration shall be paid or given, directly or indirectly, for soliciting a prospective purchaser, unless the recipient is appropriately licensed, or exempt from licensure, in this state as a broker-dealer.

(4) Nothing in this exemption is intended to or should be in any way construed as relieving issuers or persons acting on behalf of issuers from providing disclosure to prospective investors adequate to satisfy the antifraud provisions of the securities law of Minnesota.

(5) The issuer shall file with the commissioner a notice on form D as adopted by the Securities and Exchange Commission according to Regulation D, Code of Federal Regulations, title 17, section 230.502. The notice must be filed not later than 15 days after the first sale in this state of securities in an offering under this exemption. Every notice on form D must be manually signed by a person duly authorized by the issuer and must be accompanied by a consent to service of process on a form prescribed by the commissioner.

(6) A failure to comply with a term, condition, or requirement of paragraph (h) will not result in loss of the exemption for an offer or sale to a particular individual or entity if the person relying on the exemption shows that: (i) the failure to comply did not pertain to a term, condition, or requirement directly intended to protect that particular individual or entity, and the failure to comply was insignificant with respect to the offering as a whole; and (ii) a good faith and reasonable attempt was made to comply with all applicable terms, conditions, and requirements of paragraph (h), except that, where an exemption is established only through reliance upon this provision, the failure to comply shall nonetheless constitute a violation of section 80A.08 and be actionable by the commissioner.

(7) The issuer, upon request by the commissioner, shall, within ten days of the request, furnish to the commissioner a copy of any and all information, documents, or materials furnished to investors or offerees in connection with the offer and sale according to paragraph (h).

(8) Neither compliance nor attempted compliance with the exemption provided by paragraph (h), nor the absence of an objection or order by the commissioner with respect to an offer or sale of securities undertaken according to this exemption, shall be considered to be a waiver of a condition of the exemption or considered to be a confirmation by the commissioner of the availability of this exemption.

(9) The commissioner may, by rule or order, increase the number of purchasers or waive any other condition of this exemption.

(10) The determination whether offers and sales made in reliance on the exemption set forth in paragraph (h) shall be integrated with offers and sales according to other paragraphs of this subdivision shall be made according to the integration standard set forth in Rule 502 of Regulation D promulgated by

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the Securities and Exchange Commission, Code of Federal Regulations, title 17, section 230.502. If not subject to integration according to that rule, offers and sales according to paragraph (h) shall not otherwise be integrated with offers and sales according to other exemptions set forth in this subdivision.

(i) Any offer (but not a sale) of a security for which a registration statement has been filed under sections 80A.01 to 80A.31, if no stop order or refusal order is in effect and no public proceeding or examination looking toward an order is pending; and any offer of a security if the sale of the security is or would be exempt under this section. The commissioner may by rule exempt offers (but not sales) of securities for which a registration statement has been filed as the commissioner deems appropriate, consistent with the purposes of sections 80A.01 to 80A.31.

(j) The offer and sale by a cooperative organized under chapter 308A or under the laws of another state, of its securities when the securities are offered and sold only to its members, or when the purchase of the securities is necessary or incidental to establishing membership in the cooperative, or when such securities are issued as patronage dividends. This paragraph applies to a cooperative organized under the laws of another state only if the cooperative has filed with the commissioner a consent to service of process under section 80A.27, subdivision 7, and has, not less than ten days prior to the issuance or delivery, furnished the commissioner with a written general description of the transaction and any other information that the commissioner requires by rule or otherwise.

(l) The issuance and delivery of any securities of one corporation to another corporation or its security holders in connection with a merger, exchange of shares, or transfer of assets whereby the approval of stockholders of the other corporation is required to be obtained, provided, that the commissioner has been furnished with a general description of the transaction and with other information as the commissioner by rule prescribes not less than ten days prior to the issuance and delivery. For purposes of this paragraph, a corporation includes a cooperative organized under chapter 308B, and the approval of stockholders applies to members of such a cooperative.

(m) Any transaction between the issuer or other person on whose behalf the offering is made and an underwriter or among underwriters.

(n) The distribution by a corporation of its or other securities to its own security holders as a stock dividend or as a dividend from earnings or surplus or as a liquidating distribution; or upon conversion of an outstanding convertible security; or pursuant to a stock split or reverse stock split. For purposes of this paragraph, a corporation includes a cooperative organized under chapter 308B, and the term "stock" applies to interests in such a cooperative.

(o) Any offer or sale of securities by an affiliate of the issuer thereof if: (1) a registration statement is in effect with respect to securities of the same class of the issuer and (2) the offer or sale has been exempted from registration by rule or order of the commissioner.

(p) Any transaction pursuant to an offer to existing security holders of the issuer, including persons who at the

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time of the transaction are holders of convertible securities, nontransferable warrants, or transferable warrants exercisable within not more than 90 days of their issuance, if: (1) no commission or other remuneration (other than a standby commission) is paid or given directly or indirectly for soliciting any security holder in this state; and (2) the commissioner has been furnished with a general description of the transaction and with other information as the commissioner may by rule prescribe no less than ten days prior to the transaction.

(q) Any nonissuer sales of any security, including a revenue obligation, issued by the state of Minnesota or any of its political or governmental subdivisions, municipalities, governmental agencies, or instrumentalities.

(r) Any transaction as to which the commissioner by rule or order finds that registration is not necessary in the public interest and for the protection of investors.

(s) An offer or sale of a security issued in connection with an employee's stock purchase, savings, option, profit sharing, pension, or similar employee benefit plan, if the following conditions are met:

(1) the issuer, its parent corporation or any of its majority-owned subsidiaries offers or sells the security according to a written benefit plan or written contract relating to the compensation of the purchaser; and

(2) the class of securities offered according to the plan or contract, or if an option or right to purchase a security, the class of securities to be issued upon the exercise of the option or right, is registered under section 12 of the Securities Exchange Act of 1934, or is a class of securities with respect to which the issuer files reports according to section 15(d) of the Securities Exchange Act of 1934; or

(3) the issuer fully complies with the provisions of Rule 701 as adopted by the Securities and Exchange Commission, Code of Federal Regulations, title 12, section 230.701.

The issuer shall file not less than ten days before the transaction, a general description of the transaction and any other information that the commissioner requires by rule or otherwise or, if applicable, a Securities and Exchange Form S-8. Annually, within 90 days after the end of the issuer's fiscal year, the issuer shall file a notice as provided with the commissioner.

(t) Any sale of a security of an issuer that is a pooled income fund, a charitable remainder trust, or a charitable lead trust that has a qualified charity as the only charitable beneficiary.

(u) Any sale by a qualified charity of a security that is a charitable gift annuity if the issuer has a net worth, otherwise defined as unrestricted fund balance, of not less than \$300,000 and either: (1) has been in continuous operation for not less than three years; or (2) is a successor or affiliate of a qualified charity that has been in continuous operation for not less than three years.

(v) The offer and sale by a cooperative organized under chapter 308B of its securities when the securities are offered and sold only to its existing members or when the purchase of the securities is necessary or incidental to establishing patron membership in the cooperative, or when such securities are issued as patronage dividends. This paragraph applies when

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securities are issued as patronage dividends or otherwise only when:

(1) the issuer, prior to the completion of the sale of such securities, provides each offeree or purchaser disclosure materials, which to the extent material to an understanding of the issuer, its business, and the securities being offered substantially meet the disclosure conditions and limitations found in rule 502(b) of regulation D promulgated by the Securities and Exchange Commission, Code of Federal Regulations, title 17, section 230.502; and

(2) within 15 days after the completion of the first sale in each offering completed in reliance upon this exemption, the cooperative has filed with the commissioner a consent to service of process under section 80A.27, subdivision 7, and has furnished the commissioner with a written general description of the transaction and any other information that the commissioner requires by rule or otherwise.

A cooperative may, at or about the same time as offers or sales are being completed in reliance upon this exemption from registration and as part of a common plan of financing, offer or sell its securities in reliance upon any other exemption from registration available under this chapter. The offer or sale of securities in reliance upon this paragraph shall not be considered or deemed a part of or be integrated with any offer or sale of securities conducted by the cooperative in reliance upon any other exemption from registration available under this chapter, nor shall offers or sales of securities by the cooperative in reliance upon any other exemption from registration available under this chapter be considered or deemed a part of or be integrated with any offer or sale conducted by the cooperative in reliance upon this paragraph.

Subd. 3. Revocation; order to show cause. The commissioner may issue an order requiring any person who claims the benefit of an exemption with respect to a specific security or transaction, to show cause why the exemption should not be revoked. The order shall be calculated to give reasonable notice of the time and place for hearing thereon, and shall state the reasons for the entry of the order. The commissioner may by order summarily suspend an exemption pending final determination of any order to show cause. If an exemption is suspended pending final determination of an order to show cause, a hearing on the merits shall be held within 30 days of the issuance of the order of suspension. All hearings shall be conducted in accordance with the provisions of chapter 14. After the hearing, the commissioner shall enter an order making such disposition of the matter as the facts require. If the person claiming the benefit of the exemption fails to appear at a hearing of which the person has been duly notified, such person shall be deemed in default, and the proceeding may be determined against the person upon consideration of the order to show cause, the allegations of which may be deemed to be true. The commissioner may adopt rules of procedure concerning all proceedings conducted pursuant to this subdivision.

A notice filing that is incomplete is considered withdrawn if no activity occurs with respect to the notice filing for a period of 120 days.

Subd. 4. Burden of proof. In any judicial or administrative proceeding under sections 80A.01 to 80A.31, the burden of proving an exemption or an exception from a definition

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is upon the person claiming it.

80A.16 FILING OF SALES AND ADVERTISING LITERATURE.

The commissioner may by rule or order require the filing of any prospectus, pamphlet, circular, form letter, advertisement, or other sales literature or advertising communication addressed or intended for distribution to prospective investors, including clients or prospective clients of an investment adviser or broker-dealer unless: (1) the security or transaction is exempted by section 80A.15; or (2) the security is a federal covered security.

80A.17 MISLEADING FILINGS.

It is unlawful for any person to make or cause to be made, in any document filed with the commissioner or in any proceeding under sections 80A.01 to 80A.31, other than a contested case hearing any statement which is, at the time and in the light of the circumstances under which it is made, false or misleading in any material respect or, in connection with such statement, to omit to state a material fact necessary in order to make the statements made, in the light of the circumstances under which they are made, not misleading.

80A.18 UNLAWFUL REPRESENTATIONS CONCERNING REGISTRATION OR EXEMPTION.

Neither the fact that a registration statement or an application for a license has been filed nor the fact that a security is effectively registered or a person is licensed constitutes a finding by the commissioner that any document filed under this chapter is true, complete and not misleading. Neither any such fact nor the fact that an exemption or exception is available for a security or a transaction means that the commissioner has passed in any way upon the merits or qualifications of, or recommended or given approval to, any person, security, or transaction. It is unlawful to make, or cause to be made, to any prospective purchaser, customer or client any representation inconsistent with the foregoing.

80A.19 ADMINISTRATION.

Subdivision 1. Commissioner of commerce. This chapter shall be administered by the commissioner of commerce.

Subd. 2. Information regulation. It is unlawful for the commissioner or any of the commissioner's officers or employees to use for personal benefit any information which is filed with or obtained by the commissioner and which is not a matter of public record. Nothing in this chapter authorizes the commissioner or any of the commissioner's officers or employees to disclose information which is not a matter of public record except among themselves or when necessary or appropriate in a proceeding or investigation under this chapter. No provision of this chapter either creates or derogates from any privilege which exists at common law or otherwise when documentary or other evidence is sought under a subpoena directed to the commissioner or any of the commissioner's officers or employees.

Subd. 3. Biennial report. It shall be the duty of the commissioner biennially, on or before October 1, in each even numbered year, to prepare and file in the office of the governor a report for the preceding two fiscal years ending June 30 preceding the report, which shall contain a summary of all applications received, withdrawn, granted and denied; a summary of all

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registrations and licenses suspended, revoked or canceled, a schedule of receipts and disbursements of the commissioner, and such other information as the commissioner considers material.
80A.22 CRIMINAL PENALTY.

Subdivision 1. False or misleading statements. Any person who willfully violates any provision of sections 80A.01 to 80A.31 except section 80A.17, or any rule or order under sections 80A.01 to 80A.31, of which that person has notice, or who violates section 80A.17 knowing that the statement was false or misleading in any material respect, may be fined not more than \$10,000 or imprisoned not more than five years or both. Each of the acts specified shall constitute a separate offense and a prosecution or conviction for any one of such offenses shall not bar prosecution or conviction for any other offense.

Subd. 2. Referral to attorney general. The commissioner may refer such evidence as is available concerning violations of sections 80A.01 to 80A.31 or of any rule or order hereunder to the attorney general or the county attorney of the appropriate county, who may, with or without any such reference, institute the appropriate criminal proceedings under sections 80A.01 to 80A.31. If referred to a county attorney, the county attorney shall within 90 days file with the commissioner a statement concerning any action taken, or, if no action has been taken, the reasons therefor.

Subd. 3. Other crimes. Nothing in sections 80A.01 to 80A.31 limits the power of the state to punish any person for any conduct which constitutes a crime under any other statute.

80A.23 CIVIL LIABILITIES.

Subdivision 1. Registration-related actions. Any person who sells a security in violation of sections 80A.08 or 80A.18, or of any condition imposed under section 80A.11, subdivision 4, or 80A.12, subdivisions 5 and 6, is liable to the person purchasing the security, who may sue either in equity for rescission upon tender of the security or at law for damages if that person no longer owns the security. In any action for rescission, the purchaser shall be entitled to recover the consideration paid for the security together with interest at the legal rate, costs, and reasonable attorney's fees, less the amount of any income received on the securities. In an action at law, damages shall be the consideration paid for the security together with interest at the legal rate to the date of disposition, costs, and reasonable attorney's fees, less the value of the security at the date of disposition.

Subd. 2. Sales and purchase actions. Any person who violates section 80A.01 in connection with the purchase or sale of any security shall be liable to any person damaged thereby who sold such security to that person or to whom that person sold such security, and any person who violates section 80A.03 in connection with the purchase or sale of any security shall be liable to any person damaged by the conduct prescribed by section 80A.03. Any person who violates section 80A.02 in connection with the purchase or sale of any security shall be liable to any investment advisory client who is damaged thereby. Damages in an action pursuant to this subdivision shall include the actual damages sustained plus interest from the date of payment or sale, costs and reasonable

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attorney's fees.

Subd. 3. **Joint and several liability of others.** Every person who directly or indirectly controls a person liable under subdivision 1 or 2, every partner, principal executive officer or director of such person, every person occupying a similar status or performing a similar function, every employee of such person who materially aids in the act or transaction constituting the violation, and every broker-dealer or agent who materially aids in the act or transaction constituting the violation, are also liable jointly and severally with and to the same extent as such person. There is contribution as in cases of contract among the several persons so liable.

Subd. 4. **Liability exception.** No person shall be liable under subdivisions 1 to 3 who shall sustain the burden of proof that the person did not know, and in the exercise of reasonable care could not have known, of the existence of facts by reason of which the liability is alleged to exist.

Subd. 5. **Tender.** Any tender specified in this section may be made

at any time before entry of judgment. Tender by a purchaser shall require only notice of willingness to exchange the security for the amount computed pursuant to subdivision 1. Tender by a seller shall require only notice of willingness to pay the amount specified in exchange for the security. Any notice may be given by service as in civil actions or by certified mail to the last known address of the person liable.

Subd. 6. **Survival of action.** Every cause of action under this statute survives the death of any person who might have been a plaintiff or defendant.

Subd. 7. **Limitation on actions.** No person may commence an action under subdivision 1 more than three years after the sale upon which such action is based. No person may commence an action under subdivision 2 more than three years after the occurrence of the act or transaction constituting the violation.

Subd. 8. **Offer to prevent suit.** No purchaser may commence an action under subdivision 1 if, before suit is commenced, the purchaser has received a written offer to repurchase the security for cash payable on delivery of the security equal to the consideration paid, together with interest at the legal rate from the date of payment, less the amount of any income received thereon or, if the purchaser no longer owns the security, an offer to pay an amount in cash equal to the damages computed in accordance with subdivision 1 and the purchaser has failed to accept such offer in writing within 30 days of its receipt. No offer shall be effective to prevent suit under this section unless a duplicate copy thereof shall have been filed with the commissioner at least 20 days prior to its delivery to the offeree and the commissioner shall not have objected to the offer within that time. The offer shall be in the form and contain the information the commissioner by rule or order prescribes. If the offer is not performed in accordance with its terms, suit by the offeree under this section shall be permitted without regard to this subdivision.

Subd. 9. **Conduct-related action restrictions.** No person who

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has made or engaged in the performance of any contract in violation of any provision of this section or any rule or order hereunder or has acquired any purported rights under any such contract with knowledge of the facts by reason of which its making or performance was in violation may base any suit on such violation under the contract.

Subd. 10. **Compliance waivers void.** Any condition, stipulation or provision binding any person to waive compliance with any provision of sections 80A.01 to 80A.31 or any rule or order hereunder in the purchase or sale of any security is void.

Subd. 11. **Other actions.** The rights and remedies promulgated by sections 80A.01 to 80A.31 are in addition to any other right or remedy that may exist at law or in equity, but sections 80A.01 to 80A.31 do not create any cause of action not specified in this section or section 80A.05, subdivision 5. No civil cause of action may be based solely upon the failure of a broker-dealer or agent to comply with the requirements of section 80A.04, subdivision 1 or 3, except a cause of action arising under section 45.027.

80A.24 HEARINGS AND JUDICIAL REVIEW.

Subdivision 1. **Application and conduct of hearing.** Within 30 days after an order has been issued without a hearing, any interested party may apply to the commissioner for a hearing in respect to matters determined by the order, and a hearing shall be held, on a date fixed by the commissioner, within 30 days after the application is filed. After the hearing the commissioner may modify the order as the commissioner deems appropriate. Hearings shall be public unless the commissioner grants a request joined in by all parties that the hearing be conducted privately.

Subd. 2. **Reviewability of orders.** Orders of the commissioner shall be subject to judicial review under chapter 14, but orders originally issued without hearing may be reviewed only if the party seeking review has requested a hearing within the time provided by subdivision 1.

80A.25 RULES, FORMS AND ORDERS.

Subdivision 1. **Commissioner's general authority.** The commissioner may from time to time make, amend, and rescind such rules, forms, and orders as are necessary to carry out the provisions of sections 80A.01 to 80A.31, including but not limited to rules and forms governing the conduct of business by broker-dealers, agents and investment advisers, registration statements, applications, and reports, and defining any terms, whether or not used in sections 80A.01 to 80A.31, insofar as the definitions are not inconsistent with the provisions of sections 80A.01 to 80A.31. For the purpose of rules and forms, the commissioner may classify securities, persons, and matters within the commissioner's jurisdiction, and prescribe different requirements for different classes.

Subd. 2. **Scope of authority.** No rule, form or order may be made, amended or rescinded unless the commissioner finds that the action is necessary or appropriate in the public interest or for the protection of investors and consistent with the purposes fairly intended by the policy and provisions of sections 80A.01 to 80A.31. In prescribing rules and forms the commissioner may

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cooperate with securities administrators of the other states and the Securities and Exchange Commission with a view to effectuating the policy of this statute to achieve maximum uniformity in the form and content of registration statements, application, and reports wherever practicable.

Subd. 3. Financial statements. The commissioner may by rule or order prescribe

(a) the form and content of financial statements required under sections 80A.01 to 80A.31, (b) the circumstances under which consolidated financial statements shall be filed, and (c) whether any required financial statements shall be certified by independent or certified public accountants. All financial statements shall be prepared in accordance with generally accepted accounting principles unless otherwise permitted by rule or order.

Subd. 4. Publishing of rules and forms. All rules and forms of the commissioner shall be published.

Subd. 5. Good faith exception to liability. No provision of sections 80A.01 to 80A.31

imposing any liability applies to any act done or omitted in good faith in conformity with any rule, form, or order of the commissioner, notwithstanding that the rule, form, or order may later be amended or rescinded or be determined by judicial or other authority to be invalid for any reason.

80A.26 ADMINISTRATIVE FILES AND OPINIONS.

Subdivision 1. Filings. A document is filed when it is received by the commissioner.

Subd. 2. Register. The commissioner shall keep a register of all

applications for registration and registration statements which are or have ever been effective, and all denial, suspension, or revocation orders which have ever been entered under this chapter and any predecessor laws. Any information contained in the register shall be a matter of public record.

Subd. 3. Classification of information. All information contained in or filed with any registration statement, application, or report, except such information as to which the commissioner, upon request and for good cause shown, grants confidential treatment, and except as to reports of sales provided for in section 45.027, subdivision 1, clause (7), shall be a matter of public record and shall be made available to the public under such rules as the commissioner prescribes.

Subd. 4. Copying. Upon request and at such reasonable charges as the commissioner prescribes, the commissioner shall furnish to any person photostatic or other copies (certified under the seal of office if requested) of any entry in the register or any document which is a matter of public record. In any proceeding or prosecution under this chapter, any copy so certified is prima facie evidence of the contents of the entry or document certified.

Subd. 5. Interpretive opinions. The commissioner may honor requests from interested persons for interpretive opinions.

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80A.27 SCOPE OF SECTIONS 80A.01 TO 80A.31 AND SERVICE OF PROCESS.

Subdivision 1. Sales. Sections 80A.01; 80A.04, subdivision 1; 80A.08; 80A.18; and 80A.23, apply to persons who sell or offer to sell when (a) an offer to sell is made in this state or (b) an offer to buy is made and accepted in this state.

Subd. 2. Purchases. Sections 80A.01; 80A.04, subdivision 1; 80A.18; and 80A.23, apply to persons who buy or offer to buy when (a) an offer to buy is made in this state, or (b) an offer to sell is made and accepted in this state.

Subd. 3. Offers made. For the purpose of this section an offer to sell or to buy is made in this state, whether or not either party is then present in this state, when the offer (a) originates from this state or (b) is directed by the offeror to this state and received by the offeree in this state, but for the purpose of section 80A.08 an offer to sell which is not directed to or received by the offeree in this state is not made in this state.

Subd. 4. Offers accepted. For the purpose of this section an offer to buy or to sell is accepted in this state when acceptance (a) is communicated to the offeror in this state and (b) has not previously been communicated to the offeror, orally or in writing outside of this state; and acceptance is communicated to the offeror in this state, whether or not either party is then present in this state, when the offeree directs it to the offeror in this state reasonably believing the offeror to be in this state and it is received by the offeror in this state.

Subd. 5. Offers not made in state. An offer to sell or to buy is not made in this state when (a) the publisher circulates or there is circulated on the publisher's behalf in this state any bona fide newspaper or other publication of general, regular, and paid circulation which is not published in this state, or which is published in this state but has had more than two-thirds of its circulation outside this state during the past 12 months, or (b) a radio or television program originating outside this state is received in this state.

Subd. 6. Application of certain sales and licensing restrictions. Sections 80A.01 and 80A.04, subdivision 3, so far as investment advisers are concerned, and section 80A.03 so far as any person is concerned, apply when any act instrumental in effecting prohibited conduct is done in this state, whether or not either party is then present in this state.

Subd. 7. Consent to service of process. Every applicant for registration under sections 80A.01 to 80A.31 and every issuer who proposes to offer a security in this state through any person acting on an agency basis in the common law sense shall file with the commissioner, in such form as the commissioner by rule prescribes, an irrevocable consent appointing the commissioner or a successor in office to be the attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against that person or a successor, executor, or administrator which arises under sections 80A.01 to 80A.31 or any rule or order hereunder after the consent has been filed, with the same force and validity as if served personally on the person filing the

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consent. The consent need not be filed by a person who has filed a consent in connection with a previous registration or license which is then in effect. Service may be made in compliance with section 45.028, subdivision 2.

Subd. 8. **Appointment of commissioner to receive process.** When any person, including any nonresident of this state, engages in conduct prohibited or made actionable by sections 80A.01 to 80A.31 or any rule or order hereunder, and has not filed a consent to service of process under subdivision 7 and personal jurisdiction cannot otherwise be obtained in this state, that conduct shall be considered equivalent to an appointment of the commissioner or a successor in office to be the attorney to receive service of any lawful process in any noncriminal suit, action, or proceeding against that person or a successor executor or administrator which grows out of that conduct and which is brought under sections 80A.01 to 80A.31 or any rule or order hereunder, with the same force and validity as if served personally. Service under this section shall be made in compliance with section 45.028, subdivision 2.

Subd. 9. **Authority to grant continuance.** When process is served under this section, the court, or the commissioner in a proceeding before the commissioner, shall order such continuance as may be necessary to afford the defendant or respondent reasonable opportunity to defend.

80A.28 FEES AND EXPENSES.

Subdivision 1. **Registration or notice filing fee.** (a) There shall be a filing fee of \$100 for every application for registration or notice filing. There shall be an additional fee of one-tenth of one percent of the maximum aggregate offering price at which the securities are to be offered in this state, and the maximum combined fees shall not exceed \$300.

(b) When an application for registration is withdrawn before the effective date or a preeffective stop order is entered under section 80A.13, subdivision 1, all but the \$100 filing fee shall be returned. If an application to register securities is denied, the total of all fees received shall be retained.

(c) Where a filing is made in connection with a federal covered security under section 18(b)(2) of the Securities Act of 1933, there is a fee of \$100 for every initial filing. If the filing is made in connection with redeemable securities issued by an open end management company or unit investment trust, as defined in the Investment Company Act of 1940, there is an additional annual fee of 1/20 of one percent of the maximum aggregate offering price at which the securities are to be offered in this state during the notice filing period. The fee must be paid at the time of the initial filing and thereafter in connection with each renewal no later than July 1 of each year and must be sufficient to cover the shares the issuer expects to sell in this state over the next 12 months. If during a current notice filing the issuer determines it is likely to sell shares in excess of the shares for which fees have been paid to the commissioner, the issuer shall submit an amended notice filing to the commissioner under section 80A.122, subdivision 1, clause (3), together with a fee of 1/20 of one percent of the maximum aggregate offering price of the additional shares. Shares for which a fee has been paid, but which have not been sold at the

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time of expiration of the notice filing, may not be sold unless an additional fee to cover the shares has been paid to the commissioner as provided in this section and section 80A.122, subdivision 4a. If the filing is made in connection with redeemable securities issued by such a company or trust, there is no maximum fee for securities filings made according to this paragraph. If the filing is made in connection with any other federal covered security under Section 18(b)(2) of the Securities Act of 1933, there is an additional fee of one-tenth of one percent of the maximum aggregate offering price at which the securities are to be offered in this state, and the combined fees shall not exceed \$300. Beginning with fiscal year 2001 and continuing each fiscal year thereafter, as of the last day of each fiscal year, the commissioner shall determine the total amount of all fees that were collected under this paragraph in connection with any filings made for that fiscal year for securities of an open-end investment company on behalf of a security that is a federal covered security pursuant to section 18(b)(2) of the Securities Act of 1933. To the extent the total fees collected by the commissioner in connection with these filings exceed \$25,000,000 in a fiscal year, the commissioner shall refund, on a pro rata basis, to all persons who paid any fees for that fiscal year, the amount of fees collected by the commissioner in excess of \$25,000,000. No individual refund is required of amounts of \$100 or less for a fiscal year.

Subd. 2. **License application and renewal filing fee.** Every applicant for an initial or renewal license shall pay a filing fee of \$200 in the case of a broker-dealer, \$50 in the case of an agent, and \$100 in the case of an investment adviser. When an application is denied or withdrawn, the filing fee shall be retained. A licensed agent who has terminated employment with one broker-dealer shall, before beginning employment with another broker-dealer, pay a transfer fee of \$25. The fee for a filing made according to section 80A.05, subdivision 1a, is \$100.

Subd. 3. **Amendment fee.** Any amendment to an existing license or registration requiring an order of the commissioner shall require payment of an amendment fee of \$25. If the amendment increases the aggregate amount of securities to be registered, there shall be an additional fee calculated in accordance with subdivision 1, provided the maximum additional fees, if applicable, have not previously been paid. The commissioner shall by rule designate those amendments which require an order of the commissioner.

Subd. 4. **Annual report fee.** Every annual report required by section 80A.12, subdivision 10, shall be accompanied by a fee of \$100.

Subd. 5. **Exemption filing fee.** The filing of any exemption for which notice is required to be given the commissioner under section 80A.15, subdivision 2, shall be accompanied by a fee of \$50.

Subd. 6. **Rescission offer filing fee.** The filing of a rescission offer under section 80A.23, subdivision 8, shall be accompanied by the fees as calculated in subdivision 1.

Subd. 7. **Written opinion request fee.** Every request for a written opinion from the commissioner shall be accompanied by a fee of \$50.

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Subd. 7a. **Excess securities registration filing fee.** If securities of an issuer are sold in this state in excess of the quantity registered, the excess securities may be registered by paying a filing fee of \$100, and an additional fee in the amount of three times that which is prescribed under subdivision 1, for the excess securities to be registered. There shall be no maximum combined fees under this subdivision, notwithstanding the limitation set forth in subdivision 1, clause (a).

Registration of the excess securities shall be effective retroactively to the date of sale.

Subd. 8. **Expense deposits.** When the commissioner deems it necessary to incur any expense in connection with any application, registration or license, the commissioner shall have the power to require the interested person to make an advance deposit with the commissioner in an amount estimated as sufficient to cover such expense. All such deposits shall be covered into the state treasury and credited to the state commissioner of commerce's investigation fund, from which fund the commissioner shall have power to make disbursements to pay for expenses necessarily incurred in the investigation. Any unexpended portion shall be refunded. On field examinations made by the commissioner or an employee away from the office of the commissioner, a per diem of \$10 for each such person may be charged in addition to actual expenses. Where additional technical, expert, or special services are used, the actual cost of such services may be charged in addition to actual expenses.

Subd. 9. **Generally.** No filing for which a fee is required shall be deemed to be filed or given any effect until the proper fee is paid. All fees and charges collected by the commissioner shall be covered into the state treasury. When any person is entitled to a refund under this section, the commissioner shall certify to the commissioner of finance the amount of the fee to be refunded to the applicant, and the commissioner of finance shall issue a warrant in payment thereof out of the fund to which such fee was credited in the manner provided by law. There is hereby appropriated to the person entitled to such refunds from the fund in the state treasury to which such fees were credited an amount to make such refunds and payments.

80A.29 SALE OF LIQUOR WAREHOUSE RECEIPTS IS SALE OF SECURITIES.

The sale of warehouse receipts or other evidence of ownership for the storing of liquor during the aging or processing period of liquor is hereby declared to be a sale of securities subject to all of the provisions of sections 80A.01 to 80A.31 except section 80A.15. The sale of such warehouse receipts by broker-dealers and agents licensed under sections 80A.01 to 80A.31 is hereby authorized without such broker-dealers or agents having to procure a liquor license when such liquor is not to be imported nor shipped into this state, except as authorized by law. The provisions of sections 80A.01 to 80A.31 shall not apply to the sale of warehouse receipts to distillers, manufacturers, or wholesalers of liquor duly licensed as such in the state of Minnesota.

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80A.30 REGISTRATION OF OIL OR GAS LANDS OR INTEREST BEFORE SALE.

Subdivision 1. **Generally.** No person shall sell to any person in this state any lands represented to contain or to be a prospect for oil or gas, or any interest therein or thereunder, or in royalties therefrom, unless and until those lands, interests or royalties shall have been first registered under this chapter. Registration shall be made or denied in substantially the same manner and upon substantially the same grounds and conditions as are prescribed for the registration of securities by section 80A.11. The fees for registration shall be calculated in the same manner as the fees for registration of securities under section 80A.28, subdivision 1.

Subd. 2. **Exception.** This section shall not apply to any isolated sale not made or occurring in the course of repeated or successive sale; nor to any judicial sale or any transaction lawfully ordered, authorized, or approved by a court of competent jurisdiction in this state; nor to any sale to a bank or financial institution under the supervision of any instrumentality or officer of the United States or of the commissioner of commerce of this state, or a licensed broker-dealer; nor to any sale made in compliance with the provisions of section 80A.15, subdivision 2, clause (g) or (h). In any complaint, information or indictment charging a sale in violation of this section, it shall not be necessary to specifically name or identify persons other than the complainant to whom like sales have been made.

80A.31 STATUTORY POLICY.

Sections 80A.01 to 80A.31 shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it and to coordinate the interpretation of sections 80A.01 to 80A.31 with the related federal regulation.



Why States Should Adopt the...

Uniform Securities Act (2002)

The states have a significant role in securities regulation. Fraudulent activity often occurs at a level that eludes the applicability of federal law and, even when federal law applies, eludes the capacity of federal enforcement. Without state regulation accompanied by civil and criminal enforcement of the law in state courts, there would be no hope of redress for many victimized investors.

The Uniform Securities Act (2002) is important new legislation designed to coordinate federal and state securities regulation. It will give states regulatory and enforcement authority that avoids duplication of regulatory effort and blends with federal regulation and enforcement in a more efficient system for investor protection. To that end, the new act provides the following:

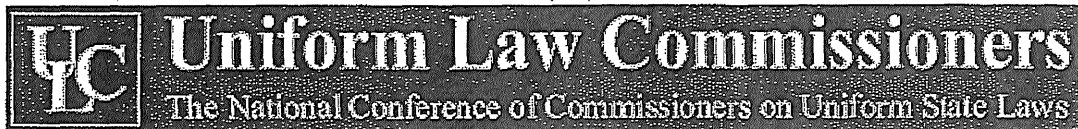
- **Registration of securities.** Three forms of securities registration - notice, coordination and qualification - clarify and simplify the process for both the regulators and the industry. The requirements give investors assurance that the marketplace will be fair, the playing field level, and the estimations of value based on real information.
- **Regulation of broker-dealers, investment advisors, their agents and representatives.** Investment professionals must register in states where they do business. Federal covered investment advisors have notice filing obligations, whereas other investment professionals are subject to more comprehensive registrations. For the most part, securities administrators are authorized to establish these requirements by rule or order.
- **Expanded enforcement powers.** Enforcement provisions are more comprehensive and include civil and criminal actions against those who perpetrate frauds through appropriate courts of law and through administrative actions such as cease and desist orders.
- **Investigatory and subpoena powers.** Securities administrators will have the power to conduct investigations, backed by subpoena powers and with the contempt powers of a court with jurisdiction.
- **Criminal penalties set by states.** The USA 2002 provides that a state sets its own criminal penalties for violations, including for basic anti-fraud provisions. Persons violating the act are subject to civil liability against any injured party. Damages and equitable relief are generally equivalent to those available in actions under federal law.
- **Investor education.** The act creates an optional fund to support investor education programs highlighting the need to help investors protect themselves against fraud.
- **Electronic filing facilitation.** The act facilitates the electronic filing of documents and the movement toward a more technologically effective system of capital formation and securities regulation.

UNIFORMITY

The Uniform Securities Act (2002) provides enforcement at every level to maximize effectiveness. Its provisions will provide a stronger securities regulatory framework and protections for investors. At the same time, the effort to eliminate duplication of regulation relieves the marketplace of a significant burden, keeping American securities markets the best in the world.

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SUMMARY

Uniform Securities Act

Background

The Uniform Law Commissioners have turned to the subject of securities regulation four times in their history. The first act was the Uniform Sales of Securities Act of 1930, which predates the first major federal effort in 1933. The dating of this first act seems appropriate in light of the events of 1929. Recognizing the need for state uniformity, the Uniform Law Commissioners had begun their work eight years earlier, in 1922. There were not many enactments, however.

A second Uniform Securities Act was promulgated by the Uniform Law Commissioners in 1956 to replace the 1930 Act. It was enacted in 37 jurisdictions. The first revision of this mainstay of state securities regulation occurred in 1985; amendments were added to the 1985 Act in 1988, but the revision was enacted in only six states. The Uniform Law Commissioners have now promulgated a fourth Act which replaces both the 1956 and 1985 Acts. It is a carefully balanced result of four years of intensive consideration and drafting, and reflects consensus support from most representatives of the broad array of government and private sector interests that participated in the process. This summary describes the 2002 Uniform Securities Act.

Federal and State Law

Initially it is necessary to recognize that there are two concurrent securities regulatory regimes: one at the federal level and the other at the state level. Federal regulation of securities began effectively with Congress' enactment of the Securities Act of 1933 and the Securities Exchange Act of 1934, which created the Securities and Exchange Commission (SEC). These two Acts, plus the Investment Company and the Investment Adviser Acts enacted in 1940, all of them much amended over the years since their original enactment, are still the core federal law on securities regulation. But there are more federal statutes relevant to securities regulation: Section 103 of the 2002 Act lists a total of 13. From 1956 through 2002, drafters of the successive versions of the Uniform Securities Act have had to deal with the relationship with federal law. Coordinating federal and state regulation has been a substantial objective of the drafters of the new 2002 Uniform Act.

The failure of the 1985 Act to gain many enactments was rooted in the duplication of regulation problem, the role of merit regulation at the state level, and many states' reluctance to address the subject when there was such controversy about its provisions. In 1996, Congress partially resolved this problem in the National Securities Markets Improvements Act of 1996 (NSMIA) and the Securities Litigation Uniform Standards Act of 1998. In NSMIA Congress preempted significant parts of state power to duplicate federal regulation. For example, it prohibits a state from subjecting an offering of "federal covered securities" to merit review and other registration requirements. A principal effort of the 2002 Uniform Act is to reconcile, and to achieve better coordination of, federal and state securities regulation.

State Role in Securities Regulation

The states have an important role in securities regulation. There is fraudulent activity at a level that eludes federal law protection, even when federal law applies. And by no means is every security sold a "federal covered security." Many schemes to defraud investors involve locally generated pyramid schemes, misrepresentation, and scam sales. Without state regulation

accompanied by civil and criminal enforcement of the law in state courts, there would be little hope of redress for many victimized investors. State enforcement is also available when there are fraudulent schemes involving federal covered securities. In effect, Congress and the SEC have acknowledged that the federal level is unable to cope with all the enforcement that needs to be done.

The 2002 Uniform Act is an effort to give states regulatory and enforcement authority that minimizes duplication of regulatory resources and that blends with federal regulation and enforcement in a more efficient system for investor protection. Uniformity of law among the states is essential for this to happen, but it needs to be a uniform law that coordinates with federal law.

Elements of Securities Regulation

Securities regulation exists to prevent fraudulent sales of securities to investors. The purpose is achieved by three methods. First, initial public offerings of securities by issuers and control persons must be registered. Second, broker-dealers and their agents, and investment advisers and their representatives, must be registered. Third, fraud in securities transactions must be prohibited and enforcement powers given to an appropriate regulatory agency. These powers include the ability to make rules and regulations, issue stop-orders, bring criminal prosecutions and pursue civil actions in court. The 2002 Uniform Act brings all of this up-to-date with expansion of enforcement authority at the state level.

Registration and Filing for Securities Offerings

There are three methods for dealing with public offerings of securities under the new Act: notice filing, registration by coordination, and registration by qualification.

Notice filing is for certain "federal covered securities". These are securities which by reason of federal preemption are no longer registered at the state level. They include securities that are, or on completion of the offering will be, listed on the New York or American Stock Exchanges, on NASDAQ, or on other exchanges that the SEC approves; or are securities issued by SEC registered investment companies (most of which are the mutual funds); or are securities issued under specified exemptions in the Securities Act of 1933. Public offerings of listed securities and mutual funds, of course, will be registered with the SEC. The notice filing under the 2002 Uniform Act is for federal covered securities other than listed securities, and includes a consent to service of process, payment of a filing fee, and, depending on the state securities administrator's requirements, can include copies of material filed with the SEC as part of registration there. The intent of both NSMIA and the 2002 Uniform Act is to remain essentially revenue neutral as to the states. The Act provides a platform for eventually effectuating one-stop filing whereby documents filed with the SEC can be electronically filed with states within which offerings are to be made.

Offerings of securities that are not federal covered securities must be registered at the state level unless exempt, by means of either coordination or qualification. The provision in the 1956 Act for registration by notification has been eliminated in the 2002 Act, both because it has rarely been used in recent years and because most securities to which it was applicable are now preempted federal covered securities.

Coordination registration at the state level is available for securities that, even though not federal covered securities, are registered with the SEC. These would include securities that do not meet the listing standards of exchanges, which have been going through a process of upgrading. The new Act's registration by coordination provision is little changed from the 1956 Act, which originated it. The objective of the coordination is the simultaneous registration of the offering at the SEC and in the states where the offering is to be made. In order to facilitate the coordination registration process, the state securities administrators association has implemented a system for coordinated review of such an offering by the states in which the offering is to be made. The new Act provides support for that effort. The new Act continues to permit "merit" regulation, which for the limited number of SEC registered issues to which it would apply remains, to that extent, inconsistent with the disclosure basis for SEC registration. A provision of the new Act does require that to the extent practicable any merit standards should be published so as to provide notice. It is hoped that such standards would be uniform among those states imposing such

regulation. A number of states do not apply merit regulation.

Qualification registration at the state level applies to all other offerings being made within a state, for which an exemption is not available. These can include intra-state offerings and offerings that are within exemptions from SEC registration because of their relatively small size. This provision in the new Act, including the required information content of the state registration (which is applicable also to issues being registered by coordination), is little changed from the 1956 Act, except for modernizing language.

The 2002 Act, like the 1956 Act, contains a number of exemptions from the general requirement that all securities offerings must be registered. Some exemptions are for securities, such as government (both U.S. and foreign) and municipal securities, and some are for transactions in securities, such as unsolicited brokerage and limited offering transactions.

Relevant to transaction exemptions is the definition of "institutional investor" in the new Act. It seeks both to make uniform the varied definitions in current state laws and to be consistent under federal law. With respect to securities exemptions, authority is given to the state securities administrator to limit the availability of the exemption for nonprofit organizations securities if debt obligations are being publicly offered. A number of states have been confronted with problems, sometimes of fraud and sometimes simply of inadequate disclosure, in the sale of church bonds.

It is important to recognize that all of these exemptions are only from the registration of securities. They do not free broker-dealers, investment advisers, agents, or investment adviser representatives from the separate registration requirements applicable to them under the Act. In addition, the antifraud provisions of the Act continue to apply to anyone engaging in an exempted transaction or in a transaction involving an exempted security.

Registration of Securities Professionals

The second method of securities regulation is the registration, and continued oversight, of broker-dealers and investment advisers, and the individuals who are agents of broker-dealers or issuers or who are investment adviser representatives, all defined terms in the Act. Here again there is a necessary interaction of federal and state law. The 2002 Act systematizes and reorganizes the provisions dealing with these securities professionals and coordinates them to the extent feasible with federal regulation.

In NSMIA, Congress limited, in certain respects, the state regulation of broker-dealers. In practice most broker-dealers are required under the Securities Exchange Act to be registered with the National Association of Securities Dealers (NASD) and are regulated by both that self-regulatory organization and by the SEC. Nevertheless, under NSMIA and the 2002 Act they are still subject to registration with, and antifraud enforcement by, the states. The individuals who are agents of broker-dealers are also required to be dually registered, and agents of issuers are in general required by the Act to be registered in the states. The new uniform Act clarifies these federal-state interrelationships and promotes an efficient coordination of the duality of registration and regulation in the public interest to the benefit of both the regulators and the regulated.

NSMIA took a somewhat different tack with respect to investment advisers and the individuals who are investment adviser representatives. For investment advisers Congress exercised its constitutional preemptive power to allocate regulatory authority between the SEC and the states. State registration of large investment advisers (those having assets under management in excess of \$25 million) was preempted and is exclusively with the SEC. However, under the Act and as permitted by NSMIA notice filings by such "federal covered investment advisers", who must be registered with the SEC, are to be made at the state level, along with payment of filing fees and consents to service of process. Smaller investment advisers (those having assets under management of less than \$25 million) are left to exclusive state registration and regulation. The new Uniform Act provides for the notification by larger advisers and the registration of smaller advisers.

The individuals who are investment adviser representatives of both federal covered investment advisers and the investment advisers subject to state registration must be registered with the

states in which they do business, unless exempted. There is no system for federal registration of investment adviser representatives, but the NASD is cooperating with the national association of state securities regulators in the creation of a centralized filing system for such representatives. The new Act supports such a system.

There are certain clarifying exclusions from the definitions of broker-dealer, agent, investment adviser, and investment adviser representative and certain exemptions from their registration in the 2002 Uniform Act, which are in general consistent with the federal statutes and with the 1956 Act.

Enforcement

The third method of securities regulation, of course, is enforcement, against anyone for fraudulent practices in securities transactions and against issuers and securities professionals for failure to comply with the registration regimes applicable to them. The new Uniform Act continues the enforcement powers of the state securities regulators contained in the 1956 Act with some enhancements. Enforcement includes civil and criminal actions in the courts and administrative proceedings. The new Act authorizes the state securities administrator to issue, under appropriate procedures, cease and desist orders for violations of the Act, and authorizes courts to enforce such orders. Also contained in the Act are authority for conduct of investigations and issuance of subpoenas and provision of assistance to securities regulators in other jurisdictions. The Act also includes civil liability provisions for defrauded persons to obtain damages or rescission that are substantially the same as in the 1956 Act, except that the statute of limitations is lengthened to be the same as the federal statute of limitations for securities fraud liability.

Fraud in connection with securities is a broadly defined term under both federal and state securities law, and the 2002 Act preserves that breadth. In fact, the applicability of the anti-fraud provisions has been expanded by having moved some exclusions from definitions in the 1956 Act to exemptions from registration in the 2002 Act. The antifraud provisions in the Act apply within the state equally to state registered entities and persons, to federal covered investment advisers, and to anyone in connection with transactions in any securities, including federal covered securities.

The definition of "security" largely determines the scope of the Act. The new Act tracks the definition of "security" in federal law, with some additional explicit language to make clear that the Act applies to uncertificated as well as certificated securities, to interests in limited partnerships and limited liability companies, and to investments in viatical settlements of insurance contracts, as to which there has been evidence of abuses. The Act also codifies a generally accepted definition of an "investment contract", a term included in the federal and state definition of "security", for the assistance of state courts. Following federal law, interests in pension plans subject to ERISA are excluded from the definition of "security", as are insurance contracts which are also regulated under other law.

The new Act, as did the 1956 Act, leaves open for resolution state by state whether variable annuity contracts issued by insurance companies should be excluded from the definition of "security". Variable annuities, which operate like and compete with mutual fund investments, are securities under federal law. Because the separate accounts of insurance companies that issue variable annuities would likely be registered with the SEC as investment companies, they would under NSMIA be federal covered securities not subject to state registration. Including them within the definition of security would have the effect of making their sale subject to the notice filing and antifraud provisions of the 2002 Uniform Act and require agent registration for their sellers.

While not strictly related to enforcement, it is worth noting that the 2002 Uniform Act contains a new provision that would authorize the state securities administrator to develop and implement programs for investor education, with particular emphasis on the prevention and detection of securities fraud. The new Act also creates a Securities Investor Education and Training Fund to support such a program, the funding of which is left to state by state determination. These initiatives are in recognition that financial literacy is increasingly important as participation in the country's equity markets has significantly broadened.

Coordination and Uniformity

In NSMIA, Congress declared that its policy is to increase Federal and State cooperation in securities matters. To implement this, it instructed the SEC, at its discretion, to cooperate, coordinate and share information with state securities regulators so as to maximize effectiveness of securities regulation, maximize uniformity in federal and state regulatory standards, and minimize interference with the business of capital formation, including sharing of information regarding registration or exemption of securities issues and development and maintenance of uniform securities forms and procedures. Congress made it explicit that the policy it enunciated was not intended to be preemptive of state law.

The 2002 Uniform Securities Act responds to this federal initiative by containing a provision that contains a reciprocal instruction, in substantially the same language, from the state legislature to its securities administrator. Thus, upon enactment of the 2002 Act, both the federal and state regulators would have the same marching instructions from their respective legislatures to make securities regulation as efficient, effective and coordinated as practicable in the public interest and for the protection of investors. For this to happen both federal/state coordination and uniformity among the states must be the objectives. The 2002 Uniform Act provides a platform for these to occur at the state level.

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A Few Facts About The...

UNIFORM SECURITIES ACT (2002)

PURPOSE:

The Uniform Securities Act is a revision of earlier versions of the Uniform Securities Act from 1956 and 1985. The new uniform act gives state securities regulators broad powers to investigate, prosecute, and sanction individuals and firms that engage in securities transactions; it is also consistent with current federal law.

ORIGIN:

Completed by the Uniform Law Commissioners in 2002.

ENDORSED BY:

North American Securities Administrators Association
Securities Industry Association
New York Stock Exchange
National Association of Securities Dealers
Investment Counsel Association of America

APPROVED BY:

American Bar Association

STATE ADOPTIONS:

Idaho	Oklahoma
Iowa	South Carolina
Kansas	South Dakota
Maine	U.S. Virgin Islands
Missouri	Vermont

2006 INTRODUCTIONS:

Alabama
Alaska
Hawaii
Washington

For any further information regarding the Uniform Securities Act, please contact Michelle Clayton, John McCabe or Katie Robinson at 312-915-0195.

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1.1 **Senator Betzold from the Committee on Judiciary, to which was referred**

1.2 **S.F. No. 2613:** A bill for an act relating to funerals; prohibiting the disruption of a
3 funeral, burial service, or memorial service; creating penalties and providing civil remedy;
4 proposing coding for new law in Minnesota Statutes, chapter 609.

1.5 Reports the same back with the recommendation that the bill be amended as follows:

1.6 Page 1, line 19, delete "on the day of the service or ceremony"

1.7 Page 2, line 8, delete "In addition to the criminal penalties provided in"

1.8 Page 2, delete lines 9 to 11

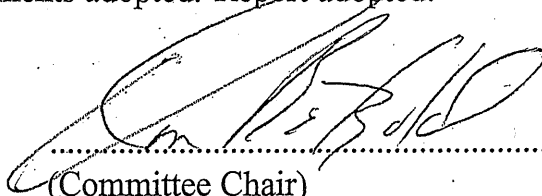
1.9 Page 2, line 12, delete "subdivision 2."

1.10 Page 2, line 16, delete "a violation thereof" and insert "the violation"

1.11 Page 2, line 17, delete "August 1, 2006" and insert "the day following final

1.12 enactment"

1.13 And when so amended the bill do pass and be re-referred to the Committee on Crime
4 Prevention and Public Safety. Amendments adopted. Report adopted.



.....
(Committee Chair)

1.17 March 2, 2006
1.18 (Date of Committee recommendation)

RES F 2013

1.1 A bill for an act
 1.2 relating to funerals; prohibiting the disruption of a funeral, burial service, or
 1.3 memorial service; creating penalties and providing civil remedy; proposing
 1.4 coding for new law in Minnesota Statutes, chapter 609.

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

1.6 Section 1. [609.501] FUNERAL OR BURIAL SERVICE; PROHIBITED ACTS.

1.7 Subdivision 1. Definitions. (a) For purposes of this section, the following terms
 1.8 have the meaning given them in this subdivision.

1.9 (b) "Funeral ceremony" has the meaning given in section 149A.02, subdivision 18.

1.10 (c) "Funeral service" has the meaning given in section 149A.02, subdivision 23.

1.11 (d) "Graveside service" has the meaning given in section 149A.02, subdivision 24.

1.12 (e) "Memorial service" has the meaning given in section 149A.02, subdivision 28.

1.13 Subd. 2. Crime to disrupt. (a) It is a misdemeanor for a person to knowingly
 1.14 and willfully disrupt or attempt to disrupt in any manner and for any reason the lawful
 1.15 funeral service, funeral ceremony, graveside service, or memorial service for any deceased
 1.16 person. It is a gross misdemeanor for a person to violate this subdivision, if the person has
 1.17 previously been convicted of a violation of this subdivision.

1.18 (b) For purposes of this section, disruption includes, but is not limited to, public
 1.19 protesting or picketing on the day of the service or ceremony within 300 feet of:

1.20 (1) the location or locations at which the service or ceremony is being conducted;

1.21 (2) the principal route or routes between the locations of:

1.22 (i) the home or homes of the deceased person's family members, and

1.23 (ii) the service or ceremony; or

2.1 (3) the principal route or routes between the locations at which any part of the
 2.2 service or ceremony are being conducted, including, but not limited to, the mortuary,
 2.3 funeral parlor, church, synagogue, mosque, and cemetery, as may apply.

2.4 Disruption also includes public protest or picketing for any reason and at any time
 2.5 within 300 feet of the home, domicile, or place of employment of any surviving member
 2.6 of the deceased person's immediate family, if the protest or picketing could reasonably be
 2.7 construed as intended to disrupt the surviving member's grieving process.

2.8 Subd. 3. **Civil remedies.** In addition to the criminal penalties provided in
 2.9 subdivision 2, the court may enjoin conduct prohibited in subdivision 2, and may in such
 2.10 proceeding award damages, including attorney fees or other appropriate relief against a
 2.11 person, if there is credible evidence that the person has violated, or is likely to violate,
 2.12 subdivision 2. Any surviving member of the deceased person's immediate family who is
 2.13 damaged or threatened with loss or injury by reason of a violation described in subdivision
 2.14 2 is entitled to sue for and have injunctive relief and appropriate remedial compensation
 2.15 in any court of competent jurisdiction against any damage or threatened loss or injury
 2.16 by reason of a violation thereof.

2.17 **EFFECTIVE DATE.** This section is effective August 1, 2006.