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November 9, 2015

Legislative Reference Library  
645 State Office Building  
100 Constitution Avenue  
St. Paul, Minnesota 55155

Re: In the Matter of the Proposed Rules of the Department of Commerce Governing MNvest Securities Regulation, *Minnesota Rules*, chapter 2876; Revisor's ID Number RD 4344

Dear Librarian:

The Minnesota Department of Commerce intends to adopt rules governing MNvest Securities Regulation. We plan to publish a Notice of Intent to Adopt Rules without a Public Hearing in the November 30, 2015, State Register.

The Department has prepared a Statement of Need and Reasonableness. As required by Minnesota Statutes, sections 14.131 and 14.23, the Department is sending the Library a copy of the Statement of Need and Reasonableness at the time we are mailing our Notice of Intent to Adopt Rules.

If you have questions, please contact me at 651-539-1456.

Yours very truly,

A handwritten signature in black ink, appearing to read "Susan Bergh", with a long horizontal flourish extending to the right.

Susan Bergh  
Rules Coordinator  
Minnesota Department of Commerce

Enclosure: Statement of Need and Reasonableness

## Minnesota Department of Commerce

### STATEMENT OF NEED AND REASONABLENESS

#### Proposed Amendment to Rules Governing MNvest Securities Regulation, *Minnesota Rules*, chapter 2876; Revisor's ID Number 4344.

#### I. INTRODUCTION

The Minnesota Department of Commerce ("Department") proposes amendments to existing Minnesota Rules, Chapter 2876, governing the regulation of securities relating to "MNvest" securities offerings.

The Department is responsible for regulating the offer and sale of securities from or within Minnesota, to protect the public, preserve fair and equitable business practices, suppress fraudulent or deceptive practices in the sale or purchase of securities, and take action against persons engaged in such practices.

Minnesota Statutes, section 80A.49, provides that it is unlawful for a person to offer or sell a security in this state unless the security is a federal covered security; the security, transaction, or offer is exempt from registration; or the security is registered under chapter 80A.

Issuers of exempt securities need not register the securities with the Department. However, some specific exemptions are subject to "notice filing" requirements, whereby the issuer must provide the Department notice of the offering as a condition of availing itself of the exemption. There are several reasons why securities may be exempt from registration requirements. Such reasons include, but are not limited to:

- the securities are considered safe because they are issued by a government authority, such as US Treasuries or municipal bonds;
- the securities are sold only to "accredited investors" or "institutional investors," such as wealthy individuals or institutions considered to have the experience, resources and/or expertise to manage their money and to avoid fraudulent schemes.
- the securities are offered and sold to a small number of individuals without being advertised to the general public.

During the 2015 legislative session, Minnesota Statutes, Chapter 80A was amended to add Minnesota Statutes, section 80A.461 ("section 80A.461"), providing for a new exemption from registration entitled the "MNvest Registration Exemption." The MNvest Registration Exemption allows Minnesota businesses and entrepreneurs to offer and sell intrastate securities through a registered Internet portal in order to raise capital through local investment. This type of capital formation strategy is often described as "equity crowdfunding." So long as issuers of MNvest offerings comply with notice filing requirements and other conditional requirements included in section 80A.461, such offerings will be exempt from Minnesota's securities registration requirements. (However, exempt offerings remain subject to prohibitions against fraud,

misleading advertisements, and misrepresentations concerning the status of a registration or exemption from registration.) Section 80A.461 also requires entities controlling the Internet portals through which MNvest offerings are sold to register with the Department as portal operators.

The proposed amendments to Minnesota Rules, chapter 2876, are intended to: (1) clarify the process that MNvest issuers and portal operators must follow to comply with MNvest notice filing and registration requirements, respectively; and (2) provide additional investor/purchaser protections with regard to the MNvest Registration Exemption. Additional details regarding the specific purpose of each proposed rule are described in Section IX below.

## II. ALTERNATIVE FORMAT

Upon request, this Statement of Need and Reasonableness (SONAR) can be made available in an alternative format, such as large print, Braille, or cassette tape. To make a request, contact Susan Bergh at the Department of Commerce, 85 7<sup>th</sup> Place East, St. Paul, MN 55101, phone: (651) 539-1456, email [susan.bergh@state.mn.us](mailto:susan.bergh@state.mn.us).

## III. STATUTORY AUTHORITY

This rulemaking is an amendment of rules for which the Legislature has not revised the statutory authority, and, accordingly, Minnesota Statutes, section 14.125, does not apply.

Minnesota Statutes, section 80A.82 (a) (1), provides that the Commissioner of Commerce "...may adopt and amend rules necessary or appropriate to carry out this chapter...."

Minnesota Statutes, section 45.023, provides that the Commissioner of Commerce "...may adopt, amend, suspend, or repeal rules in accordance with chapter 14, and as otherwise provided by law, whenever necessary or proper in discharging the commissioner's official responsibilities."

Under these statutes, the Department has the necessary statutory authority to amend these rules.

## IV. REGULATORY ANALYSIS

Minnesota Statutes, section 14.131, sets out eight factors for a regulatory analysis that must be included in the SONAR. Paragraphs (1) through (8) below quote these factors and then give the Department's response.

**(1) A description of the classes of persons who probably will be affected by the proposed rule, including classes that will bear the costs of the proposed rule and classes that will benefit from the proposed rule:**

The classes of persons who will be most directly affected include "MNvest issuers" (as defined in section 80A.461), "portal operators" (as defined in section 80A.461), and Minnesota investors. MNvest issuers are Minnesota-based businesses and entrepreneurs wishing to raise money locally

from Minnesota investors who purchase MNvest securities offerings (“purchasers”). Portal operators are entities authorized to do business in Minnesota and who help facilitate the sale of MNvest securities offerings via Internet portals. The proposed rules add clarity to the form requirements and procedures that MNvest issuers and portal operators must follow in order to comply with section 80A.461. Although the proposed rules are unlikely to create new, significant costs for the above entities that are not already included in section 80A.461, proposed rule 2876.3056 precludes some entities from utilizing the MNvest Registration Exemption to conduct certain types of securities offerings. The types of offerings precluded by proposed rule 2876.3056 are offerings that require more detailed disclosure of applicable risks than is appropriate for a securities registration exemption. The Department does not anticipate that these preclusions will apply to the majority of MNvest issuers wishing to utilize the MNvest Securities Registration Exemption.

Although the proposed rules include restrictions and requirements applicable to MNvest issuers, the proposed rules will also *benefit* MNvest issuers. In conjunction with section 80A.461, the proposed rules allow MNvest issuers a new opportunity to raise money from a wider pool of potential investors to support business development and entrepreneurship in Minnesota.

Minnesota investors – particularly “non-accredited investors” – who work through portal operators to purchase MNvest issuers’ securities are also beneficiaries of the proposed rules. Federal and state securities laws have long precluded issuers from selling or marketing certain securities to non-accredited investors (investors who do not meet certain net worth or income thresholds to be deemed sufficiently sophisticated and/or financially stable to understand and navigate investment risks). However, section 80A.461 and these proposed rules allow MNvest issuers to broadly market and sell securities to non-accredited investors using the Internet. Because non-accredited investors, generally speaking, are likely to have less money and less experience investing than accredited investors, they may be more susceptible to harm caused by high risk or fraudulent securities offerings. As discussed in more detail in Section IX, below, the proposed rules include requirements, limitations, and restrictions designed to help protect purchasers, including non-accredited investors, from fraudulent offerings, identity theft, and other risks as they participate in offerings made pursuant to the MNvest Registration Exemption.

**(2) The probable costs to the agency and to any other agency of the implementation and enforcement of the proposed rule and any anticipated effect on state revenues:**

The proposed rules are unlikely to create new costs for the Department or other agencies beyond the costs already imposed by section 80A.461. The Department does not anticipate that the proposed rules will have any effect on state revenues.

**(3) A determination of whether there are less costly methods or less intrusive methods for achieving the purpose of the proposed rule:**

The proposed rules are written in the manner, and with the intended purpose, of maximizing the protection of purchasers while minimizing the burden imposed on the entities relying on the MNvest Registration Exemption. They will not be unreasonably intrusive to the majority of

MNvest issuers and portal operators intending to operate lawfully under the section 80A.461 requirements. The proposed rules help clarify what such entities must do to comply with section 80A.461.

As stated above, proposed rule 2876.3056 precludes some issuers from utilizing the MNvest Registration Exemption. The preclusions are reasonable in that they are narrowly tailored to protect purchasers from high risk offerings and/or offerings that require a more thorough disclosure of applicable risks than is required under the MNvest Registration Exemption. Issuers precluded from utilizing the MNvest Registration Exemption are not precluded under the proposed rules from seeking registration of such offerings in, nor from claiming a different securities registration exemption, should they qualify for such an exemption pursuant to Minnesota Statutes, sections 80A.45 or 80A.46.

The proposed rules also require MNvest issuers to abide by records retention requirements. Though MNvest issuers may incur some costs associated with complying with these requirements, those costs are unlikely to be significant. The purpose of these records retention requirements is consistent with purchaser protections included in section 80A.461.

Finally, the proposed rules require MNvest issuers and portal operators to establish and implement a cybersecurity policy that outlines processes and procedures for responding to a cybersecurity attack or data breach. The proposed rules also require MNvest issuers and portal operators to report to the Department any cybersecurity attack or data breach that would trigger reporting requirements found in Minnesota Statute section 325E.61. (Section 325E.61 requires “any person or business that conducts business” in Minnesota to disclose certain cybersecurity attacks or data breaches to “any resident of [Minnesota] whose unencrypted personal information was, or is reasonably believed to have been, acquired by an unauthorized person.”) MNvest issuers and portal operators may incur some additional costs related to the development of a cybersecurity policy, such as consultation with a third party cyber security expert. MNvest issuers and portal operators are unlikely to incur significant additional costs related to the reporting requirement that would not already be incurred by an entity subject to Minnesota Statute section 325E.61. The costs associated with this requirement are reasonable to help protect purchasers from ever-evolving cybersecurity threats that may lead to identify theft and/or other harmful use of purchasers’ financial or personally-identifiable information.

The Department is unaware of less costly or intrusive methods of reaching the consumer protection objectives of the proposed rules but will consider any proposals for such alternatives raised through the Requests for Comments and Requests for Hearing processes.

**(4) A description of any alternative methods for achieving the purpose of the proposed rule that were seriously considered by the agency and the reasons why they were rejected in favor of the proposed rule:**

The Department intends to enforce the standards, procedures, limitations and requirements included in the proposed rules in order to help protect purchasers from such risks as fraudulent securities offerings and unauthorized disclosure of confidential purchaser information. The

Minnesota Administrative Procedure Act requires state agencies to use rulemaking when establishing standards that they wish to enforce. Although the Department could urge MNvest issuers and portal operators to follow the procedural requirements and purchaser protection measures outlined in the proposed rules, the Department finds recommendations, rather than requirements, to be insufficient to meet the intended objectives of the proposed rules.

**(5) The probable costs of complying with the proposed rule, including the portion of the total costs that will be borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals:**

MNvest issuers, portal operators and other entities already bearing the costs of compliance with section 80A.461 will not bear significant additional costs in order to comply with the proposed rules. Such entities may bear some additional costs associated with meeting records retention requirements and the implementation of a cybersecurity policy, such as the costs associated with purchasing software or consulting with a third-party cybersecurity expert. However, the purpose of these specific rules is consistent with the consumer protection measures included in section 80A.461.

**(6) The probable costs of not adopting the proposed rule, including those costs or consequences borne by identifiable categories of affected parties, such as separate classes of governmental units, businesses, or individuals:**

Potential costs of not adopting the proposed rules include additional staff time and labor spent reviewing inconsistent filings and taking corrective or enforcement actions needed to address violations of section 80A.461. Potential consequences also include harm experienced by Minnesota purchasers –especially “non-accredited investors” –who invest in offerings that would otherwise be restricted under proposed rule 2876.3056. As stated above, proposed rule 2876.3056 precludes issuers from availing themselves of the MNvest Securities Registration exemption when engaging in certain offerings that are high risk and/or require additional disclosures of risks that are not appropriate for a securities registration exemption.

**(7) An assessment of any differences between the proposed rule and existing federal regulations and a specific analysis of the need for and reasonableness of each difference:**

The proposed rules relate specifically to the implementation of the MNvest Registration Exemption, which exempts certain *intrastate* securities offerings from registration requirements found in Minnesota state law. There are no existing federal regulations that apply specifically to the regulation of intrastate securities offerings made to Minnesota purchasers and subject to the MNvest Securities Registration Exemption.

Title III of the JOBS Act of 2012 created a federal securities registration exemption that is similar to the MNvest Registration Exemption in that it permits issuers meeting specified conditions to raise money from non-accredited investors through offerings conducted over the Internet via a funding portal. The Securities and Exchange Commission (SEC), the federal agency primarily responsible for securities regulation, announced on October 30, 2015 the adoption of federal rules to implement

Title III of the JOBS Act. Title III of the JOBS Act and the SEC rules apply to *interstate* securities offerings, but not to the intrastate offerings subject to the MNvest Registration Exemption. At the same time that the SEC adopted rules implementing Title III of the JOBS Act, the SEC also proposed amendments to Code of Federal Regulations, title 17, part 230.147 (“Rule 147”). The proposed amendments to Rule 147 create a “safe harbor” from federal registration requirements for issuers of securities who wish to rely on intrastate securities registration exemptions. In other words, Rule 147, as amended, allows issuers of securities offered in Minnesota to be exempt from federal securities registration requirements, so long as they comply with the MNvest Registration Exemption. The proposed rules will help clarify what issuers must do to comply with the MNvest Registration Exemption.

**(8) An assessment of the cumulative effect of the rule with other federal and state regulations related to the specific purpose of the rule.... ‘[C]umulative effect’ means the impact that results from incremental impact of the proposed rule in addition to other rules, regardless of what state or federal agency has adopted the other rules. Cumulative effects can result from individually minor but collectively significant rules adopted over a period of time”:**

The proposed rules add to and clarify recent amendments to Minnesota law found in section 80A.461. The proposed rules and section 80A.461 are somewhat similar to Minnesota regulations pertaining to Small Company Offering Registration (SCOR) offerings. The SCOR regulations (found in Minnesota Statutes, section 80A.50(b), and Minnesota Rules, part 2876.3021) allow issuers to raise up to \$1 million in 12 consecutive months<sup>1</sup> through securities sold to Minnesota purchasers. The primary difference between the SCOR offerings and MNvest offerings is that SCOR offerings must be registered, whereas MNvest offerings are exempt from registration. The SCOR method has not often been utilized in Minnesota; some issuers have found the costs of complying with the SCOR requirements to outweigh the benefits of proceeding with a SCOR offering. Although the proposed rules require issuers relying on the MNvest exemption to file some documents with the Department as part of notifying the Department of the offering, the notice filing requirements are intended to be less costly and less time consuming to issuers than a SCOR registration. Issuers of MNvest offerings are also permitted to raise up to \$2 million under the MNvest Securities Registration Exemption, subject to certain conditions specified in section 80A.461.

As stated above, the proposed rules relate specifically to the implementation of the MNvest Registration Exemption and cover areas that are not specifically addressed by federal law. That said, the proposed rules affect state regulation of *intrastate* securities offerings in a manner similar to federal regulations affecting *interstate* securities offerings. Specifically, Title III of the JOBS Act of 2012 provides for a federal securities registration exemption for certain securities offered through an Internet portal and made available to both accredited and non-accredited investors. However, the Securities and Exchange Commission (SEC), the federal agency primarily

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<sup>1</sup> Pursuant to the SEC’s proposed amendments to Federal Rule 504 of Regulation D announced on October 30, 2015, the offering limit permitted under the SCOR registration method may raise from \$1 million in 12 consecutive months to \$5 million in 12 consecutive months.

responsible for enforcing federal securities regulations, took nearly three rules to adopt rules implementing Title III of the JOBS Act. The SEC announced the adoption of final rules implementing Title III of the JOBS Act on October 30, 2015. The new rules will become effective in the summer of 2016, 180 days after they are published in the Federal Register.

In the years since the JOBS Act was passed, and in response to the SEC's delay in implementing rules, several states passed legislation allowing for intrastate equity crowdfunding offerings to be exempt from state securities registration requirements within their own state's borders. Minnesota is among those states, with the adoption of section 80A.461. The SEC's recent amendments to Rule 147, discussed above, create a federal securities registration exemption for issuers of securities that comply with state regulations, such as MNvest, pertaining to *intrastate* offerings.

The cumulative effect of the proposed rules and the federal regulations discussed above is to widen opportunities for businesses and entrepreneurs to raise money while simultaneously protecting investors in those businesses and endeavors from financial harm.

## **V. PERFORMANCE-BASED RULES**

Minnesota Statutes, sections 14.002 and 14.131, require that the SONAR describe how the agency, in developing the rules, considered and implemented performance-based standards that emphasize superior achievement in meeting the agency's regulatory objectives and maximum flexibility for the regulated party and the agency in meeting those goals.

By clarifying procedures and processes that MNvest issuers and portal operators must follow to comply with Minnesota Statutes, section 80A.461, the proposed rules help ensure that such entities comply with requirements designed to help protect purchasers. The proposed rules also ensure that information the Department receives from such entities will be submitted in a consistent format that enables Department staff to review the information efficiently. Efficiency in the Department's review process will benefit both consumers who intend to invest in MNvest offerings and those MNvest issuers and portal operators that utilize the MNvest Registration Exemption in compliance with Minnesota's regulations. The proposed rules are described in more detail in Section IX, which gives a rule-by-rule description of how the proposal meets agency goals.

## **VI. ADDITIONAL NOTICE**

This Additional Notice Plan was reviewed by the Office of Administrative Hearings and approved in a November 13, 2015 order by Administrative Law Judge Eric L. Lipman.

In addition to the statutory requirements to publish notice in the *State Register* and to mail notice to the persons on the Department of Commerce rulemaking list, the Department will provide the following additional notice:

1. Mailing the notice of the proposed rule amendments to the following persons:
  - Zach Robbins and Ryan Schildkraut  
Operators of MNvest.org



Winthrop & Weinstine  
Capella Tower Suite 3500  
225 South Sixth Street  
Minneapolis, MN 55402

- Jonathan Levy, Chair of Securities Committee  
Business Law Section  
Minnesota State Bar Association  
Third Floor City Center  
600 Nicollet Mall, Suite 380  
Minneapolis, MN 55402
- Mark Schroeder & David Goodwin, Co-Chairs  
Consumer Litigation Section  
Minnesota State Bar Association  
Third Floor City Center  
600 Nicollet Mall, Suite 380  
Minneapolis, MN 55402
- Brad Lehrman  
Co-Founder of MOJO Minnesota  
Soffer Charbonnet Law Group  
7300 France Avenue South  
Suite 210, Minneapolis,  
Minnesota. 55435
- Chris Hanson, CEO & Co-founder  
The Databank  
800 Washington Avenue North, Suite 500  
Minneapolis, MN 55401
- Mary Hamel, Executive Director  
Twin Cities Metro IBA (Independent Business Alliance)  
2190 Como Avenue  
Saint Paul, MN 55108
- Audrey Britton, Public Policy Director  
Small Business Minnesota  
PO Box 46265  
Plymouth, MN 55446
- Anya Coverman, Deputy Director of Policy  
North American Securities Administrators Association (NASAA)  
750 First Street NE, Suite 1140  
Washington, DC 20002

- Ira Rheingold  
National Association of Consumer Advocates  
30 Rhode Island Ave NW  
Washington, DC 20036
- Rick Barkley, Minnesota District Director  
SCORE Association, SCORE Minnesota District  
330 South 2nd Ave, Suite 430  
Minneapolis, MN 55401
- Barbara Battiste, Director  
Office on the Economic Status of Women  
95 State Office Building  
100 Rev. Dr. Martin Luther King Jr. Blvd  
St. Paul, MN 55155

2. Placing a summary of the notice of rulemaking on the Department of Commerce web page at [www.commerce.state.mn.us](http://www.commerce.state.mn.us).

Our Notice Plan also includes giving notice required by statute. We will mail the rules and Notice of Intent to Adopt to everyone who has registered to be on the Department's rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a. We will also give notice to the Minnesota Legislature per Minnesota Statutes, section 14.116.

Our Notice Plan did not include notifying the Commissioner of Agriculture because the rules do not affect farming operations per Minnesota Statutes, section 14.111.

## **VII. CONSULTATION WITH MMB ON LOCAL GOVERNMENT IMPACT**

As required by Minnesota Statutes, section 14.131, the Department will consult with Minnesota Management and Budget to help evaluate the fiscal impact and fiscal benefits of the proposed rules on units of local governments.

The Department will do this by sending to Minnesota Management and Budget copies of the documents required to be sent to the Governor's Office for review and approval by the Governor's Office on the same day we send them to the Governor's office. We will do this before the Department publishes the Notice of Intent to Adopt. The documents include the Governor's Office Proposed Rule and SONAR Form; the proposed rules; and the SONAR. The Department will submit a copy of the cover correspondence and the response received from Minnesota Management and Budget to OAH at the hearing or with the documents it submits for ALJ review.

## **VIII. DETERMINATION ABOUT RULES REQUIRING LOCAL IMPLEMENTATION**

As required by Minnesota Statutes, section 14.128, subdivision 1, the Department has considered whether these proposed rules will require a local government to adopt or amend any ordinance or other regulation in order to comply with these rules. The Department has made this determination based on the probable costs of complying with the proposed rules, as described in the Regulatory Analysis in Section IV on pages 2-6 above.

## **VIII. COST OF COMPLYING FOR SMALL BUSINESS OR CITY**

As required by Minnesota Statutes, section 14.127, the Department has considered whether the cost of complying with the proposed rules in the first year after the rules take effect will exceed \$25,000 for any small business or small city.

Any small business or small city would not incur any significant increase in compliance costs attributable to these proposed rules that would not already be required by Minnesota Statutes, section 80A.461, and/or other sections of the Minnesota Securities Act. Any costs attributable to the proposed rules will not exceed \$25,000 for a business or small city.

## **IX. RULE-BY-RULE ANALYSIS**

As more specifically stated in the following paragraphs, the proposed rules are needed and reasonable in order to provide sufficient protection for Minnesota citizens who are making decisions about whether to invest in a MNvest offering.

**2876.1000 – DEFINITIONS.** This rule clarifies that certain terms used in the rules are defined as they are in the Minnesota Securities Act. This part also includes definitions for “control person.” The purpose of including these definitions is to reduce confusion among entities subject to the rules, and among Minnesota citizens who wish to rely on protections created through these rules when making decisions about whether to invest in a MNvest offering.

### **2876.3050 – MNVEST NOTICE FILING**

**Subpart 1. – Form and Submission** – This subpart specifies what information a MNvest issuer must provide to the Department in order to provide notice of a MNvest offering. By creating uniformity in the form and process MNvest issuers must follow to file notice of a MNvest offering, the rule will make the Department’s review of such filings more efficient and more effective. The rule will also help the Department take action to halt offerings that do not comply with Minnesota Statutes, section 80A.461, or the proposed rules.

**Subpart 2. – Fees** – This subpart states that all fees submitted pursuant to Minnesota Statutes, section 80A.461, subdivision 3, clause 11 (iii), are non-refundable. Non-refundable fees will help encourage MNvest issuers to submit complete notice filings and will prevent the Department from wasting resources reviewing notice filings that are incomplete.

**Subpart 3. – Incomplete Filings** – This subpart clarifies that any filing that does not contain all required information, including the appropriate fee, is incomplete and therefore ineffective. This rule helps protect purchasers by ensuring that MNvest issuers provide all information required by Minnesota Statutes, section 80A.461, and by these proposed rules before they can lawfully avail themselves of the MNvest Registration Exemption.

**Subpart 4. – Effective Period** – By specifying the effective period applicable for all MNvest offerings, this subpart helps protect purchasers from investing in offerings that exceed the time period allowed by the MNvest Registration Exemption.

**Subpart 5. – Post Effective Amendments** – This subpart requires MNvest issuers to amend filings and disclosure documents shared with purchasers to ensure that information provided to the Department, and to purchasers and potential purchasers, is current and complete. This requirement ensures that prospective purchasers are fully informed of all material information, such as costs and risks associated with investing in the MNvest offering, as they evaluate whether or not to make the investment. This requirement also allows those who have already purchased securities to be made aware of new costs, risks, or other disclosures. Purchasers then may have the option to cancel their investment commitment pursuant to proposed rule 2876.3058 (discussed below).

**2876.3051 – ESCROW AND IMPOUNDMENT** – This rule establishes when purchaser funds held in escrow pursuant to Minnesota Statutes, section 80A.461, subdivision 3, clause 8, will be released to MNvest issuers. This rule is necessary to ensure that issuers do not take possession of purchaser's money until certain conditions have been met.

**2876.3052 RECORDS RETENTION REQUIREMENTS FOR MNVEST ISSUERS** – This rule requires MNvest issuers to make and preserve certain books and records for 5 years following the completion of the offering. The 5 year requirement is consistent with the records retention requirement applicable to portal operators pursuant to Minnesota Statutes, section 80A.461, subdivisions 7 and 8. These records retention requirements will help the Department review whether MNvest issuers comply with the MNvest registration exemption, should an administration enforcement investigation be warranted. This rule would also require the retention of records that may be relevant in a determination of civil liability made pursuant to Minnesota Statutes, section 80A.76. The statute of limitations included in Minnesota Statutes, section 80A.76(j) states that “a person may not obtain relief: ... under subsection (b) ... unless the action is instituted with the earlier of two years after discovery of the facts constituting the violation or five years after the violation.”

### **2876.3053 – PORTAL OPERATORS REGISTRATION**

**Subpart 1. – Form and Submission** – This subpart specifies what information a portal operator must provide to apply for registration with the Department of Commerce. By creating uniformity in the form and process portal operators must follow to apply for registration, the rule will make the Department's review of registration applications more efficient and more effective.

The rule will also help the Department screen and prevent registration of portal operators that do not comply with Minnesota Statutes, section 80A.461.

**Subpart 2. – Fees** – This subpart states that all fees submitted pursuant to Minnesota Statutes, section 80A.461, subdivision 7 (a) (3), are non-refundable. Non-refundable fees will help encourage portal operators to submit complete registration applications and will prevent Department staff from wasting resources reviewing registration applications that are incomplete.

**Subpart 3. – Effectiveness of Registration** – By specifying the effective period applicable for all portal operator registrations, this subpart helps protect purchasers from investing in offerings made through portals that are not registered pursuant to Minnesota Statutes, section 80A.461.

**Subpart 4. – Incomplete Application** – This subpart clarifies that any portal operator registration application that does not contain all required information, including the appropriate fee, is incomplete and therefore ineffective. This rule also allows for the denial of a portal operator registration application that remains incomplete 45 days after the Department has notified the applicant of the reason for incompleteness. This rule helps protect purchasers by ensuring that portal operators provide all information required by Minnesota Statutes, section 80A.461 and these proposed rules before they can lawfully facilitate securities offerings made according to the MNvest Securities Registration Exemption.

**Subpart 5. – Post Effective Amendments** – This subpart requires portal operators to amend registration documents to ensure that information provided to the Department is current and complete.

**Subpart 6. – Registration Renewal** – This subpart clarifies what portal operators need to do to renew a registration pursuant to Minnesota Statutes, section 80A.461, subdivision 7 (b). This subpart requires portal operators to amend registration documents to ensure that information provided to the Department is current and complete. This requirement will help the Department screen and take action against portal operators that disclose (or fail to disclose) material information that may lead to harm to purchasers.

## **2876.3054 – REPORTING REQUIREMENTS**

This rule requires portal operators and MNvest issuers to supply a report, upon the administrator's request, of securities purchased through a MNvest offering. This rule specifies the report content that Department may collect and review to determine whether MNvest issuers and/or portal operators are complying with Minnesota Statutes, section 80A.461.

## **2876.3055 – PROTECTION OF PURCHASER INFORMATION**

**Subpart 1. Cybersecurity Policy** – This rule requires portal operators and MNvest issuers to take reasonable steps, including the development and implementation of a

cybersecurity policy, to ensure that purchasers' personal and confidential information is secured. This rule is important in helping to protect purchasers from the unwanted disclosure of personal or confidential information. Cybersecurity is an issue of growing concern in many industries, and it is important for MNvest issuers and portal operators availing themselves of the MNvest Registration Exemption to take proactive steps to help ensure that private and confidential information that they collect from purchasers is not released to other entities that may use that information to cause purchasers harm.

**Subpart 2. Reporting of a cybersecurity attack or data breach** – The rule also requires MNvest issuers and portal operators to report to the administrator any cybersecurity attack or data breach that requires the MNvest issuer or portal operator to provide notice of the incident to affected individuals pursuant to Minnesota Statutes, section 325E.61. Such a report must be provided to the administrator within 60 days of the MNvest issuer's or portal operator's discovery of the cybersecurity attack or data breach. This reporting requirement will help the Department review whether MNvest issuers and portal operators responded reasonably and lawfully to cybersecurity threats and data breaches that affect Minnesota consumers.

#### **2876. 3056 – LIMITS ON AVAILABILITY**

This rule prohibits certain offerings from being made in reliance on Minnesota Statutes, section 80A.461. The MNvest Registration Exemption provides for the use of a simplified notice filing and disclosure document that are designed to prompt an issuer to provide adequate disclosure to purchasers concerning the issuer, the securities offered, and the offering itself. Certain issuers, such as those making offerings involving investment companies or development stage companies without a specific business plan or purpose, may not be able to make adequate disclosure of applicable risks to purchasers using the simplified forms and disclosure documents required by the MNvest Registration Exemption. Further, offerings involving petroleum exploration or production, mining or other extractive industries, as well as offerings involving investments in virtual, digital, or crypto currencies, often involve high risk that must be disclosed carefully to potential purchasers. Such offerings should be registered with the Department, or offered via a different applicable exemption defined in the Minnesota Securities Act. Finally, offerings conducted concurrently through multiple MNvest portals are prohibited due to the risk that such offerings could exceed the individual purchaser and total offering limits set by Minnesota Statutes, section 80A.461, subdivision 3, clauses (5) and (7).

#### **2876. 3057 – RESTRICTIONS ON RESALE**

This rule clarifies that securities purchased pursuant to the MNvest Securities Registration Exemption may not be resold unless they are registered or exempt from registration pursuant to the Minnesota Securities Act. This prevents purchasers of MNvest offerings from being able to resell securities without adequately disclosing risks about the offerings, or issuers of the offering, to the secondary purchasers. This protects secondary purchasers from being harmed through the purchase of securities without having the opportunity to review and understand the costs and risks associated with that investment.

## **2876. 3058 – PURCHASER RIGHT OF CANCELLATION**

This rule provides purchasers with the right to cancel their investment commitment before the minimum amount set by the issuer has been raised. The rule adds a layer of protection to purchasers who, for any reason, lose confidence in a MNvest issuer or MNvest offering soon after deciding to invest.

## **2876. 3059 – ANTI-FRAUD PROVISION**

This rule clarifies that, although MNvest issuers complying with Minnesota Statutes, section 80A.461, are exempt from Minnesota's securities registration requirements, they are not exempt from anti-fraud and other enforcement provisions found in the Minnesota Securities Act and Minnesota Statutes, chapter 45. This rule clarifies the administrator's authority to take action to halt unlawful offerings made pursuant to the MNvest Securities Registration Exemption.

## **2876. 3060 – RESTRICTIONS ON USE OF THE TERM "MNVEST"**

**Subpart 1. Website addresses.** This rule prohibits portal operators from using the term "MNvest" in a Web address, domain name, or other URL address associated with a MNvest portal. The purpose of this rule is to prohibit portal operators, MNvest portals, or MNvest issuers from unfairly capitalizing on consumers' confusion surrounding the term "MNvest" to promote securities sales. The term "MNvest" is a short-form term used to describe the securities registration exemption created by Minnesota Statutes, section 80A.461. "MNvest" is also used in defined terms in Minnesota Statutes, section 80A.461 to connote securities issuers, securities offerings, and funding portals that comply with the terms of that statute (e.g., "MNvest issuer" and "MNvest offering"). However, "MNvest" is not the name of a government entity or government-sanctioned entity. The term "MNvest" does not connote one specific, individual portal operator, issuer of securities, or Internet portal.

**Subpart 2. Misrepresentations regarding recommendations or endorsements.** This subpart of the rule also prohibits other misrepresentations regarding MNvest offerings, MNvest issuers, or portal operators as being sponsored by, sanctioned or recommended by MNvest. As described in the explanation of Subpart 1, above, the purpose of this rule is to prohibit portal operators, MNvest portals, or MNvest issuers from unfairly capitalizing on consumers' confusion surrounding the term "MNvest" to promote securities sales.

## **CONCLUSION**

Based on the foregoing, the proposed rules are both needed and reasonable.

11-9-15  
Date

Mike Rothman  
Mike Rothman  
Commissioner of Commerce