



85 7TH PLACE EAST, SUITE 500
SAINT PAUL, MINNESOTA 55101-2198
MN.GOV/COMMERCE
651.539.1500 FAX: 651.539.1547
AN EQUAL OPPORTUNITY EMPLOYER

January 11, 2017

Senator Gary Dahms, Chair
Commerce and Consumer Protection
Finance and Policy Committee
95 University Avenue West
St. Paul, MN 55155

Senator Dan Sparks
Ranking Minority Member
Commerce and Consumer Protection
Finance and Policy Committee
145 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Representative Linda Slocum
Ranking Minority Member
Commerce and Regulatory Reform Committee
207 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Representative Joe Hoppe, Chair
Commerce and Regulatory Reform Committee
543 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Representative Pat Garofalo, Chair
Job Growth and Energy Affordability
Policy and Finance Committee
485 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Representative Tim Mahoney
Ranking Minority Member
Job Growth and Energy Affordability
Policy and Finance Committee
345 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

**RE: Annual Rulemaking Docket and Report as Required by Minnesota Statutes,
Section 14.116 (a).**

Dear Senators and Representatives:

Minnesota Statutes, section 14.116(a) directs that by January 15 each year, each agency must submit its rulemaking docket maintained under section 14.366, and the official rulemaking record required under section 14.365 for any rule adopted during the preceding calendar year, to the chairs and ranking minority members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rule.

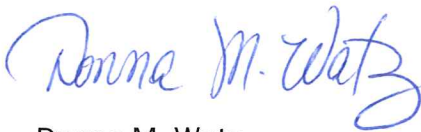
- The Commerce Department's current rulemaking docket is attached. The rulemaking docket is also available for review at <http://mn.gov/commerce/policy-data-reports/rulemaking/>.

- The rulemaking record for Rules Governing Securities; Regulating MNvest Offerings (RD4344) is attached. These amendments to Minnesota Rules, chapter 2876, were adopted on May 13, 2016, and became effective on June 20, 2016.

Please note that you also have access to the key documents in any agency rulemaking at the Revisor's website, http://www.revisor.mn.gov/rules/rule_search.php. This database is entitled, "Minnesota Rule Status - Basic Search." Among other options, you can search the State rulemaking documents by agency, keyword, rule type, dates, or statutory authority. You can access documents related to an adopted rule, or the documents already made public for a rule that is still being promulgated.

Please let me know if any further information is needed.

Very truly yours,



Donna M. Watz
Deputy General Counsel
Minnesota Department of Commerce

cc: Commissioner Mike Rothman
Peter Brickwedde, Government Relations
Alison Groebner, Government Relations

Department of Commerce

Public Rulemaking Docket

The rulemaking docket contains information and links related to current rulemaking activities by the Minnesota Department of Commerce, including published notices, availability of rule drafts, how to submit comments, the status of the rule adoption process and hearings, information about newly adopted rules and the names of contact people. The date shown is the last date the material was updated. The items are in order with the most recent at the top of the list. If there is nothing listed, it means there is no current rulemaking underway within the Department of Commerce.

Amendment to Rules Governing MNvest Securities Regulation, Minnesota Rules, chapter 2876

Subject Matter: Rules Governing MNvest Securities Regulation

- Notices Published**
- Request for Comments published 13 Jul 2015 State Register (40 SR 29)
 - Notice of Intent to Adopt Rules Without a Public Hearing published 30 Nov 2015 State Register (40 SR 619)
 - [Notice of Intent to Adopt Rules Without a Public Hearing \(.pdf\)](#)
 - Notice of Adoption published 13 Jun 2016 State Register (40 SR 1617)

Agency Contact Persons:	For technical or substantive questions:	For written comments, questions, or requests:
	Brian Edstrom (Securities Director) Department of Commerce 85 7th Place E, Suite 500 St. Paul MN 55101 brian.edstrom@state.mn.us	Donna Watz (Deputy General Counsel) Department of Commerce 85 7th Place E, Suite 500 St. Paul MN 55101 donna.watz@state.mn.us

Current Status: Adopted

Availability of Rule Draft: Published 30 Nov 2015 State Register (40 SR 619) and 13 Jun 2016 State Register (40 SR 1617)

[Proposed amendments \(.pdf\)](#)

Rule Type: Permanent

Public Hearing Schedule: N/A

Date Rule Adopted: May 13, 2016

Secretary of State Filing Date: May 20, 2016

Effective Date of Rule: June 20, 2016

Possible Amendment to Rules Governing Minnesota Weights and Measures, Minnesota Rules, chapter 7601

Subject Matter: Rules Governing Minnesota Weights and Measures

Notices Published: Request for Comments published 09 Feb 2015 State Register (39 SR 1182)

Agency Contact Persons:	For technical or substantive questions:	For written comments, questions, or requests:
	Julie Quinn, Director Weights and Measures Department of Commerce 14305 Southcross Drive W. Burnsville, Minnesota 55306 julie.quinn@state.mn.us	Donna Watz (Deputy General Counsel) Department of Commerce 85 7th Place E, Suite 500 St. Paul MN 55101 donna.watz@state.mn.us

Current Status: Pending

Availability of Rule Draft: When available, a draft of the proposed amendments will be posted.

Rule Type: Permanent

Public Hearing Schedule: N/A

Date Rule Adopted: N/A

Secretary of State Filing Date: N/A

Effective Date of Rule: N/A

Proposed Rules Governing Made in Minnesota Solar Incentive Program, Minnesota Rules, chapter 7695; Revisor's ID Number RD 4308

Subject Matter: Rules Governing Made in Minnesota Solar Incentive Program

Notices Published: Request for Comments published 02 Feb 2015 State Register (39 SR 1147)

Agency Contact Persons:	For technical or substantive questions:	For legal questions, or requests:
	Mr. Kim Havey	Donna Watz (Deputy General Counsel)
	Department of Commerce	Department of Commerce
	85 7th Place E, Suite 500	85 7th Place E, Suite 500
	St. Paul MN 55101	St. Paul MN 55101
	solar.help@state.mn.us	donna.watz@state.mn.us

Introduction: During the 2013 legislative session, Minnesota Statutes, Chapter 216C was amended to add Minnesota Statutes, section 216C.411 through section 216C.416, providing for the creation of a solar incentive program entitled the "Made in Minnesota" Program.

The Made in Minnesota Program is a random selection-based incentive available to Minnesotans who install solar equipment that is Made in Minnesota. The proposed addition of Minnesota Rules, chapter 7695, is intended to: (1) clarify Minnesota Statutes, section 216C.411 through section 216C.416; and (2) provide additional consumer protections with regard to the Made in Minnesota Solar Incentive.

Notices Published: Request for comments on the draft rules published November 07 2016

Current Status: Comment Period. Comments must be received no later than 4:30pm CST Thursday December 8, 2016

Availability of Rule Draft: [Rule draft available](#) (.pdf)

Rule Type: Permanent

Public Hearing Schedule: N/A

Date Rule Adopted: N/A

Secretary of State Filing Date: N/A

Effective Date of Rule: N/A

Mailing List: The Department maintains a list of interested persons who would like to receive notice of all rule proposals. If you are interested in being on the Department's registered mailing list, please submit your request by [email](#).

Rule Types: Permanent (Ch. 14); Expedited Permanent ([§14.389](#)); Good Cause Exempt ([§14.388](#)); Exempt ([§14.386](#))

To inspect: Written comments; or Written requests for a public hearing; or List of persons who requested a public hearing; contact agency contact person.

Rulemaking Record RD4344

Rules Governing Regulation of MNvest Securities Offerings, Minnesota Rules, chapter 2876

1. State Register Publication – Notice of Adoption
2. Adopted Permanent Rules
 - Approved by OAH
 - Approved by Revisor of Statutes for Filing with Secretary of State
 - Stamped as Filed by Secretary of State
3. Order Adopting Rules
4. OAH Order on Review of Rules
5. Letter submitting rules to OAH for review
6. Comments Received and Agency Responses
7. State Register Publication – Notice of Intent to Adopt Rules
8. Notice of Intent to Adopt Rules Without a Public Hearing
9. Letter to Legislative Reference Library
10. Letter to Legislators and LLC – Notice of Intent to Adopt Rules
11. Certificate of Giving Additional Notice Under Additional Notice Plan
12. Certificate of Mailing Notice of Intent to the Rulemaking Mailing List
13. Certificate of Accuracy of Mailing List and copy of Mailing List
14. Letter to MMB – Consultation re: fiscal impact on units of local government
15. OAH Order approving Additional Notice Plan
16. Letter to OAH requesting review and approval of Additional Notice Plan
17. Statement of Need and Reasonableness (SONAR)
18. Proposed Rules – Approved by Revisor of Statutes for Publication in State Register
19. State Register Publication – Request for Comments
20. Request for Comments

Minnesota Rules: Amendments and Additions

Office of the Secretary of State Office
 8200.1100; .1200; .5100; .5400; .9115; .9939; 8205.3200; 8210.0500;
 .0710; .0720; .0800; .2000; .2200; .2450; .2500; .3000; 8230.1130; .3560;
 .3950; .4050; .4365; .4380; 8250.0375; .0385; .0700;
 .1600; .1810 (adopted)..... 801, 1553
 8200.0800; 8210.0600 s. 2; .0730 s. 1, 3, 4; 8230.4360; 8255.0020; .0025,
 (proposed repealer)..... 801

Pollution Control Agency (MPCA)
 7001.0050; 7050.0218; .0250; .0255; .0260; .0265; .0270; .0275; .0280;
 .0285; .0290; .0295; .0305; .0315; .0325; .0335; 7052.0300
 (proposed)..... 901
 7002.0019; 7005.0100; 7007.0100; .0250; .0300; .0350; .0500; .0502;
 .0600; .0650; .0700; .0750; .0800; .0801; .0950; .1000; .1100; .1142; .1150;
 .1250; .1300; .1350; .1400; .1500; .1600; 7008.0100; .4100; .4110; 7009.0010;
 .0020; .0080; .0090; .1060; 7011.0065; .0070; .0080; .0510; .0515; 0530;
 .0535; .0610; .0615; .0620; .0710; .0715; .0720; .0905; .1105; .1115; .1130;
 .1135; .1227; .1229; .1231; 1233; .1265; .1280; .1282; .1305; .1310; .1320;

.1400; .1405; .1410; .1425; .1905; .1910; .2005; .2010; .2300; .2375; .2450;
 .7185; .7630; 7017.1002; .1080; .1110; .1120; .1170; .1215; .2015; .2017;
 .2025; .2035; .2050; .2060; 7019.3020; 7030.0010;
 .0050 (proposed)..... 1085
 7007.0325; 7009.0070; 7011.0725; .1280 s. 8; .1400 s. 12; .1415;
 7017.1080 s. 3; .1120 s. 2; .1170 s. 1, 4, 5; .1210; .2001 s. 2; .2018
 (proposed repealer)..... 1085
 7050.0180; .0185 (proposed repealer)..... 901

Public Utilities Commission
 7829.0100; .0400; .0410; .0700; .1050; .1300; .1400; .2700; .2900
 (adopted) 1329

Minnesota Racing Commission
 7876.0130 (adopted) 1515

Adopted Rules

A rule becomes effective after the requirements of *Minnesota Statutes* §§ 14.05-14.28 have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule. If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed. If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

KEY: Proposed Rules - Underlining indicates additions to existing rule language. ~~Strikeouts~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **Adopted Rules** - Underlining indicates additions to proposed rule language. ~~Strikeout~~ indicates deletions from proposed rule language.

Board of Chiropractic Examiners

Adopted Permanent Rules Governing Waiver of Continuing Education Requirements for Chiropractic License Renewal

The rules proposed and published at State Register, Volume 40, Number 21, pages 597-598, November 23, 2015 (40 SR 597), are adopted as proposed.

Department of Commerce

Adopted Permanent Rules Governing Securities; Regulating MNvest Offerings

The rules proposed and published at State Register, Volume 40, Number 22, pages 619-625, November 30, 2015 (40 SR 619), are adopted with the following modifications:

2876.1000 DEFINITIONS.

Subp. 2. **Control person.** For purposes of this chapter, "control person" means a partner, officer, director, or manager, majority holder of securities, or anyone else having the power to direct the management of the entity, but does not include a person whose primary duties are ministerial or clerical.

2876.3050 MNVEST NOTICE FILING.

Subpart 1. **Form and submission.** A notice filing made pursuant to Minnesota Statutes, section 80A.461, subdivision 3, clause (11), must be filed on the MNvest notice form, available on the Department of Commerce Web site or upon request from the administrator, not less than ten days before the beginning of the MNvest offering. The MNvest notice form must be mailed or delivered electronically to the administrator, along with the appropriate fee, at the address listed on the MNvest notice form. Information provided on or with the MNvest notice form must include the following:

E. a written affirmation that the MNvest issuer has exercised reasonable care to confirm that it is not disqualified from

Adopted Rules

making the MNvest offering under Minnesota Statutes, section 80A.461, subdivision 9;

(1) reviewed the disqualification provisions of Minnesota Statutes, section 80A.461, subdivision 9, paragraph (a); and

(2) undertaken the inquiries needed to establish, under Minnesota Statutes, section 80A.461, subdivision 9, paragraph (b), clause (4), that the issuer has no reason to know that a disqualification exists.

Subp. 4. **Effective period.** ~~Except while a stop order is in effect under Minnesota Statutes, section 80A.48, paragraph (a), a complete notice filing made for purposes of Minnesota Statutes, section 80A.461, subdivision 3, clause (11), automatically becomes effective ten days after receipt by the administrator and remains effective for one year following the date of effectiveness. The effective period of the offering begins ten days after the notice filing is received by the administrator. The effective period ends on the earlier of the following occurrences:~~

A. on the expiration date of the offering as stipulated in the MNvest disclosure documents; or

B. at the point when the offering fails to meet any of the MNvest exemption requirements.

Subp. 5. **Post effective amendments.**

A. ~~After a MNvest notice filing has become effective, and while the MNvest offering is still in progress, and throughout the effective period of the offering, the MNvest issuer must amend or supplement the information required by subpart 1 as necessary so that the documents provided by the MNvest issuer does do not make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading.~~

2876.3052 RECORDS RETENTION REQUIREMENTS FOR MNVEST ISSUERS.

MNvest issuers must retain records related to MNvest offerings made pursuant to Minnesota Statutes, section 80A.461, for five years after the close of the MNvest offering. Retained records must include a copy of the following:

D. records of all agreements and compensation arrangements made between the MNvest issuer and the portal operator through which the MNvest issuer's securities are offered, including copies of written contracts and all amendments thereto;

E. records of all escrow agreements between the escrow agent, the MNvest issuer, and, if applicable, the portal operator through which the MNvest issuer's securities are offered, including copies of written contracts and all amendments thereto; and

2876.3053 PORTAL OPERATOR REGISTRATION.

Subp. 7. ~~**Sales report.** The portal operator must provide to the administrator upon request a final sales report of an offering or offerings completed through the portal. A sales report must contain, at a minimum, the total amount raised through the offerings; the number of investors that purchased securities through the offerings; and whether, if funds were held in escrow, the funds were released to the MNvest issuer.~~

2876.3055 PROTECTION OF PURCHASER INFORMATION.

Subpart 1. **Cybersecurity policy.**

A. Portal operators and MNvest issuers must take reasonable steps to ensure that purchasers' financial and personal information is properly secured. Reasonable steps include, at a minimum, ~~the development and implementation of a written cybersecurity policy that outlines the MNvest issuer's or portal operator's policies and procedures for preventing and responding to cybersecurity attacks and data breaches resulting in the disclosure or potential disclosure of purchasers' confidential or personally identifiable information.;~~

(1) preventing cybersecurity attacks that result in the disclosure, or potential disclosure, of purchasers' confidential or personally identifiable information;

(2) preventing data breaches that result in the disclosure, or potential disclosure, of purchasers' confidential or personal-

ly identifiable information;

- (3) responding to a cybersecurity attack or data breach that occurs; and
- (4) demonstrating the issuer's implementation of the written cybersecurity policy.

2876.3059 ANTIFRAUD PROVISION.

Minnesota Statutes, section 80A.461, and parts 2876.3050 to 2876.3060 do not exempt any person, including control persons and employees of MNvest issuers and portal operators, from the antifraud provisions of Minnesota Statutes, section 80A.68, and do not provide relief from any other provisions of the Minnesota Securities Act or Minnesota Statutes, chapter 45, other than as expressly stated. Nothing in this chapter exempts any person from any antifraud provisions of Minnesota Statutes, chapter 80A.

Department of Natural Resources

Adopted Exempt Permanent Rules: Personal Flotation Devices and Water Surface Use Restrictions

6110.1200 NAVIGATION OF WATERCRAFT ON THE WATERS OF THE STATE; SAFETY EQUIPMENT.

[For text of subps 1 and 2, see M.R.]

Subp. 3. Personal flotation (lifesaving) devices. Flotation devices:

A. Every person on board a watercraft or waterfowl boat shall wear or have readily accessible a U.S. Coast Guard approved ~~Type I, II, or III~~ wearable personal flotation device. In addition to these devices, watercraft and waterfowl boats 16 feet or more in length, except canoes and kayaks, must also carry at least one U.S. Coast Guard approved ~~Type IV~~ throwable personal flotation device. A U.S. Coast Guard approved ~~Type IV~~ throwable personal flotation device may be carried in lieu of any personal flotation device required by this part, on nonmotorized watercraft operated by lifeguards within a marked swimming area, as defined in part 6110.1600.

~~B. A U.S. Coast Guard approved Type V personal flotation device may be carried in lieu of any personal flotation device required in this rule, if the Type V personal flotation device is approved:~~

- ~~(1) for the activity in which the watercraft is being used; and~~
- ~~(2) as a substitute for the type of personal flotation devices required to be on board the watercraft.~~

~~C. B. Persons being towed by a watercraft on water skis or other devices shall be considered to be on board the towing watercraft for the purpose of personal flotation device requirements. A U.S. Coast Guard approved Type I, II, or III wearable personal flotation device must be either carried in the towing watercraft or worn by the person being towed.~~

~~D. All personal flotation devices required by this subpart shall be:~~

- ~~(1) approved by the United States Coast Guard;~~
- ~~(2) legibly marked with the approval number issued by the United States Coast Guard;~~
- ~~(3) in serviceable condition free of tears, rot, punctures, or waterlogging, and with all straps and fasteners present and in good condition;~~
- ~~(4) either readily accessible or worn with the following exceptions:~~
 - ~~(a) those Type V devices which are required to be worn to be accepted as United States Coast Guard approved;~~
 - ~~(b) those cases designated by statute where wearing a Coast Guard approved Type I, II, III or V personal flotation device is mandatory; and~~
 - ~~(c) Type IV personal flotation devices must be immediately available.~~

1.1 **Department of Commerce**

1.2 **Adopted Permanent Rules Governing Securities; Regulating MNvest Offerings**

1.3 **2876.1000 DEFINITIONS.**

1.4 Subpart 1. **General terms and scope.** The terms used in this chapter that are not
1.5 defined in this part have the meanings given them in Minnesota Statutes, chapter 80A.

1.6 Subp. 2. **Control person.** For purposes of this chapter, "control person" means a
1.7 partner, officer, director, or manager, majority holder of securities, or anyone else having
1.8 the power to direct the management of the entity, but does not include a person whose
1.9 primary duties are ministerial or clerical.

1.10 **2876.3050 MNVEST NOTICE FILING.**

1.11 Subpart 1. **Form and submission.** A notice filing made pursuant to Minnesota
1.12 Statutes, section 80A.461, subdivision 3, clause (11), must be filed on the MNvest notice
1.13 form, available on the Department of Commerce Web site or upon request from the
1.14 administrator, not less than ten days before the beginning of the MNvest offering. The
1.15 MNvest notice form must be mailed or delivered electronically to the administrator, along
1.16 with the appropriate fee, at the address listed on the MNvest notice form. Information
1.17 provided on or with the MNvest notice form must include the following:

1.18 A. the name and contact information of the MNvest issuer making the filing;

1.19 B. identifying information for the MNvest portal through which the MNvest
1.20 issuer's securities are to be offered, including an indication as to whether the MNvest
1.21 issuer has registered, or intends to register, as a portal operator;

1.22 C. the minimum offering amount to be raised through the MNvest offering, and
1.23 a written explanation of how the minimum offering amount will be used to implement the
1.24 MNvest issuer's business plan;

2.1 D. the name and contact information of the escrow agent holding purchasers'
2.2 payments pursuant to Minnesota Statutes, section 80A.461, subdivision 3, clause (8);

2.3 E. a written affirmation that the MNvest issuer has ~~exercised reasonable care~~
2.4 ~~to confirm that it is not disqualified from making the MNvest offering under Minnesota~~
2.5 ~~Statutes, section 80A.461, subdivision 9;~~

2.6 (1) reviewed the disqualification provisions of Minnesota Statutes, section
2.7 80A.461, subdivision 9, paragraph (a); and

2.8 (2) undertaken the inquiries needed to establish, under Minnesota Statutes,
2.9 section 80A.461, subdivision 9, paragraph (b), clause (4), that the issuer has no reason to
2.10 know that a disqualification exists.

2.11 F. a copy of a disclosure document including all information required under
2.12 Minnesota Statutes, section 80A.461, subdivision 4;

2.13 G. a copy of a representative example of advertising used to promote the
2.14 MNvest offering or solicit prospective purchasers;

2.15 H. a copy of the MNvest issuer's balance sheet and income statement made
2.16 available to prospective purchasers pursuant to Minnesota Statutes, section 80A.461,
2.17 subdivision 3, clause (4); and

2.18 I. any other information the administrator may reasonably require to determine
2.19 the MNvest issuer's compliance with Minnesota Statutes, section 80A.461.

2.20 Subp. 2. **Fees.** Notice filing fee payments made pursuant to Minnesota Statutes,
2.21 section 80A.461, subdivision 3, clause (11), item (iii), are nonrefundable. Fee payments
2.22 must be made payable to the Department of Commerce.

2.23 Subp. 3. **Incomplete filings.** A notice filing that does not contain all information
2.24 required by this part and by Minnesota Statutes, section 80A.461, subdivision 3, clause
2.25 (11), or that does not include a correct fee payment, is incomplete and ineffective.

3.1 Subp. 4. **Effective period.** ~~Except while a stop order is in effect under Minnesota~~
3.2 ~~Statutes, section 80A.48, paragraph (a), a complete notice filing made for purposes of~~
3.3 ~~Minnesota Statutes, section 80A.461, subdivision 3, clause (11), automatically becomes~~
3.4 ~~effective ten days after receipt by the administrator and remains effective for one year~~
3.5 ~~following the date of effectiveness. The effective period of the offering begins ten days~~
3.6 ~~after the notice filing is received by the administrator. The effective period ends on the~~
3.7 ~~earlier of the following occurrences:~~

3.8 A. on the expiration date of the offering as stipulated in the MNvest disclosure
3.9 documents; or

3.10 B. at the point when the offering fails to meet any of the MNvest exemption
3.11 requirements.

3.12 Subp. 5. **Post effective amendments.**

3.13 A. After a MNvest notice filing has become effective, ~~and while the MNvest~~
3.14 ~~offering is still in progress, and throughout the effective period of the offering,~~ the MNvest
3.15 issuer must amend or supplement the information required by subpart 1 as necessary so
3.16 that the documents provided by the MNvest issuer does do not make any untrue statement
3.17 of a material fact, or omit to state a material fact necessary in order to make the statement
3.18 made, in light of the circumstances under which it is made, not misleading.

3.19 B. A copy of the amended documents required by item A as changed, revised,
3.20 or supplemented and clearly marked to show changes from the previously filed version
3.21 must be filed with the administrator not more than ten days after the amendment occurs.
3.22 No additional fee is required for amendment filings made under this subpart.

3.23 C. If amendments are made to the disclosure document required under
3.24 Minnesota Statutes, section 80A.461, subdivision 3, clause (11), item (ii), the MNvest
3.25 issuer must direct the portal operator facilitating the MNvest offering to:

4.1 (1) make the amended disclosure document available to all prospective
4.2 purchasers in the MNvest offering; and

4.3 (2) deliver the amended disclosure document to all purchasers who have
4.4 already invested in the MNvest offering.

4.5 **2876.3051 ESCROW AND IMPOUNDMENT.**

4.6 A MNvest issuer must comply with the escrow requirements found in Minnesota
4.7 Statutes, section 80A.461, subdivision 3, clause (8). The escrow and impoundment of
4.8 funds is subject to the following:

4.9 A. All funds from purchasers of a MNvest offering must be deposited in the
4.10 depository impound account controlled by the escrow agent within three business days
4.11 after receipt by the MNvest issuer.

4.12 B. All purchaser funds must remain in escrow until the earliest of the following:

4.13 (1) the total amount deposited with the escrow agent reaches at least the
4.14 minimum offering amount set by the MNvest issuer;

4.15 (2) twelve months have expired from the effective date of the MNvest
4.16 offering without the minimum offering amount having been deposited with the escrow
4.17 agent; or

4.18 (3) the MNvest offering reaches the stipulated expiration date set by the
4.19 MNvest issuer pursuant to Minnesota Statutes, section 80A.461, subdivision 4, clause (2),
4.20 without the minimum offering amount having been deposited with the escrow agent.

4.21 C. If the MNvest issuer does not raise the minimum offering amount by the
4.22 earlier of 12 months from the effective date of the MNvest offering or the stipulated
4.23 expiration date, the MNvest issuer must immediately notify the escrow agent that funds
4.24 received from each purchaser and held in escrow for the MNvest offering must be
4.25 refunded in full to the purchasers.

5.1 D. When the minimum offering amount for a MNvest offering is deposited with
5.2 the escrow agent, the MNvest issuer must issue securities to purchasers of the MNvest
5.3 offering within five days of the MNvest issuer's receipt of funds released from escrow
5.4 for the MNvest offering.

5.5 **2876.3052 RECORDS RETENTION REQUIREMENTS FOR MNVEST ISSUERS.**

5.6 MNvest issuers must retain records related to MNvest offerings made pursuant to
5.7 Minnesota Statutes, section 80A.461, for five years after the close of the MNvest offering.
5.8 Retained records must include a copy of the following:

5.9 A. the MNvest notice form and accompanying documents filed with the
5.10 administrator as part of the MNvest issuer's initial notice filing, and any subsequently
5.11 amended MNvest notice forms and documents filed with the administrator;

5.12 B. records of all purchaser payments deposited into the escrow impound
5.13 account, including information on when the payments were either released to the MNvest
5.14 issuer or refunded to the purchaser;

5.15 C. records of all written communications sent to or received from purchasers in
5.16 a MNvest offering while the offering is ongoing;

5.17 D. records of all agreements and compensation arrangements made between the
5.18 MNvest issuer and the portal operator through which the MNvest issuer's securities are
5.19 offered, including copies of written contracts and all amendments thereto;

5.20 E. records of all escrow agreements between the escrow agent, the MNvest
5.21 issuer, and, if applicable, the portal operator through which the MNvest issuer's securities
5.22 are offered, including copies of written contracts and all amendments thereto; and

5.23 F. all records used to establish compliance with Minnesota Statutes, section
5.24 80A.461, subdivision 9.

6.1 **2876.3053 PORTAL OPERATOR REGISTRATION.**

6.2 Subpart 1. **Form and submission.** A portal operator registration application made
6.3 pursuant to Minnesota Statutes, section 80A.461, must be filed on a MNvest portal
6.4 operator registration form, available on the Department of Commerce Web site or upon
6.5 request from the administrator. The portal operator registration form must be mailed or
6.6 delivered electronically to the administrator, along with the appropriate fee, at the address
6.7 listed on the MNvest portal operator registration form. Information provided on or with
6.8 the MNvest portal operator registration form must include, at minimum, the following:

6.9 A. the names, contact information, and titles of all control persons of the portal
6.10 operator;

6.11 B. the Web addresses of the MNvest portal;

6.12 C. documentation meeting the requirements of Minnesota Statutes, section
6.13 80A.461, subdivision 7, paragraph (a), clause (2);

6.14 D. information as to whether the portal operator is, or intends to be, a MNvest
6.15 issuer;

6.16 E. information as to whether control persons of the MNvest portal are agents,
6.17 representatives, or control persons of another portal operator, a broker-dealer, or an
6.18 investment adviser and, if applicable, the names and Central Registration Depository
6.19 (CRD) or Investment Adviser Registration Depository (IARD) numbers of each portal
6.20 operator, broker-dealer, or investment adviser so associated with each control person of
6.21 the MNvest portal;

6.22 F. a written explanation of the portal operator's use of a third party's software
6.23 program or other services in developing, operating, or maintaining the MNvest portal;

7.1 G. a written explanation of the steps taken by the portal operator to verify the
7.2 Minnesota residency of individuals purchasing securities through the MNvest portal
7.3 pursuant to Minnesota Statutes, section 80A.461, subdivision 6, clause (3), item (i);

7.4 H. a written explanation as to how the portal operator calculates and collects
7.5 fees pursuant to Minnesota Statutes, section 80A.461, subdivision 7, paragraph (c),
7.6 clause (3); and

7.7 I. any other information the administrator may reasonably require to determine
7.8 the portal operator's compliance with Minnesota Statutes, section 80A.461.

7.9 Subp. 2. **Fees.** A person filing a MNvest registration form with the department shall
7.10 include a nonrefundable \$200 fee, made payable to the Department of Commerce. A
7.11 MNvest registration form submitted to the department without the correct fee payment
7.12 will not be reviewed by the department, and will remain ineffective and incomplete until
7.13 the correct fee is submitted.

7.14 Subp. 3. **Effectiveness of registration.** A portal operator registration does not
7.15 become effective until the administrator has declared the registration effective.

7.16 Subp. 4. **Incomplete applications.** A portal operator registration application that
7.17 does not contain all information required by this part and by Minnesota Statutes, section
7.18 80A.461, subdivision 7, paragraph (a), or that does not include a correct fee payment,
7.19 is incomplete. A registration application that remains incomplete 45 days after the
7.20 administrator notifies the applicant of the reason for incompleteness is deemed denied
7.21 effective on the 46th day after the administrator's notification.

7.22 Subp. 5. **Post effective amendments.**

7.23 A. After a portal operator registration has been declared effective, the portal
7.24 operator shall amend or supplement the MNvest registration form to contain further

8.1 material information, if any, necessary to make the information in the MNvest registration
8.2 form not misleading or incorrect.

8.3 B. A copy of the MNvest registration form as changed, revised, or supplemented
8.4 and clearly marked to show changes from the previously filed version must be filed with
8.5 the administrator.

8.6 Subp. 6. **Registration renewal.** To renew a portal operator registration, the portal
8.7 operator must submit a MNvest portal operator registration form marked to indicate it
8.8 is an application for renewal, along with the fee required by Minnesota Statutes, section
8.9 80A.461, subdivision 7, paragraph (b), to the administrator at least 15 days prior to
8.10 the expiration of the portal operator's registration. Unless an order is in effect under
8.11 Minnesota Statutes, section 80A.67, a complete application for renewal of a portal operator
8.12 registration automatically becomes effective 16 days after the administrator receives the
8.13 renewal application, or immediately upon the expiration of the portal operator's existing
8.14 registration, whichever occurs later.

8.15 ~~Subp. 7. **Sales report.** The portal operator must provide to the administrator upon~~
8.16 ~~request a final sales report of an offering or offerings completed through the portal. A~~
8.17 ~~sales report must contain, at a minimum, the total amount raised through the offerings; the~~
8.18 ~~number of investors that purchased securities through the offerings; and whether, if funds~~
8.19 ~~were held in escrow, the funds were released to the MNvest issuer.~~

8.20 **2876.3054 REPORTING REQUIREMENTS.**

8.21 Subpart 1. **Offerings reports.** MNvest issuers and portal operators must provide
8.22 to the administrator upon request a report of a MNvest offering or MNvest offerings
8.23 occurring or completed in reliance on Minnesota Statutes, section 80A.461. The report
8.24 must be provided to the administrator within 30 days of the administrator's request, or at a
8.25 sooner date specified by the administrator.

9.1 Subp. 2. **Contents of issuer reports.** Reports requested from MNvest issuers
9.2 pursuant to this part must contain:

9.3 A. the minimum offering amount set by the MNvest issuer for a MNvest offering;

9.4 B. the total amount of money raised through the MNvest offering;

9.5 C. the name and address of each purchaser involved in the MNvest offering;

9.6 D. the amount of money raised from each individual purchaser in the MNvest
9.7 offering; and

9.8 E. confirmation as to whether and when purchasers' funds held in escrow for the
9.9 MNvest offering were released to the MNvest issuer or returned to purchasers.

9.10 Subp. 3. **Contents of portal operator reports.** Reports requested from portal
9.11 operators pursuant to this part must contain, for each MNvest offering conducted through
9.12 the MNvest portal in the requested period:

9.13 A. all of the information required in subpart 2, items A to D; and

9.14 B. the date the portal operator received from each purchaser the certification
9.15 required under Minnesota Statutes, section 80A.461, subdivision 5.

9.16 **2876.3055 PROTECTION OF PURCHASER INFORMATION.**

9.17 Subpart 1. **Cybersecurity policy.**

9.18 A. Portal operators and MNvest issuers must take reasonable steps to ensure
9.19 that purchasers' financial and personal information is properly secured. Reasonable steps
9.20 include, at a minimum, ~~the development and implementation of a written cybersecurity~~
9.21 ~~policy that outlines the MNvest issuer's or portal operator's policies and procedures for~~
9.22 ~~preventing and responding to cybersecurity attacks and data breaches resulting in the~~
9.23 ~~disclosure or potential disclosure of purchasers' confidential or personally identifiable~~
9.24 ~~information.;~~

10.1 (1) preventing cybersecurity attacks that result in the disclosure, or
10.2 potential disclosure, of purchasers' confidential or personally identifiable information;

10.3 (2) preventing data breaches that result in the disclosure, or potential
10.4 disclosure, of purchasers' confidential or personally identifiable information;

10.5 (3) responding to a cybersecurity attack or data breach that occurs; and

10.6 (4) demonstrating the issuer's implementation of the written cybersecurity
10.7 policy.

10.8 B. The cybersecurity policy required in item A must specifically include the
10.9 MNvest issuer's or portal operator's procedures to establish compliance with Minnesota
10.10 Statutes, section 325E.61.

10.11 C. MNvest issuers and portal operators must publish the cybersecurity policy
10.12 required by this subpart on the portal operator's or MNvest issuer's Web site, with a
10.13 prominent link to the cybersecurity policy on the Web site's homepage.

10.14 Subp. 2. **Reporting of a cybersecurity attack or data breach.** MNvest issuers and
10.15 portal operators must report to the administrator any action taken by the MNvest issuer or
10.16 portal operator to meet the reporting requirements of Minnesota Statutes, section 325E.61.

10.17 A. The report sent to the administrator must not include any confidential or
10.18 personally identifiable information of those individuals whose data were improperly
10.19 accessed or acquired, unless the information is requested by the administrator. The report
10.20 must include:

10.21 (1) a general description of the type of data that were accessed or acquired;

10.22 (2) the number of individuals whose data were improperly accessed or
10.23 acquired; and

10.24 (3) a description of the steps taken by the MNvest issuer or portal operator
10.25 to notify the individuals whose data were improperly accessed or acquired.

11.1 B. The report must be mailed or sent electronically to the administrator within
11.2 60 days of the MNvest issuer's or portal operator's discovery of the cybersecurity attack
11.3 or data breach.

11.4 **2876.3056 LIMITS ON AVAILABILITY.**

11.5 Minnesota Statutes, section 80A.461, is not available for the following types of
11.6 offerings:

11.7 A. offerings involving petroleum exploration or production, mining, or other
11.8 extractive industries;

11.9 B. offerings relating to investments in virtual, digital, or crypto currencies;

11.10 C. offerings conducted concurrently through multiple MNvest portals;

11.11 D. offerings involving an investment company as defined and classified under
11.12 Section 4 of the Investment Company Act of 1940; and

11.13 E. offerings in which it is proposed to issue stock or other equity interest in an
11.14 entity that has not yet defined its business operations, has no business plan, has no stated
11.15 investment goal for the funds being raised, or plans to engage in a merger or acquisition
11.16 with an unspecified business entity.

11.17 **2876.3057 RESTRICTIONS ON RESALE.**

11.18 Securities offered under Minnesota Statutes, section 80A.461, have not been
11.19 registered under federal or state securities laws and, therefore, cannot be resold unless
11.20 the securities are registered or qualified for an exemption from registration under federal
11.21 and state law. In addition, MNvest issuers shall make the disclosures required by Code of
11.22 Federal Regulations, title 17, section 230.147 (f).

11.23 **2876.3058 INVESTOR RIGHT OF CANCELLATION.**

11.24 In an offering conducted under Minnesota Statutes, section 80A.461, an investor may
11.25 cancel an investment commitment for any reason until such time as the target minimum

12.1 offering amount identified in the MNvest notice form corresponding with the offering and
12.2 filed with the administrator has been raised.

12.3 **2876.3059 ANTIFRAUD PROVISION.**

12.4 ~~Minnesota Statutes, section 80A.461, and parts 2876.3050 to 2876.3060 do not~~
12.5 ~~exempt any person, including control persons and employees of MNvest issuers and portal~~
12.6 ~~operators, from the antifraud provisions of Minnesota Statutes, section 80A.68, and do not~~
12.7 ~~provide relief from any other provisions of the Minnesota Securities Act or Minnesota~~
12.8 ~~Statutes, chapter 45, other than as expressly stated. Nothing in this chapter exempts any~~
12.9 ~~person from any antifraud provisions of Minnesota Statutes, chapter 80A.~~

12.10 **2876.3060 RESTRICTIONS ON USE OF THE TERM "MNVEST."**

12.11 Subpart 1. **Web site addresses.** The word "MNvest" must not be used in an Internet
12.12 URL address or domain name:

12.13 A. owned by a portal operator or MNvest issuer; or

12.14 B. that automatically redirects a prospective purchaser to a MNvest portal. In
12.15 addition, no MNvest portal shall hold itself out as being the "official" MNvest portal,
12.16 the "only" MNvest portal, or otherwise describe itself using words of similar import, as
12.17 determined by the administrator.

12.18 Subp. 2. **Misrepresentations regarding recommendations or endorsements.** A
12.19 person shall not make any representation, or use any device, title, descriptive name, or
12.20 identifier that has the tendency or capacity to confuse or mislead a Minnesota resident to
12.21 believe that a MNvest issuer, MNvest offering, or MNvest portal is endorsed, sponsored,
12.22 sanctioned, or recommended by MNvest.

Office of the Revisor of Statutes

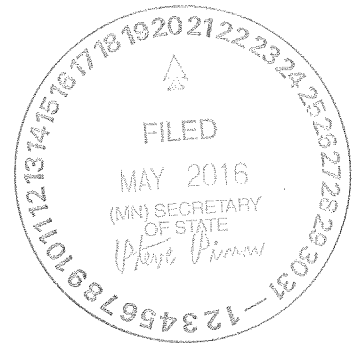
Administrative Rules



TITLE: Adopted Permanent Rules Governing Securities; Regulating MNvest Offerings

AGENCY: Department of Commerce

MINNESOTA RULES: Chapter 2876



RULE APPROVED
OFFICE OF ADMINISTRATIVE HEARINGS

April 29, 2016

DATE

[Signature]

ADMINISTRATIVE LAW JUDGE.

The attached rules are approved for
filing with the Secretary of State

[Signature]

Paul M. Marinac
Deputy Revisor

163090

Minnesota Department of Commerce

ORDER ADOPTING RULES

Adoption of Rules Governing Regulation of MNvest Securities Offerings, *Minnesota Rules*, chapter 2876; Revisor's ID Number RD 4344

BACKGROUND INFORMATION

1. The Department of Commerce has complied with all notice and procedural requirements in Minnesota Statutes, chapter 14, Minnesota Rules, chapter 1400, and other applicable law.
2. The agency received three written comments and submissions on the rules. Two persons requested a public hearing. Therefore, there are not 25 or more requests for a public hearing. The agency received no requests for notice of submission to the Office of Administrative Hearings.
3. The following changes were made between the proposed rules and the adopted rules:

- i. In response to public comment that the definition of Control Person should include anyone having the power to direct the management of the entity, the agency modified the rule by adding clarifying language to proposed Minn. R. 2876.1000, subp. 2, as follows:

Subp. 2. **Control person.** For purposes of this chapter, "control person" means a partner, officer, director, or manager, majority holder of securities, or anyone else having the power to direct the management of the entity, but does not include a person whose primary duties are ministerial or clerical.

The modification is reasonable and does not make the rules substantially different because it maintains the original intent of the rule to clearly define control persons.

- ii. In response to public comment that there is the potential for misunderstanding that compliance with proposed Minn. R. 2876.3050 would establish an exemption from anti-fraud provisions, the agency modified proposed Minn. R. 2876.3059 as follows:

~~**2876.3059 ANTIFRAUD PROVISION.** Minnesota Statutes, section 80A.461, and parts 2876.3050 to 2876.3060 do not exempt any person, including control persons and employees of MNvest issuers and portal operators, from the antifraud provisions of Minnesota Statutes, section 80A.68, and do not provide relief from any other provisions of the Minnesota Securities Act or Minnesota Statutes, chapter 45, other than as expressly stated. Nothing in this chapter exempts any person from any antifraud provisions of Minnesota Statutes, chapter 80A.~~

The modification is reasonable and does not make the rules substantially different because it maintains the original intent of the rule to clarify that nothing in the MNvest rules exempts anyone from antifraud provisions.

- iii. In response to public comment that the term “offering still in progress” needs to be clarified, the agency made two modifications, (1) to replace “still in progress” with “effective period”, and (2) to clarify the definition of “effective period.”

(1) The agency modified proposed Minn. R. 2876.3050, subp. 5 (A), as follows:

Subp. 5. Post effective amendments.

A. After a MNvest notice filing has become effective, ~~and while the MNvest offering is still in progress and throughout the effective period of the offering,~~ the MNvest issuer must amend or supplement the information required by subpart 1 as necessary so that the documents provided by the MNvest issuer ~~does do~~ not make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statement made, in light of circumstances under which it is made, not misleading.

(2) The agency modified proposed Minn. R. 2876.3050, subp. 4, as follows:

Subp. 4. Effective period. ~~Except while a stop order is in effect under Minnesota Statutes, section 80A.48, paragraph (a), a complete notice filing made for purposes of Minnesota Statutes, section 80A.461, subdivision 3, clause (11), automatically becomes effective ten days after receipt by the administrator and remains effective for one year following the date of effectiveness. The effective period of the offering begins ten days after the notice filing is received by the administrator. The effective period ends on the earlier of the following occurrences:~~

- A. on the expiration date of the offering as stipulated the MNvest disclosure documents; or
- B. at the point when the offering fails to meet any of the MNvest exemption requirements.

These modifications are reasonable and do not make the rules substantially different because the term “offering still in progress” was not defined in the proposed rules and therefore needed further clarification, which the agency accomplished by more clearly defining the term “effective period.” These modifications conform to the intent of the rules to provide specifications for MNvest securities offerings.

- iv. In response to public comment that there is the potential for misunderstanding that proposed Minn. R. 2876.3050, subp. 1 (E), could be misconstrued to mean that an affirmation that the issuer has exercised reasonable care is sufficient to establish that the issuer has, in fact, exercised reasonable care; and further, in response to the Administrative Law Judge’s recommendation for technical corrections to proposed Minn. R. 2876.3050, subp. 1 (E), the agency modified the rules as follows:

~~E. a written affirmation that the MNvest issuer has exercised reasonable care to confirm that it is not disqualified from making the MNvest offering under Minnesota Statutes, section 80A.461, subdivision 9;~~

~~(1) reviewed the disqualification provisions of Minnesota Statutes, section 80A.461, subdivision 9, paragraph (a); and~~

~~(2) undertaken the inquiries needed to establish, under Minnesota Statutes, section 80A.461, subdivision 9, paragraph (b), clause (4), that the issuer has no reason to know that a disqualification exists.~~

The modification is reasonable and does not make the rule substantially different because the rule language clarifies what actions would satisfy the “reasonable care” requirement set forth in Minnesota Statutes, section 80A.461, subdivision 9.

- v. In response to public comment that proposed Minn. R. 2876.3052 (D) should include “and all amendments thereto,” the agency modified proposed Minn. R. 2876.3052 (D) as follows:

D. records of all agreements and compensation arrangements made between the MNvest issuer and the portal operator through which the MNvest issuer’s securities are offered, including copies of written contracts and all amendments thereto;

The modification is reasonable and does not make the rule substantially different because it maintains the original intent of the rule to establish specifications for records retention.

- vi. In response to public comment that proposed Minn. R. 2876.3052 (E) should include amendments, the agency modified proposed Minn. R. 2876.3052 (E) as follows:

E. records of all escrow agreements between the escrow agent, the MNvest issuer, and, if applicable, the portal operator through which the MNvest issuer’s securities are offered, including copies of written contracts and all amendments thereto; and

The modification is reasonable and does not make the rule substantially different because it maintains the original intent of the rule to establish specifications for records retention.

- vii. In response to public comment that proposed Minn. R. 2876.3054, subp. 1, and proposed Minn. R. 2876.3053, subp. 7, are duplicative, the agency modified the rules as follows:

~~Subp. 7. Sales report. The portal operator must provide to the administrator upon request a final sales report of an offering or offerings completed through the portal. A sales report must contain, at a minimum, the total amount raised through the offerings; the number of investors that purchased securities through the offerings; and whether, if funds were held in escrow, the funds were released to the MNvest issuer.~~

The modification is reasonable and does not make the rules substantially different because it eliminates unnecessary duplication.

viii. In response to the Administrative Law Judge's recommendation for technical corrections to proposed Minn. R. 2876.3055, subp. 1 (A), the agency modified the rules as follows:

A. Portal operators and MNvest issuers must take reasonable steps to ensure that purchasers' financial and personal information is properly secured. Reasonable steps include, at a minimum, ~~the development and implementation of a written cybersecurity policy that outlines the MNvest issuer's or portal operator's policies and procedures for preventing and responding to cybersecurity attacks and data breaches resulting in the disclosure or potential disclosure of purchasers' confidential or personally identifiable information.;~~

(1) preventing cybersecurity attacks that result in the disclosure, or potential disclosure, of purchasers' confidential or personally identifiable information;

(2) preventing data breaches that result in the disclosure, or potential disclosure, of purchasers' confidential or personally identifiable information;

(3) responding to a cybersecurity attack or data breach that occurs; and,

(4) demonstrating the issuer's implementation of the written cybersecurity policy.

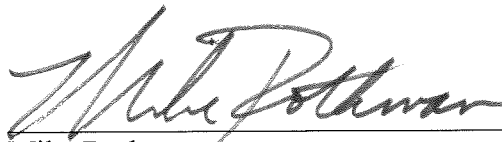
The modification is needed and reasonable because it clarifies the "reasonable steps" requirement and would not be a substantial change from the rules as proposed.

4. The rules are needed and reasonable.

ORDER

The above-named rules, in the form published in the State Register on November 30, 2015, with the modifications as indicated in the Revisor's draft, file number AR4344, dated May 11, 2016, are adopted under my authority in Minnesota Statutes, sections 45.023 and 80A.82 (a) (1).

5/13/16
Date



Mike Rothman
Commissioner of Commerce

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Adopted Rules of the
State Department of Commerce Governing
MNvest Securities Regulation, Minnesota
Rules, Chapter 2876

**ORDER ON REVIEW OF
RULES UNDER
MINN. STAT. § 14.26**

The Minnesota Department of Commerce (Department) sought review and approval of the above-entitled rules, pursuant to Minn. Stat. § 14.26 (2014).

On April 15, 2016, the Office of Administrative Hearings (OAH) received the documents that must be filed by the Department under Minn. Stat. § 14.26 and Minn. R. 1400.2310 (2015). Based upon a review of the filings, Minnesota Statutes, Minnesota Rules,

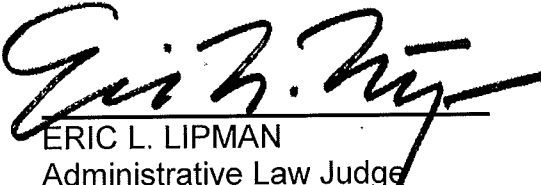
IT IS HEREBY DETERMINED:

1. The Department has the statutory authority to adopt the rules.
2. The rules were adopted in compliance with the procedural requirements of Minnesota Statutes, Chapter 14 (2014), and Minnesota Rules, Chapter 1400 (2015).
3. The record demonstrates the rules are needed and reasonable.
4. Clarity and administration of the rules would benefit from two technical corrections to the proposed rules, as set forth in the accompanying Memorandum.

IT IS HEREBY ORDERED THAT:

The rules are **APPROVED**.

Dated: April 29, 2016


ERIC L. LIPMAN
Administrative Law Judge

MEMORANDUM

The Administrative Law Judge recommends two technical corrections to the rules for the Department's review and consideration. Technical corrections are not defects in the rules. The suggested corrections are recommendations that the agency may choose to adopt, if it sees fit, to aid in the administration of the rules.

Proposed Minn. R. 2876.3050, subp. 1 (E):

The Department proposes to add a requirement obliging those who issue offerings under the MNvest program to make a written affirmation that they have undertaken a reasonable effort to identify, and exclude, those who are disqualified from making such offerings. The proposed rule reads in part:

Information provided on or with the MNvest notice form must include the following:

....

E. a written affirmation that the MNvest issuer has exercised reasonable care to confirm that it is not disqualified from making the MNvest offering under Minnesota Statutes, section 80A.461, subdivision 9¹

While "reasonable care" is a recognized term of art, it may well be that this regulatory requirement leaves many MNvest participants, or would-be participants, wondering if they have, in fact, satisfied the rule requirements. In the view of the Administrative Law Judge, clarity and administration of the rule would be improved if the issuers were given discreet tasks to complete when demonstrating due diligence. For example, one possible revision of the proposed rule might be:

Information provided on or with the MNvest notice form must include the following:

....

E. a written affirmation that the MNvest issuer has:

(1) reviewed the disqualification provisions of Minn. Stat. § 80A.461, subd. 9(a); and

(2) has undertaken the inquires needed to establish, under Minn. Stat. § 80A.461, subd. 9(b)(4), that the issuer has no reason to know that a disqualification exists.

A revision that clarified this portion of the rule would be needed and reasonable and would not be a substantial change from the rules as proposed.

¹ Ex. C at 1-2.

Proposed Minn. R. 2876.3055, subp. 1 (A):

The Department proposes to add a requirement obliging those who issue offerings under the MNvest program to have procedures to safeguard confidential and personally identifiable information from unauthorized disclosure. The proposed rule reads in part:

A. Portal operators and MNvest issuers must take reasonable steps to ensure that purchasers' financial and personal information is properly secured. Reasonable steps include, at a minimum, the development and implementation of a written cybersecurity policy that outlines the MNvest issuer's or portal operator's policies and procedures for preventing and responding to cybersecurity attacks and data breaches resulting in the disclosure or potential disclosure of purchasers' confidential or personally identifiable information.²

The second sentence of this subparagraph is a multi-part, 50-word sentence. In the view of the Administrative Law Judge, clarity and administration of the rule would be improved if the various obligations were broken out into discreet sub-clauses. For example, one possible revision of the proposed rule might be:

A. Portal operators and MNvest issuers must take reasonable steps to ensure that purchasers' financial and personal information is properly secured. Reasonable steps include, at a minimum, a written cybersecurity policy that outlines the MNvest issuer's or portal operator's policies and procedures for:

(1) preventing cybersecurity attacks that result in the disclosure, or potential disclosure, of purchasers' confidential or personally identifiable information;

(2) preventing data breaches that result in the disclosure, or potential disclosure, of purchasers' confidential or personally identifiable information;

(3) responding to a cybersecurity attack or data breach that occurs; and,

(4) demonstrating the issuer's implementation of the written cybersecurity policy.

A revision that clarified this portion of the rule would be needed and reasonable and would not be a substantial change from the rules as proposed.

E. L. L.

² *Id.*, at 9.

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS
ADMINISTRATIVE LAW SECTION
PO BOX 64620
600 NORTH ROBERT STREET
ST. PAUL, MINNESOTA 55164

CERTIFICATE OF SERVICE

In the Matter of the Adopted Rules of the State Department of Commerce Governing MNvest Securities Regulation	OAH Docket No. 8-9009-32985 Revisor R-4344
---	---

Rachel Youness certifies that on April 29, 2016, she served a true and correct copy of the attached **ORDER ON REVIEW OF RULES**; by placing it in the United States mail or by courier service with postage prepaid, addressed to the following individuals:

Susan Bergh Minnesota Department of Commerce 85 E Seventh PI Ste 500 Saint Paul, MN 55101 Susan.Bergh@state.mn.us	Elizabeth Dressel Policy Coordinator Office of Governor Mark Dayton 20 W Twelfth St Ste 116 St Paul, MN 55155
Legislative Coordinating Commission (lcc@lcc.leg.mn)	Paul Marinac Office of the Revisor of Statutes paul.marinac@revisor.mn.gov

April 15, 2016

The Honorable Tammy L. Pust
Chief Administrative Law Judge
Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
Saint Paul, Minnesota 55164-0620

Re: In the Matter of the Rules Governing Regulation of MNvest Securities Offerings, *Minnesota Rules*, chapter 2876, Revisor's ID Number 4344

Dear Chief Judge Pust:

The Minnesota Department of Commerce requests that the Office of Administrative Hearings review and approve its rules governing regulation of MNvest securities offerings for legality and form according to Minnesota Statutes, section 14.26. Upon receipt of OAH approval, the Department will adopt the rules. Enclosed for your review are the documents required by Office of Administrative Hearings Rules, part 1400.2310, items A to P. Paragraphs A to P of this letter are keyed to items A to P of part 1400.2310. Each paragraph states whether the document is enclosed and, if the document is not enclosed, the reason that the document is not applicable.

- A. Enclosed: the Request for Comments as published in the State Register on July 13, 2015.
- B. Not enclosed: a petition for rulemaking. This is not enclosed because no petition was filed regarding these rules.
- C. Enclosed: the proposed rules dated November 9, 2015, with the Revisor's certificate of approval.
- D. Enclosed: the Statement of Need and Reasonableness.
- E. Enclosed: the Notice of Intent to Adopt Rules, as mailed, and the Notice of Intent to Adopt Rules, as published in the State Register on November 30, 2015.
- F. Not enclosed: a letter from the Chief Administrative Law Judge authorizing the Department to omit the text of the proposed rules from the Notice Of Intent To Adopt Rules published in the State Register. This is not enclosed because the Department included the text of the proposed rules with the Notice of Intent to Adopt Rules published in the State Register.
- G. Enclosed: the Certificate of Mailing the Notice of Intent to Adopt Rules and the Certificate of Accuracy of the Mailing List.
- H. Enclosed: the Certificate of Additional Notice, and a copy of the letter from Administrative Law Judge Eric L. Lipman dated November 13, 2015, approving the Additional Notice Plan.

- I. Enclosed: A copy of the transmittal letter showing the agency sent notice to the Legislative Reference Library.
- J. Enclosed: all written comments and submissions on the proposed rules that the Department received during the comment period, requests for hearing and withdrawals of requests for hearing, except those that only requested copies of documents. Also enclosed are copies of the Department's responses to written comments.
- K. Not enclosed: a notice of withdrawal of hearing request, evidence that the Department sent its notice of withdrawal to all persons who requested a hearing, and any responsive comments received. These are not enclosed because Minnesota Statutes, section 14.25, subdivision 2, did not require the Department to send a notice of withdrawal of hearing request.
- L. Enclosed: a copy of the adopted rules dated March 29, 2016. The modifications to the proposed rules are reflected in the rules as adopted and are approved by the Revisor of Statutes.
- M. Not enclosed: a notice of adopting substantially different rules that was sent to persons or groups who commented during the comment period and evidence that the notice was sent to those persons or groups. This is not enclosed because the Department did not adopt substantially different rules.
- N. Enclosed: the unsigned Order Adopting Rules that complies with the requirements in part 1400.2090.
- O. Not enclosed: a notice of submission of rules to the Office of Administrative Hearings and a copy of a transmittal letter or certificate of mailing the notice of submission of rules to the Office of Administrative Hearings. No persons requested notification of the submission of the rules to the Office of Administrative Hearings.
- P. Enclosed: any other document or evidence to show compliance with any other law or rule that the Department is required to follow in adopting these rules. These are:
- A copy of the transmittal letter showing the agency sent notice to Legislators per Minnesota Statutes, section 14.116.
 - A copy of the transmittal letter showing the agency consulted with the Department of MMB per Minnesota Statutes, section 14.131.

If you have questions or wish to discuss anything with me, please contact me at 651-539-1456. After you complete your review, please send any correspondence to me at the following address:

Susan Bergh
Minnesota Department of Commerce
85 Seventh Place East, Suite 500
St. Paul, MN 55101

Yours very truly,



Susan Bergh
Administrative Rules Coordinator
Minnesota Department of Commerce

1.1 **Department of Commerce**1.2 **Adopted Permanent Rules Governing Securities; Regulating MNvest Offerings**1.3 **2876.1000 DEFINITIONS.**

1.4 Subpart 1. **General terms and scope.** The terms used in this chapter that are not
1.5 defined in this part have the meanings given them in Minnesota Statutes, chapter 80A.

1.6 Subp. 2. **Control person.** For purposes of this chapter, "control person" means a
1.7 partner, officer, director, or manager, majority holder of securities, or anyone else having
1.8 the power to direct the management of the entity, but does not include a person whose
1.9 primary duties are ministerial or clerical.

1.10 **2876.3050 MNVEST NOTICE FILING.**

1.11 Subpart 1. **Form and submission.** A notice filing made pursuant to Minnesota
1.12 Statutes, section 80A.461, subdivision 3, clause (11), must be filed on the MNvest notice
1.13 form, available on the Department of Commerce Web site or upon request from the
1.14 administrator, not less than ten days before the beginning of the MNvest offering. The
1.15 MNvest notice form must be mailed or delivered electronically to the administrator, along
1.16 with the appropriate fee, at the address listed on the MNvest notice form. Information
1.17 provided on or with the MNvest notice form must include the following:

1.18 A. the name and contact information of the MNvest issuer making the filing;

1.19 B. identifying information for the MNvest portal through which the MNvest
1.20 issuer's securities are to be offered, including an indication as to whether the MNvest
1.21 issuer has registered, or intends to register, as a portal operator;

1.22 C. the minimum offering amount to be raised through the MNvest offering, and
1.23 a written explanation of how the minimum offering amount will be used to implement the
1.24 MNvest issuer's business plan;

2.1 D. the name and contact information of the escrow agent holding purchasers'
2.2 payments pursuant to Minnesota Statutes, section 80A.461, subdivision 3, clause (8);

2.3 E. a written ~~affirmation~~ declaration, signed by a control person of the MNvest
2.4 issuer, stating that the MNvest issuer has exercised reasonable care to confirm that it is
2.5 not disqualified from making the MNvest offering under Minnesota Statutes, section
2.6 80A.461, subdivision 9;

2.7 F. a copy of a disclosure document including all information required under
2.8 Minnesota Statutes, section 80A.461, subdivision 4;

2.9 G. a copy of a representative example of advertising used to promote the
2.10 MNvest offering or solicit prospective purchasers;

2.11 H. a copy of the MNvest issuer's balance sheet and income statement made
2.12 available to prospective purchasers pursuant to Minnesota Statutes, section 80A.461,
2.13 subdivision 3, clause (4); and

2.14 I. any other information the administrator may reasonably require to determine
2.15 the MNvest issuer's compliance with Minnesota Statutes, section 80A.461.

2.16 Subp. 2. **Fees.** Notice filing fee payments made pursuant to Minnesota Statutes,
2.17 section 80A.461, subdivision 3, clause (11), item (iii), are nonrefundable. Fee payments
2.18 must be made payable to the Department of Commerce.

2.19 Subp. 3. **Incomplete filings.** A notice filing that does not contain all information
2.20 required by this part and by Minnesota Statutes, section 80A.461, subdivision 3, clause
2.21 (11), or that does not include a correct fee payment, is incomplete and ineffective.

2.22 Subp. 4. **Effective period.** ~~Except while a stop order is in effect under Minnesota~~
2.23 ~~Statutes, section 80A.48, paragraph (a), a complete notice filing made for purposes of~~
2.24 ~~Minnesota Statutes, section 80A.461, subdivision 3, clause (11), automatically becomes~~
2.25 ~~effective ten days after receipt by the administrator and remains effective for one year~~

3.1 ~~following the date of effectiveness.~~ The effective period of the offering begins ten days
3.2 after the notice filing is received by the administrator. The effective period ends on the
3.3 earlier of the following occurrences:

3.4 A. on the expiration date of the offering as stipulated in the MNvest disclosure
3.5 documents; or

3.6 B. at the point when the offering fails to meet any of the MNvest exemption
3.7 requirements.

3.8 **Subp. 5. Post effective amendments.**

3.9 A. After a MNvest notice filing has become effective, ~~and while the MNvest~~
3.10 ~~offering is still in progress, and throughout the effective period of the offering,~~ the MNvest
3.11 issuer must amend or supplement the information required by subpart 1 as necessary so
3.12 that the documents provided by the MNvest issuer ~~does~~ do not make any untrue statement
3.13 of a material fact, or omit to state a material fact necessary in order to make the statement
3.14 made, in light of the circumstances under which it is made, not misleading.

3.15 B. A copy of the amended documents required by item A as changed, revised,
3.16 or supplemented and clearly marked to show changes from the previously filed version
3.17 must be filed with the administrator not more than ten days after the amendment occurs.
3.18 No additional fee is required for amendment filings made under this subpart.

3.19 C. If amendments are made to the disclosure document required under
3.20 Minnesota Statutes, section 80A.461, subdivision 3, clause (11), item (ii), the MNvest
3.21 issuer must direct the portal operator facilitating the MNvest offering to:

3.22 (1) make the amended disclosure document available to all prospective
3.23 purchasers in the MNvest offering; and

3.24 (2) deliver the amended disclosure document to all purchasers who have
3.25 already invested in the MNvest offering.

4.1 **2876.3051 ESCROW AND IMPOUNDMENT.**

4.2 A MNvest issuer must comply with the escrow requirements found in Minnesota
4.3 Statutes, section 80A.461, subdivision 3, clause (8). The escrow and impoundment of
4.4 funds is subject to the following:

4.5 A. All funds from purchasers of a MNvest offering must be deposited in the
4.6 depository impound account controlled by the escrow agent within three business days
4.7 after receipt by the MNvest issuer.

4.8 B. All purchaser funds must remain in escrow until the earliest of the following:

4.9 (1) the total amount deposited with the escrow agent reaches at least the
4.10 minimum offering amount set by the MNvest issuer;

4.11 (2) twelve months have expired from the effective date of the MNvest
4.12 offering without the minimum offering amount having been deposited with the escrow
4.13 agent; or

4.14 (3) the MNvest offering reaches the stipulated expiration date set by the
4.15 MNvest issuer pursuant to Minnesota Statutes, section 80A.461, subdivision 4, clause (2),
4.16 without the minimum offering amount having been deposited with the escrow agent.

4.17 C. If the MNvest issuer does not raise the minimum offering amount by the
4.18 earlier of 12 months from the effective date of the MNvest offering or the stipulated
4.19 expiration date, the MNvest issuer must immediately notify the escrow agent that funds
4.20 received from each purchaser and held in escrow for the MNvest offering must be
4.21 refunded in full to the purchasers.

4.22 D. When the minimum offering amount for a MNvest offering is deposited with
4.23 the escrow agent, the MNvest issuer must issue securities to purchasers of the MNvest
4.24 offering within five days of the MNvest issuer's receipt of funds released from escrow
4.25 for the MNvest offering.

5.1 **2876.3052 RECORDS RETENTION REQUIREMENTS FOR MNVEST ISSUERS.**

5.2 MNvest issuers must retain records related to MNvest offerings made pursuant to
5.3 Minnesota Statutes, section 80A.461, for five years after the close of the MNvest offering.
5.4 Retained records must include a copy of the following:

5.5 A. the MNvest notice form and accompanying documents filed with the
5.6 administrator as part of the MNvest issuer's initial notice filing, and any subsequently
5.7 amended MNvest notice forms and documents filed with the administrator;

5.8 B. records of all purchaser payments deposited into the escrow impound
5.9 account, including information on when the payments were either released to the MNvest
5.10 issuer or refunded to the purchaser;

5.11 C. records of all written communications sent to or received from purchasers in
5.12 a MNvest offering while the offering is ongoing;

5.13 D. records of all agreements and compensation arrangements made between the
5.14 MNvest issuer and the portal operator through which the MNvest issuer's securities are
5.15 offered, including copies of written contracts and all amendments thereto;

5.16 E. records of all escrow agreements between the escrow agent, the MNvest
5.17 issuer, and, if applicable, the portal operator through which the MNvest issuer's securities
5.18 are offered, including copies of written contracts and all amendments thereto; and

5.19 F. all records used to establish compliance with Minnesota Statutes, section
5.20 80A.461, subdivision 9.

5.21 **2876.3053 PORTAL OPERATOR REGISTRATION.**

5.22 Subpart 1. **Form and submission.** A portal operator registration application made
5.23 pursuant to Minnesota Statutes, section 80A.461, must be filed on a MNvest portal
5.24 operator registration form, available on the Department of Commerce Web site or upon
5.25 request from the administrator. The portal operator registration form must be mailed or

6.1 delivered electronically to the administrator, along with the appropriate fee, at the address
6.2 listed on the MNvest portal operator registration form. Information provided on or with
6.3 the MNvest portal operator registration form must include, at minimum, the following:

6.4 A. the names, contact information, and titles of all control persons of the portal
6.5 operator;

6.6 B. the Web addresses of the MNvest portal;

6.7 C. documentation meeting the requirements of Minnesota Statutes, section
6.8 80A.461, subdivision 7, paragraph (a), clause (2);

6.9 D. information as to whether the portal operator is, or intends to be, a MNvest
6.10 issuer;

6.11 E. information as to whether control persons of the MNvest portal are agents,
6.12 representatives, or control persons of another portal operator, a broker-dealer, or an
6.13 investment adviser and, if applicable, the names and Central Registration Depository
6.14 (CRD) or Investment Adviser Registration Depository (IARD) numbers of each portal
6.15 operator, broker-dealer, or investment adviser so associated with each control person of
6.16 the MNvest portal;

6.17 F. a written explanation of the portal operator's use of a third party's software
6.18 program or other services in developing, operating, or maintaining the MNvest portal;

6.19 G. a written explanation of the steps taken by the portal operator to verify the
6.20 Minnesota residency of individuals purchasing securities through the MNvest portal
6.21 pursuant to Minnesota Statutes, section 80A.461, subdivision 6, clause (3), item (i);

6.22 H. a written explanation as to how the portal operator calculates and collects
6.23 fees pursuant to Minnesota Statutes, section 80A.461, subdivision 7, paragraph (c),
6.24 clause (3); and

7.1 I. any other information the administrator may reasonably require to determine
7.2 the portal operator's compliance with Minnesota Statutes, section 80A.461.

7.3 Subp. 2. **Fees.** A person filing a MNvest registration form with the department shall
7.4 include a nonrefundable \$200 fee, made payable to the Department of Commerce. A
7.5 MNvest registration form submitted to the department without the correct fee payment
7.6 will not be reviewed by the department, and will remain ineffective and incomplete until
7.7 the correct fee is submitted.

7.8 Subp. 3. **Effectiveness of registration.** A portal operator registration does not
7.9 become effective until the administrator has declared the registration effective.

7.10 Subp. 4. **Incomplete applications.** A portal operator registration application that
7.11 does not contain all information required by this part and by Minnesota Statutes, section
7.12 80A.461, subdivision 7, paragraph (a), or that does not include a correct fee payment,
7.13 is incomplete. A registration application that remains incomplete 45 days after the
7.14 administrator notifies the applicant of the reason for incompleteness is deemed denied
7.15 effective on the 46th day after the administrator's notification.

7.16 Subp. 5. **Post effective amendments.**

7.17 A. After a portal operator registration has been declared effective, the portal
7.18 operator shall amend or supplement the MNvest registration form to contain further
7.19 material information, if any, necessary to make the information in the MNvest registration
7.20 form not misleading or incorrect.

7.21 B. A copy of the MNvest registration form as changed, revised, or supplemented
7.22 and clearly marked to show changes from the previously filed version must be filed with
7.23 the administrator.

7.24 Subp. 6. **Registration renewal.** To renew a portal operator registration, the portal
7.25 operator must submit a MNvest portal operator registration form marked to indicate it

8.1 is an application for renewal, along with the fee required by Minnesota Statutes, section
8.2 80A.461, subdivision 7, paragraph (b), to the administrator at least 15 days prior to
8.3 the expiration of the portal operator's registration. Unless an order is in effect under
8.4 Minnesota Statutes, section 80A.67, a complete application for renewal of a portal operator
8.5 registration automatically becomes effective 16 days after the administrator receives the
8.6 renewal application, or immediately upon the expiration of the portal operator's existing
8.7 registration, whichever occurs later.

8.8 ~~Subp. 7. **Sales report.** The portal operator must provide to the administrator upon~~
8.9 ~~request a final sales report of an offering or offerings completed through the portal. A~~
8.10 ~~sales report must contain, at a minimum, the total amount raised through the offerings; the~~
8.11 ~~number of investors that purchased securities through the offerings; and whether, if funds~~
8.12 ~~were held in escrow, the funds were released to the MNvest issuer.~~

8.13 **2876.3054 REPORTING REQUIREMENTS.**

8.14 Subpart 1. **Offerings reports.** MNvest issuers and portal operators must provide
8.15 to the administrator upon request a report of a MNvest offering or MNvest offerings
8.16 occurring or completed in reliance on Minnesota Statutes, section 80A.461. The report
8.17 must be provided to the administrator within 30 days of the administrator's request, or at a
8.18 sooner date specified by the administrator.

8.19 Subp. 2. **Contents of issuer reports.** Reports requested from MNvest issuers
8.20 pursuant to this part must contain:

- 8.21 A. the minimum offering amount set by the MNvest issuer for a MNvest offering;
- 8.22 B. the total amount of money raised through the MNvest offering;
- 8.23 C. the name and address of each purchaser involved in the MNvest offering;
- 8.24 D. the amount of money raised from each individual purchaser in the MNvest
- 8.25 offering; and

9.1 E. confirmation as to whether and when purchasers' funds held in escrow for the
9.2 MNvest offering were released to the MNvest issuer or returned to purchasers.

9.3 Subp. 3. **Contents of portal operator reports.** Reports requested from portal
9.4 operators pursuant to this part must contain, for each MNvest offering conducted through
9.5 the MNvest portal in the requested period:

9.6 A. all of the information required in subpart 2, items A to D; and

9.7 B. the date the portal operator received from each purchaser the certification
9.8 required under Minnesota Statutes, section 80A.461, subdivision 5.

9.9 **2876.3055 PROTECTION OF PURCHASER INFORMATION.**

9.10 Subpart 1. **Cybersecurity policy.**

9.11 A. Portal operators and MNvest issuers must take reasonable steps to ensure
9.12 that purchasers' financial and personal information is properly secured. Reasonable steps
9.13 include, at a minimum, the development and implementation of a written cybersecurity
9.14 policy that outlines the MNvest issuer's or portal operator's policies and procedures for
9.15 preventing and responding to cybersecurity attacks and data breaches resulting in the
9.16 disclosure or potential disclosure of purchasers' confidential or personally identifiable
9.17 information.

9.18 B. The cybersecurity policy required in item A must specifically include the
9.19 MNvest issuer's or portal operator's procedures to establish compliance with Minnesota
9.20 Statutes, section 325E.61.

9.21 C. MNvest issuers and portal operators must publish the cybersecurity policy
9.22 required by this subpart on the portal operator's or MNvest issuer's Web site, with a
9.23 prominent link to the cybersecurity policy on the Web site's homepage.

10.1 Subp. 2. **Reporting of a cybersecurity attack or data breach.** MNvest issuers and
10.2 portal operators must report to the administrator any action taken by the MNvest issuer or
10.3 portal operator to meet the reporting requirements of Minnesota Statutes, section 325E.61.

10.4 A. The report sent to the administrator must not include any confidential or
10.5 personally identifiable information of those individuals whose data were improperly
10.6 accessed or acquired, unless the information is requested by the administrator. The report
10.7 must include:

10.8 (1) a general description of the type of data that were accessed or acquired;

10.9 (2) the number of individuals whose data were improperly accessed or
10.10 acquired; and

10.11 (3) a description of the steps taken by the MNvest issuer or portal operator
10.12 to notify the individuals whose data were improperly accessed or acquired.

10.13 B. The report must be mailed or sent electronically to the administrator within
10.14 60 days of the MNvest issuer's or portal operator's discovery of the cybersecurity attack
10.15 or data breach.

10.16 **2876.3056 LIMITS ON AVAILABILITY.**

10.17 Minnesota Statutes, section 80A.461, is not available for the following types of
10.18 offerings:

10.19 A. offerings involving petroleum exploration or production, mining, or other
10.20 extractive industries;

10.21 B. offerings relating to investments in virtual, digital, or crypto currencies;

10.22 C. offerings conducted concurrently through multiple MNvest portals;

10.23 D. offerings involving an investment company as defined and classified under
10.24 Section 4 of the Investment Company Act of 1940; and

11.1 E. offerings in which it is proposed to issue stock or other equity interest in an
 11.2 entity that has not yet defined its business operations, has no business plan, has no stated
 11.3 investment goal for the funds being raised, or plans to engage in a merger or acquisition
 11.4 with an unspecified business entity.

11.5 **2876.3057 RESTRICTIONS ON RESALE.**

11.6 Securities offered under Minnesota Statutes, section 80A.461, have not been
 11.7 registered under federal or state securities laws and, therefore, cannot be resold unless
 11.8 the securities are registered or qualified for an exemption from registration under federal
 11.9 and state law. In addition, MNvest issuers shall make the disclosures required by Code of
 11.10 Federal Regulations, title 17, section 230.147 (f).

11.11 **2876.3058 INVESTOR RIGHT OF CANCELLATION.**

11.12 In an offering conducted under Minnesota Statutes, section 80A.461, an investor may
 11.13 cancel an investment commitment for any reason until such time as the target minimum
 11.14 offering amount identified in the MNvest notice form corresponding with the offering and
 11.15 filed with the administrator has been raised.

11.16 **2876.3059 ANTIFRAUD PROVISION.**

11.17 ~~Minnesota Statutes, section 80A.461, and parts 2876.3050 to 2876.3060 do not~~
 11.18 ~~exempt any person, including control persons and employees of MNvest issuers and portal~~
 11.19 ~~operators, from the antifraud provisions of Minnesota Statutes, section 80A.68, and do not~~
 11.20 ~~provide relief from any other provisions of the Minnesota Securities Act or Minnesota~~
 11.21 ~~Statutes, chapter 45, other than as expressly stated. Nothing in this chapter exempts any~~
 11.22 ~~person from any antifraud provisions of Minnesota Statutes, chapter 80A.~~

11.23 **2876.3060 RESTRICTIONS ON USE OF THE TERM "MNVEST."**

11.24 Subpart 1. **Web site addresses.** The word "MNvest" must not be used in an Internet
 11.25 URL address or domain name:

11.26 A. owned by a portal operator or MNvest issuer; or

12.1 B. that automatically redirects a prospective purchaser to a MNvest portal. In
12.2 addition, no MNvest portal shall hold itself out as being the "official" MNvest portal,
12.3 the "only" MNvest portal, or otherwise describe itself using words of similar import, as
12.4 determined by the administrator.

12.5 Subp. 2. **Misrepresentations regarding recommendations or endorsements.** A
12.6 person shall not make any representation, or use any device, title, descriptive name, or
12.7 identifier that has the tendency or capacity to confuse or mislead a Minnesota resident to
12.8 believe that a MNvest issuer, MNvest offering, or MNvest portal is endorsed, sponsored,
12.9 sanctioned, or recommended by MNvest.

From: Bergh, Susan (COMM)
Sent: Friday, January 08, 2016 12:07 PM
To: 'Kathy Ahlers'
Subject: RE: MNVest - request for a hearing -- 30 November 2015 (Cite 40 SR 619-625)

RESPONSE 1

Dear Ms. Ahlers,

Thank you for your email of December 30, 2015, regarding the proposed amendments to Minnesota Rules Chapter 2876 and requesting a hearing. The Department appreciates your comments. However, many of your concerns cannot be addressed by rulemaking because they are required by the statute (Minnesota Statutes, section 80A.461). To propose changes to the statute, please contact your state legislator (<http://www.leg.state.mn.us/leg/legislators>).

Please note that the Department will not hold a public hearing on the proposed rules, because 25 or more persons did not submit a written request for a hearing by December 31, 2015.

Susan Bergh

Rules Coordinator, Legal Services Division
Minnesota Department of Commerce
85 - 7th Place East, Saint Paul, MN 55101



From: Kathy Ahlers [<mailto:kathyahlers@gmail.com>]
Sent: Wednesday, December 30, 2015 12:18 PM
To: *COMM_Rules Commerce
Subject: MNVest - request for a hearing -- 30 November 2015 (Cite 40 SR 619-625)

REQUEST FOR HEARING 1

December 30, 2015

Susan Bergh
Minnesota Department of Commerce
85 7th Place East Suite 500
St. Paul, Minnesota 55101
rules.commerce@state.mn.us

Dear Ms. Bergh:

I wish to request that the Department of Commerce hold a hearing on the proposed rules for MNVest, as published in the Minnesota State Register, Monday 30 November 2015 (Cite 40 SR 619-625).

I object to the entire set of rules, which if not subjected to the light of day of a public hearing and full scrutiny of public discourse may not serve the broader public interest. MNVest is a major innovation, and thus deserves broad public discussion and involvement. Many civically engaged people I have mentioned it to have never even heard of it, and exhibit intense interest once they hear about what it might allow, thus demonstrating that not enough visibility has been made about its potential and to weighing its specific potential opportunities, limitations and requirements. To avoid the exclusion or inadvertent discrimination against certain sectors of society via the specific structures as built by the rules, we must bring MNVest's proposed rules into the light of day. The potentially excluded and discriminated-against sectors include but are not limited to: people of color, immigrants and women, who were not represented on the rules-making body in accordance with their percentages in the community.

I oppose the adoption of the entire set of rules until public discourse can be conducted about them.

Sincerely,

Kathy Ahlers
4010 Hayes Street Northeast
Columbia Heights, MN 55421

From: Bergh, Susan (COMM)
Sent: Friday, January 08, 2016 12:06 PM
To: 'Judith Sims'
Subject: RE: MNVest

RESPONSE 2

Dear Ms. Sims,

Thank you for your email of December 30, 2015, requesting a hearing for the proposed amendments to Minnesota Rules Chapter 2876.

Please note that the Department will not hold a public hearing on the proposed rules, because 25 or more persons did not submit a written request for a hearing by December 31, 2015.

Susan Bergh
Rules Coordinator, Legal Services Division
Minnesota Department of Commerce
85 - 7th Place East, Saint Paul, MN 55101

REQUEST
FOR HEARING 2



From: Judith Sims [<mailto:zoji@comcast.net>]
Sent: Wednesday, December 30, 2015 3:46 PM
To: *COMM_Rules Commerce
Subject: MNVest

TO: Susan Bergh

As a small business owner, I wish to request that the Department of Commerce hold a hearing on the proposed rules for MNVest, as published in the Minnesota State Register, Monday 30 November 2015 (Cite 40 SR 619-625).\

Thank you for your attention.

Judith Sims
St Paul

From: Vander Weide, Vern J. [mailto:vjvanderweide@locklaw.com]
Sent: Thursday, December 31, 2015 12:35 PM
To: Edstrom, Brian (COMM); Bergh, Susan (COMM); paul.marinac@revisor.mn.gov
Cc: Robert Moilanen
Subject: Comments to Proposed Rules under MNvest statute, Minn. Stat. § 80A.461

COMMENT 3

Messrs Edstrom and Marinac and Ms. Bergh:

Attached hereto are my comments to the proposed MNvest rules for your consideration.

I have practiced securities law for almost 45 years as a regulator and litigator in both government (six years on the staff of the SEC) and in private practice, which included doing transactions (including non-public and public offerings) and regulatory work. The views expressed herein and in the attached comments are mine, and mine alone, and are not to be deemed representative of my firm, of which I am “of counsel.” While I take sole responsibility for these comments, I was pleased to have consulted with Robert Moilanen, whose contributions immensely improved the final product.

MNvest is little more than a codification of rules to be followed for an internet offering in Minnesota under the Securities Act of 1933 and Rule 147 thereunder (the “intrastate offering exemption”) and what careful practitioners would normally do in advising a client that seeks to raise money via this exemption. An experienced securities practitioner knows that this exemption from the registration requirements of the Securities Act of 1933 is the most difficult to use because it is so easily lost and, therefore, is not employed as much as other such exemptions. Nothing in MNvest changes this basic difficulty with the intrastate exemption.

The one significant change in MNvest, which is contrary to an opinion piece by the bill’s legislative sponsors in the Minneapolis Star Tribune last spring touting the bill, is that the statute DOES NOT preserve existing investor protections under Minnesota law. The standard of liability under the Minnesota Securities Act (Minn. Stat. § 80A.76(b)) for false representations or omissions of material fact in connection with the offer and sale of securities to which the MSA is applicable is negligence (“knew or should have known”). This is also the standard of liability under the federal Securities Act of 1933.

The statute allows “the entity” and “any other person” to limit its, her, his, or their liability to intentional fraud, thus avoiding the standard of liability under the Minnesota Securities Act and, if not well advised, to think also under the federal Securities Act of 1933. Minn. Stat. § 80A.461, Subd. 1(b)(4) (“the entity does not attempt to limit its liability for fraud or intentional misrepresentation”). Thus, “the entity” *can* avoid liability for a negligent misrepresentation, not only under the MSA but also, presumably, the common law (including the Restatement of Torts, Negligent Misrepresentation, adopted in Minnesota), and not only for it but for “any other person.” Thus, the MNvest statute rolls back standards for investor protection that were years in the making through legislative action and court rulings in the context of a MNvest offering.

It needs to be noted that the exemption for intrastate offerings under the Securities Act of 1933 is only an exemption from registration, not from the anti-fraud provisions of that statute. Accordingly, the disclaimer of liability for negligence allowed by the statute does not preclude liability for negligence for a MNvest offering under § 12(a)(2) of the Securities Act of 1933.

Section 80A.461, subd. 1(b)(4) is particularly imprudent because it is perverse and invites confusion, and confusion results in needless expensive litigation. Without the suggested disclosures and clarifications, it can only lead to confusion among issuers (and their attorneys), investors, the courts, and maybe even regulators. This confusion may be exacerbated by a failure to reconcile the proposed rules with the “crowdfunding” rules recently promulgated by the SEC.

Contrary to its legislative sponsors, the MNvest statute provides what is manifestly a reduction in investor protection for Minnesotans investing in MNvest offerings, as compared with the Minnesota Securities Act specifically and Minnesota law generally. While I have substantial doubts that the legislature fully understood the implications of what it was doing, and while I believe the statute should be corrected, the proposed rules can help address this issue. The statute’s defects can be substantially mitigated by including in the proposed rules the suggested disclosures and clarifications to, hopefully, head off the otherwise inevitable confusion.

Thank you for your consideration.

Vernon J. Vander Weide, Attorney
Lockridge Grindal Nauen P.L.L.P.
100 Washington Avenue South, Suite 2200
Minneapolis MN 55401
612-596-4026
www.locklaw.com

***** This e-mail may contain information that is privileged, confidential or otherwise protected from disclosure. If you are not the intended recipient or otherwise have received this message in error, you are not authorized to read, print, retain, copy or disseminate this message or any part of it. If you are not the intended recipient or otherwise have received this message in error, please notify us immediately by e-mail, discard any paper copies and delete all electronic files of the message. *****

Comments to Proposed MNvest Rules

Submitted by Vernon J. Vander Weide, Attorney, 12/31/15

2876.1000, Subp. 2: What about a substantial shareholder/member (natural person or legal entity) who is neither a manager, officer, nor director? Suggest the term be defined to include “partners, officers, directors, managers, majority holders of securities, and anyone else having the power to direct the management of the entity.” At a minimum, the definition of those subject to secondary liability under this rule should be consistent with Minn. Stat. § 80A.76(g).

2876.3050, Subp. 1.F, lines 2.4-2.5:

1. As stated, this is highly misleading and will lead to substantial confusion because it suggests that complying with the prescribed disclosures is sufficient to satisfy all requirements of the Minnesota Securities Act. Either here or elsewhere in the rule, this should be clarified to avoid such confusion.
2. Accordingly, the rule should make clear what is implied in the statute (*see, e.g.*, § 80A.461, subd. 2), and what is crystal clear in the general regulation of securities, that the required specific disclosures in § 80A.461, subd. 4, are part of the requirements that enable an issuer to avoid the need to register its securities, are not to the exclusion of the obligation to disclose all material facts, and do not limit the scope of liability for false and misleading statements (particularly omitted material facts) pursuant to § 80A.76.
3. Suggest the rule require the following additional disclosures, which should be prominently disclosed in the disclosure document:
 - a. For all offerings, and especially minimum-maximum offerings, the issuer should disclose whether the amount sought is sufficient to accomplish its business purposes, the bases for such statement (especially what would not be done if only the minimum is raised), whether each member of the issuer’s governing body has reviewed such statements and concurs in the disclosures, and whether a third person who has no interest in the offering has reviewed such statements and concurs in the disclosures.
 - b. As to all elections (e.g., the election to opt out of the negligence standard of liability under the Minnesota Securities Act (§ 80A.461, subd. 1(b)(4)) and all elections that narrow investors rights under the Minnesota Business Corporation Act and the Limited Liability Company statute), describe all such elections and their effect on shareholders/members/investors rights and protections and whether within one year following the offering a meeting of such persons will be held at which they will be offered the opportunity to undo all such elections. Like the suggestion above to make clear that there is no exemption from liability under the anti-fraud provisions, the 80A.461, subd. 1(b)(4) election should make clear that any effort to disclaim liability for negligence is not effective under the Securities Act of 1933. This is necessary to, at a minimum, prevent users of the MNvest provisions from being misled about their liability under other applicable laws.

2876.3050, Subp. 5.A, lines 3.1-3.5:

1. Line 3.2: What constitutes an “offering still in progress”? Is this a defined term? If not, when is an offering completed and no longer “still in progress”? When escrow is broken? The expiration of 12 months or the stipulated expiration date? This may also raise issues with respect to “integration” and what is an “offering” for purposes of the various exemptions under the Minnesota Securities Act from the securities registration requirement. For example, how soon after a MNvest offering can an issuer use the exemptions under Minn. Stat. § 80A.46(13) or (14)? § 80A.46(14) excludes an § 80A.46(13) offering but makes no mention of any other offering; thus, presumably, a MNvest offering is not excluded. This should be addressed in what is an “offering still in progress.”
2. Lines 3.3-3.4: Is this intended to address changing circumstances that render prior statements made no longer truthful? If so, it should say so.

2876.3050, Subp. 1.E, lines 2.1-2.3: The statute has a “bad actor” provision that precludes an issuer from availing itself of the MNvest exemption if it or the identified affiliates thereof have been convicted of certain offenses or are otherwise under a prescribed disability.. Minn. Stat. 80A.461, subd 9. Proposed rule 2876.3050, Subp. 1.E, merely requires an issuer to have “exercised reasonable care” to determine that they are not disqualified under this provision. The issuer *and each of the identified affiliates* should be required to affirm that he, she, or it is not a “bad actor” under the statute, not that the issuer merely “exercised reasonable care” in attempting to determine if *it* is excluded under that provision.

2876.3050, Subp. 5.C, lines 3.10-3.16:

1. Lines 3.12-14: What is the liability of the issuer for failing to direct the portal operator to make the amended disclosure document available to all prospective investors?
2. Lines 3.15-16: Does this allow someone who has already invested to change her mind and demand the return of her investment? Is the answer different depending upon whether the new disclosure corrects a prior disclosure (i.e., the prior disclosure was false) or only reflects changed circumstances from when the investor made her investment?

2876.3051, C, lines 4.9-4.13: Recognizing that, under the statute, the escrow agent has no direct liability for breaching its duties and that the rule requires the issuer to direct the escrow agent to return money if the aggregate amount is not raised, suggest that the rule further require that the agreement between the escrow agent and the issuer require the escrow agent to return the money to investors if the conditions for breaking escrow are not met and that an escrow agent is not immune from liability if it, notwithstanding having knowledge, or being reasonably on notice, that the conditions have not been satisfied, nevertheless does not return the money to investors if the conditions for breaking escrow are not met.

2876.3051, D, lines 4.14-4.17: What is the liability of the issuer for breaching its duties? Suggest that the rule provide for the issuance of securities by the escrow agent, so that securities are issued simultaneously with release of the funds.

2876.3052, D, lines 5.6-5.7: Must all such agreements and arrangements be in writing? This should include “and all amendments thereto.”

2876.3052, E, lines 5.8-5.9: Must all such agreements and arrangements be in writing? This should include “and all amendments thereto.”

2876.3053, Subp. 1.G, lines 6.11-6.13: The statute provides that the portal operator is responsible for verifying the residency status of purchasers, along with certain other obligations. Minn. Stat. § 80A.461, subd. 3(9) and (10). What is the portal operator’s liability for failing to verify the Minnesota residency of investors or for failing to carry out its other obligations? Verifying residency is obviously a very critical function since non-Minnesota investors will terminate the intra-state exemption under the Securities Act of 1933 and subject the issuer to rescission of all investments. It would appear that the function of the portal operator is as an intermediary roughly akin to that of an underwriter. An underwriter’s function, in part, is for the protection of investors, to ensure that an independent evaluation of the securities being offered to investors is made. It would appear that the portal operator is, to the extent of the much more limited scope of its duties under the statute, also intended to serve something of the same purpose. Underwriters have liability under the Minnesota Securities Act and, thus, so should portal operators, so that the intended protection is meaningful. This should be made clear.

2876.3053, Subp. 7, lines 7.24-8.2: Suggest such reports be mandatory; if not, should state a deadline for submission after the request is made. Why do lines 8.1-8.2 say “if funds were held in escrow”? Are there circumstances where a MNvest offering proceeds are not escrowed?

2876.3054, Subp. 1, lines 8.4-8.8: How does the portal operator report pursuant to this provision differ from the sales report in 2876.3053, Subp. 7? Suggest such reports be mandatory.

2876.3056, C, line 10.12: What is “concurrently”? What about serial offerings through multiple portals that are part of a “continuous offering” within the meaning of the 1933 Act rules? What happens if a MNvest offering (intra-state under Securities Act of 1933 Rule 147) is followed shortly by, or is done concurrently with, an offering under another limited offering exemption from registration under the Securities Act of 1933 and Minnesota Securities Act that is not limited to Minnesota residents?

2876.3056, D, lines 10.13-10.14: What does “involving” mean—the investment company as the issuer or purchaser? This also raises the issue of investors that are not natural persons. How is an entity (e.g., limited liability company) whose members are from states other than Minnesota that is domiciled in Minnesota with a Minnesota address that was formed specifically to participate in the MNvest offering to be treated? What if such an entity’s business purpose is investing in MNvest offerings generally? What if such an entity has some other business activity?

April 11, 2016

RESPONSE 3

Vernon J. Vander Weide, Attorney
Lockridge Grindal Nauen P.L.L.P.
100 Washington Avenue South, Suite 2200
Minneapolis MN 55401

Re: Proposed Rules Governing MNvest Securities Offerings

Dear Mr. Vander Weide,

Thank you for your letter of December 31, 2015, regarding the proposed rules governing MNvest securities offerings. The Department has considered your comments and responds as follows:

2876.1000, Subp. 2:

Comment:

What about a substantial shareholder/member (natural person or legal entity) who is neither a manager, officer, nor director? Suggest the term be defined to include "partners, officers, directors, managers, majority holders of securities, and anyone else having the power to direct the management of the entity." At a minimum, the definition of those subject to secondary liability under this rule should be consistent with Minn. Stat. § 80A.76(g).

Response:

We agree with the suggestion and we intend to amend proposed rule 2876.1000, subp. 2, to provide:

Subp. 2. **Control person.** For purposes of this chapter, "control person" means a partner, officer, director, or manager, majority holder of securities, or anyone else having the power to direct the management of the entity, but does not include a person whose primary duties are ministerial or clerical.

2876.3050, Subp. 1. F, lines 2.4-2.5:

Comment 1:

As stated, this is highly misleading and will lead to substantial confusion because it suggests that complying with the prescribed disclosures is sufficient to satisfy all requirements of the Minnesota Securities Act. Either here or elsewhere in the rule, this should be clarified to avoid such confusion.

Response 1:

We agree that clarification of the language of proposed rule 2876.3059 would be of value. Therefore, we intend to amend proposed rule 2876.3059 to provide:

2876.3059 ANTIFRAUD PROVISION. ~~Minnesota Statutes, section 80A.461, and parts 2876.3050 to 2876.3060 do not exempt any person, including control persons and employees of MNvest issuers and portal operators, from the antifraud provisions of Minnesota Statutes, section 80A.68, and do not provide relief from any other provisions of the Minnesota Securities Act or Minnesota Statutes, chapter 45, other than as expressly stated. Nothing in this chapter exempts any person from any antifraud provisions of Minnesota Statutes, chapters 80A.~~

Comment 2:

Accordingly, the rule should make clear what is implied in the statute (see, e.g., § 80A.461, subd. 2), and what is crystal clear in the general regulation of securities, that the required specific disclosures in § 80A.461, subd. 4, are part of the requirements that enable an issuer to avoid the need to register its securities, are not to the exclusion of the obligation to disclose all material facts, and do not limit the scope of liability for false and misleading statements (particularly omitted material facts) pursuant to § 80A.76.

Response 2:

We acknowledge the comment and we intend to amend proposed rule 2876.3059 as indicated above.

Comment 3:

Suggest the rule require the following additional disclosures, which should be prominently disclosed in the disclosure document:

- a.) For all offerings, and especially minimum-maximum offerings, the issuer should disclose whether the amount sought is sufficient to accomplish its business purposes, the bases for such statement (especially what would not be done if only the minimum is raised), whether each member of the issuer's governing body has reviewed such statements and concurs in the disclosures, and whether a third person who has no interest in the offering has reviewed such statements and concurs in the disclosures.
- b.) As to all elections (e.g., the election to opt out of the negligence standard of liability under the Minnesota Securities Act (§ 80A.461, subd. 1(b)(4)) and all elections that narrow investors rights under the Minnesota Business Corporation Act and the Limited Liability Company statute), describe all such elections and their effect on shareholders/members/investors rights and protections and whether within one year following the offering a meeting of such persons will be held at which they will be offered the opportunity to undo all such elections. Like the suggestion above to make clear that there is no exemption from liability under the anti-fraud provisions, the 80A.461, subd. 1(b)(4) election should make clear that any effort to disclaim liability for negligence is not effective under the Securities Act of 1933. This is necessary to, at a minimum, prevent users of the MNvest provisions from being misled about their liability under other applicable laws.

Response 3:

Minn. Stat. § 80A.461, subd. 4, establishes requirements for what MNvest issuers must include in disclosure documents made available to prospective purchasers. Though we acknowledge and appreciate the above suggestions, changes or additions made to the requirements of Minn. Stat. § 80A.461, subd. 4, particularly those that may be viewed as imposing additional costs or burdens on MNvest issuers, may contravene legislative intent behind the MNvest Securities Registration Exemption. Therefore, we submit that interested parties should incorporate these suggestions into a future legislative proposal for consideration by the Minnesota legislature.

2876.3050, Subp. 5.A, lines 3.1-3.5:

Comment 1:

Line 3.2: What constitutes an "offering still in progress"? Is this a defined term? If not, when is an offering completed and no longer "still in progress"? When escrow is broken? The expiration of 12 months or the stipulated expiration date?

This may also raise issues with respect to "integration" and what is an "offering" for purposes of the various exemptions under the Minnesota Securities Act from the securities registration requirement.

For example, how soon after a MNvest offering can an issuer use the exemptions under Minn. Stat. § 80A.46(13) or (14)? § 80A.46(14) excludes an § 80A.46(13) offering but makes no mention of any other offering; thus, presumably, a MNvest offering is not excluded. This should be addressed in what is an "offering still in progress."

Response 1:

We acknowledge that clarification of this proposed rule would be of value. Therefore, we intend to replace "still in progress" with "effective period", and to further define "effective period."

First, we intend to amend proposed rule 2876.3050, subp. 5 A, to provide:

Subp. 5. Post effective amendments.

A. After a MNvest notice filing has become effective, and while the MNvest offering is still in progress and throughout the effective period of the offering, the MNvest issuer must amend or supplement the information required by subpart 1 as necessary so that the documents provided by the MNvest issuer does not make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statement made, in light of circumstances under which it is made, not misleading.

Second, we intend to amend proposed rule 2876.3050, subp. 4, to provide:

~~Subp. 4. Effective period. Except while a stop order is in effect under Minnesota Statutes, section 80A.48, paragraph (a), a complete notice filing made for purposes of Minnesota Statutes, section 80A.461, subdivision~~

3, clause (11), automatically becomes effective ten days after receipt by the administrator and remains effective for one year following the date of effectiveness. The effective period of the offering begins ten days after the notice filing is received by the administrator. The effective period ends on the earlier of the following occurrences:

- A. on the expiration date of the offering as stipulated in the MNvest disclosure documents; or
- B. at the point when the offering fails to meet any of the MNvest exemption requirements.

We also appreciate the concerns expressed regarding “integration”, and submit that interested parties should incorporate these suggestions into a future legislative proposal for consideration by the Minnesota legislature.

Comment 2:

Lines 3.3-3.4: Is this intended to address changing circumstances that render prior statements made no longer truthful? If so, it should say so.

Response 2:

The language in lines 3.3-3.4 is intended to address changing circumstances that render prior statements made no longer truthful. This language was drafted to be consistent with language included throughout the Minnesota Securities Act. See, e.g., Minn. Stat. §§ 80A.54(a)(1); 80A.68(2), 80A.72, and 80A.76(b) and (c). Accordingly, we do not believe further change to this proposed rule is necessary.

2876.3050, Subp. 1.E, lines 2.1-2.3:

Comment:

The statute has a “bad actor” provision that precludes an issuer from availing itself of the MNvest exemption if it or the identified affiliates thereof have been convicted of certain offenses or are otherwise under a prescribed disability. Minn. Stat. 80A.461, subd 9. Proposed rule 2876.3050, Subp. 1.E, merely requires an issuer to have “exercised reasonable care” to determine that they are not disqualified under this provision. The issuer *and each of the identified affiliates* should be required to affirm that he, she, or it is not a “bad actor” under the statute, not that the issuer merely “exercised reasonable care” in attempting to determine if *it* is excluded under that provision.

Response:

We agree that the notice filing should not be required to include the phrase “has exercised reasonable care,” and we appreciate the concern that a control person, rather than an entity, should be accountable for the information provided in the notice filing and disclosure document. Therefore, we intend to amend proposed rule 2876.3050, subp. 1.E, to provide:

E. a written affirmation declaration, signed by a control person of the MNvest issuer, stating that the MNvest issuer has exercised reasonable care to confirm that it is not disqualified from making the MNvest offering under Minnesota Statutes, section 80A.461, subdivision 9;

2876.3050, Subp. 5.C, lines 3.10-3.16:

Comment 1:

Lines 3.12-14: What is the liability of the issuer for failing to direct the portal operator to make the amended disclosure document available to all prospective investors?

Response 1:

A MNvest issuer that violates a provision of Minn. Stat., chapter 80A, or a rule adopted under Minn. Stat., chapter 80A, is subject to civil or administrative action and/or other liabilities established under state law. Therefore, we do not believe that proposed rule 2876.3050, subp. 5C, requires further change.

* * * *

Comment 2:

Lines 3.15-16: Does this allow someone who has already invested to change her mind and demand the return of her investment? Is the answer different depending upon whether the new disclosure corrects a prior disclosure (i.e., the prior disclosure was false) or only reflects changed circumstances from when the investor made her investment?

Response 2:

If any statement in the original filing and disclosure was false, the MNvest issuer is subject to civil or administrative action and/or other liabilities established under state law.

If the amended filing and disclosure is amended to reflect circumstances that changed after the original filing and disclosure, proposed rule 2876.3058 provides that an investor in a MNvest offering may “cancel an investment commitment for any reason until such time as the target minimum offering amount identified in the MNvest notice form corresponding with the offering and filed with the administrator has been raised.”

2876.3051, C, lines 4.9-4.13:

Comment:

Recognizing that, under the statute, the escrow agent has no direct liability for breaching its duties and that the rule requires the issuer to direct the escrow agent to return money if the aggregate amount is not raised, suggest that the rule further require that the agreement between the escrow agent and the issuer require the escrow agent to return the money to investors if the conditions for breaking escrow are not met and that an escrow agent is not immune from liability if it, notwithstanding having knowledge, or being reasonably on notice, that the conditions have not been satisfied, nevertheless does not return the money to investors if the conditions for breaking escrow are not met.

Response:

We appreciate these comments; however, amending the proposed rules to impose additional requirements and/or liability on the escrow agent may contravene legislative intent behind the MNvest Securities Registration Exemption. Therefore, we submit that interested parties should incorporate these suggestions into a future legislative proposal for consideration by the Minnesota legislature.

2876.3051, D, lines 4.14-4.17:

Comment:

What is the liability of the issuer for breaching its duties? Suggest that the rule provide for the issuance of securities by the escrow agent, so that securities are issued simultaneously with release of the funds.

Response:

A MNvest issuer that violates a provision of Minn. Stat., chapter 80A, or a rule adopted under Minn. Stat., chapter 80A, is subject to civil or administrative action and/or other liabilities established under state law.

Though we see the merit of requiring the issuance of securities simultaneously with the release of the funds, we submit that interested parties should submit suggestions regarding the imposition of additional requirements on the escrow agent in a future legislative proposal for consideration by the Minnesota legislature.

2876.3052, D, lines 5.6-5.7:

Comment:

Must all such agreements and arrangements be in writing? This should include “and all amendments thereto.”

Response:

Based on this comment, we intend to amend proposed rule 2876.3052 (D) to provide:

D. records of all agreements and compensation arrangements made between the MNvest issuer and the portal operator through which the MNvest issuer’s securities are offered, including copies of written contracts and all amendments thereto;

2876.3052, E, lines 5.8-5.9:

Comment:

Must all such agreements and arrangements be in writing? This should include “and all amendments thereto.”

Response:

Based on this comment, we intend to amend proposed rule 2876.3052 (E) to provide:

E. records of all escrow agreements between the escrow agent, the MNvest issuer, and, if applicable, the portal operator through which the MNvest issuer’s securities are offered, including copies of written contracts and all amendments thereto; and

2876.3053, Subp. 1.G, lines 6.11-6.13:

Comment:

The statute provides that the portal operator is responsible for verifying the residency status of purchasers, along with certain other obligations. Minn. Stat. § 80A.461, subd. 3(9) and (10). What is the portal operator's liability for failing to verify the Minnesota residency of investors or for failing to carry out its other obligations?

Verifying residency is obviously a very critical function since non-Minnesota investors will terminate the intra-state exemption under the Securities Act of 1933 and subject the issuer to rescission of all investments. It would appear that the function of the portal operator is as an intermediary roughly akin to that of an underwriter. An underwriter's function, in part, is for the protection of investors, to ensure that an independent evaluation of the securities being offered to investors is made. It would appear that the portal operator is, to the extent of the much more limited scope of its duties under the statute, also intended to serve something of the same purpose. Underwriters have liability under the Minnesota Securities Act and, thus, so should portal operators, so that the intended protection is meaningful. This should be made clear.

Response:

A portal operator that violates a provision of Minn. Stat., chapter 80A, or a rule adopted under Minn. Stat., chapter 80A, is subject to civil or administrative enforcement action and/or other liabilities established under state law.

The role of portal operators, and particularly the role of portal operators in vetting or underwriting MNvest offerings, was discussed during the 2015 legislative session. We appreciate this comment and submit that interested parties should incorporate these suggestions into a future legislative proposal for consideration by the Minnesota legislature.

2876.3053, Subp. 7, lines 7.24-8.2:

Comment:

Suggest such reports be mandatory; if not, should state a deadline for submission after the request is made. Why do lines 8.1-8.2 say "if funds were held in escrow"? Are there circumstances where a MNvest offering proceeds are not escrowed?

Response:

The phrase "if funds were held in escrow" was included because it is possible that no funds will be held in escrow if no investors participated in the MNvest offering.

However, we agree with your comment below, and therefore we intend to delete proposed rule 2876.3053, subp. 7, because proposed rule 2876.3054, subp. 1, accomplishes the same objective.

2876.3054, Subp. 1, lines 8.4-8.8:

Comment:

How does the portal operator report pursuant to this provision differ from the sales report in 2876.3053, subp. 7? Suggest such reports be mandatory.

Response:

Proposed rule 2876.3054, subp. 1, as written, allows the Department to request reports from some or all MNvest issuers and portal operators, at its discretion. Submission of the report is mandatory within 30 days of such a request. Therefore, we do not find it necessary to further amend proposed rule 2876.3054, subp. 1.

See above response indicating that we intend to delete proposed rule 2876.3053, subp. 7, as duplicative and unnecessary.

2876.3056, C, line 10.12:

Comment:

What is "concurrently"? What about serial offerings through multiple portals that are part of a "continuous offering" within the meaning of the 1933 Act rules? What happens if a MNvest offering (intra-state under Securities Act of 1933 Rule 147) is followed shortly by, or is done concurrently with, an offering under another limited offering exemption from registration under the Securities Act of 1933 and Minnesota Securities Act that is not limited to Minnesota residents?

Response:

We agree that further legislative clarification may be warranted regarding concurrent, continuous, subsequent, or serial offerings under MNvest and/or other exemptions. Therefore, we submit that interested parties should incorporate these suggestions into a future legislative proposal for consideration by the Minnesota legislature.

2876.3056, D, lines 10.13-10.14:

Comment:

What does "involving" mean—the investment company as the issuer or purchaser? This also raises the issue of investors that are not natural persons. How is an entity (e.g., limited liability company) whose members are from states other than Minnesota that is domiciled in Minnesota with a Minnesota address that was formed specifically to participate in the MNvest offering to be treated? What if such an entity's business purpose is investing in MNvest offerings generally? What if such an entity has some other business activity?

Response:

We agree that further clarification may be warranted regarding investors that are not natural persons, and submit that interested parties should incorporate these issues into a future legislative proposal for consideration by the Minnesota legislature.

The Department appreciates your interest in the proposed amendments.

Very truly yours,

A handwritten signature in cursive script, appearing to read "Susan Bergh", followed by a horizontal line extending to the right.

Susan Bergh
Rules Coordinator
Legal Services Division

cc: Brian Edstrom, Director of Securities, Department of Commerce

Proposed Rules

Comments on Planned Rules or Rule Amendments. An agency must first solicit Comments on Planned Rules or Comments on Planned Rule Amendments from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency (*Minnesota Statutes* §§ 14.101). It does this by publishing a notice in the *State Register* at least 60 days before publication of a notice to adopt or a notice of hearing, and within 60 days of the effective date of any new statutory grant of required rulemaking.

Rules to be Adopted After a Hearing. After receiving comments and deciding to hold a public hearing on the rule, an agency drafts its rule. It then publishes its rules with a notice of hearing. All persons wishing to make a statement must register at the hearing. Anyone who wishes to submit written comments may do so at the hearing, or within five working days of the close of the hearing. Administrative law judges may, during the hearing, extend the period for receiving comments up to 20 calendar days. For five business days after the submission period the agency and interested persons may respond to any new information submitted during the written submission period and the record then is closed. The administrative law judge prepares a report within 30 days, stating findings of fact, conclusions and recommendations. After receiving the report, the agency decides whether to adopt, withdraw or modify the proposed rule based on consideration of the comments made during the rule hearing procedure and the report of the administrative law judge. The agency must wait five days after receiving the report before taking any action.

Rules to be Adopted Without a Hearing. Pursuant to *Minnesota Statutes* § 14.22, an agency may propose to adopt, amend, suspend or repeal rules without first holding a public hearing. An agency must first solicit **Comments on Planned Rules** or **Comments on Planned Rule Amendments** from the public. The agency then publishes a notice of intent to adopt rules without a public hearing, together with the proposed rules, in the *State Register*. If, during the 30-day comment period, 25 or more persons submit to the agency a written request for a hearing of the proposed rules, the agency must proceed under the provisions of §§ 14.14-14.20, which state that if an agency decides to hold a public hearing, it must publish a notice of intent in the *State Register*.

KEY: Proposed Rules - Underlining indicates additions to existing rule language. ~~Strikeouts~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **Adopted Rules** - Underlining indicates additions to proposed rule language. ~~Strikeout~~ indicates deletions from proposed rule language.

Minnesota Department of Commerce (COMM)

Proposed Permanent Rules Governing Securities; Regulating MNvest Offerings

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

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

Introduction. The Department of Commerce intends to adopt rules without a public hearing following the procedures in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. You may submit written comments on the proposed rules and may also submit a written request that a hearing be held on the rules until December 31, 2015.

Agency Contact Person. You must submit comments or questions on the rules and written requests for a public hearing to the agency contact person. The agency contact person is Susan Bergh at the Minnesota Department of Commerce, 85 7th Place East, Suite 500, St. Paul, Minnesota 55101, phone: (651) 539-1456, e mail to: rules.commerce@state.mn.us. Consumers with hearing or speech disabilities may contact the Department of Commerce via their preferred Telecommunications Relay Service.

Subject of Rules and Statutory Authority. The proposed modifications to the rules are intended to facilitate public investment in Minnesota businesses while protecting Minnesota investors from fraud, identity theft, and misuse of their investments, through rule requirements for advertising, cybersecurity, records retention, and data privacy. The statutory authority to adopt the rules is *Minnesota Statutes*, sections 80A.82 (a)(1) and 45.023. A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed.

Comments. You have until 4:30 p.m. on December 31, 2015, to submit written comment in support of or in opposition to the proposed rules and any part or subpart of the rules. Your comment must be in writing and the agency contact person must receive it by the due date. The Department encourages comment. Your comment should identify the portion of the proposed rules addressed and the reason for the comment. You are encouraged to propose any change desired. You must also make any comments about the legality of the proposed rules during this comment period.

Request for a Hearing. In addition to submitting comments, you may also request that the Department hold a hearing on the rules.

Proposed Rules

Your request must be in writing and the agency contact person must receive it by 4:30 p.m. on December 31, 2015. Your written request for a public hearing must include your name and address. You must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and the agency cannot count it when determining whether it must hold a public hearing. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

Withdrawal of Requests. If 25 or more persons submit a valid written request for a hearing, the Department will hold a public hearing unless a sufficient number withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the agency must give written notice of this to all persons who requested a hearing, explain the actions the agency took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

Alternative Format. Upon request, the Department can make this Notice available in an alternative format, such as large print, Braille, or cassette tape. To make such a request, please contact the agency contact person at the address or telephone number listed above.

Modifications. The Department may modify the proposed rules as a result of public comment. The modifications must be supported by comments and information submitted to the agency, and the adopted rules may not be substantially different than these proposed rules, unless the agency follows the procedure under *Minnesota Rules*, part 1400.2110. If the proposed rules affect you in any way, the Department encourages you to participate in the rulemaking process.

Statement of Need and Reasonableness. The statement of need and reasonableness contains a summary of the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. It is now available from the agency contact person. You may review, or obtain copies at the cost of reproduction, by contacting the agency contact person.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. You should direct questions about this requirement to the Campaign Finance and Public Disclosure Board at: Suite 190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone 651-539-1180 or 1-800-657-3889.

Adoption and Review of Rules. If no hearing is required, the agency may adopt the rules after the end of the comment period. The agency will then submit the rules and supporting documents to the Office of Administrative Hearings for review for legality. You may ask to be notified of the date the Department submits the rules to the office. If you want to be so notified, or want to receive a copy of the adopted rules, or want to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

Dated:

Mike Rothman, Commissioner
Commerce Department

2876.1000 DEFINITIONS.

Subpart 1. General terms and scope. The terms used in this chapter that are not defined in this part have the meanings given them in *Minnesota Statutes*, chapter 80A.

Subp. 2. Control person. For purposes of this chapter, "control person" means a partner, officer, director, or manager, but does not include a person whose primary duties are ministerial or clerical.

2876.3050 MNVEST NOTICE FILING

Subpart 1. Form and submission. A notice filing made pursuant to *Minnesota Statutes*, section 80A.461, subdivision 3, clause (11), must be filed on the MNvest notice form, available on the Department of Commerce Web site or upon request from the administrator, not less than ten days before the beginning of the MNvest offering. The MNvest notice form must be mailed or delivered electronically to the administrator, along with the appropriate fee, at the address listed on the MNvest notice form. Information provided on or with the MNvest notice form must include the following:

A. the name and contact information of the MNvest issuer making the filing;

B. identifying information for the MNvest portal through which the MNvest issuer's securities are to be offered, including an

Proposed Rules

indication as to whether the MNvest issuer has registered, or intends to register, as a portal operator;

C. the minimum offering amount to be raised through the MNvest offering, and a written explanation of how the minimum offering amount will be used to implement the MNvest issuer's business plan;

D. the name and contact information of the escrow agent holding purchasers' payments pursuant to *Minnesota Statutes*, section 80A.461, subdivision 3, clause (8);

E. a written affirmation that the MNvest issuer has exercised reasonable care to confirm that it is not disqualified from making the MNvest offering under *Minnesota Statutes*, section 80A.461, subdivision 9;

F. a copy of a disclosure document including all information required under *Minnesota Statutes*, section 80A.461, subdivision 4;

G. a copy of a representative example of advertising used to promote the MNvest offering or solicit prospective purchasers;

H. a copy of the MNvest issuer's balance sheet and income statement made available to prospective purchasers pursuant to *Minnesota Statutes*, section 80A.461, subdivision 3, clause (4); and

I. any other information the administrator may reasonably require to determine the MNvest issuer's compliance with *Minnesota Statutes*, section 80A.461.

Subp. 2. Fees. Notice filing fee payments made pursuant to *Minnesota Statutes*, section 80A.461, subdivision 3, clause (11), item (iii), are nonrefundable. Fee payments must be made payable to the Department of Commerce.

Subp. 3. Incomplete filings. A notice filing that does not contain all information required by this part and by *Minnesota Statutes*, section 80A.461, subdivision 3, clause (11), or that does not include a correct fee payment, is incomplete and ineffective.

Subp. 4. Effective period. Except while a stop order is in effect under *Minnesota Statutes*, section 80A.48, paragraph (a), a complete notice filing made for purposes of *Minnesota Statutes*, section 80A.461, subdivision 3, clause (11), automatically becomes effective ten days after receipt by the administrator and remains effective for one year following the date of effectiveness.

Subp. 5. Post effective amendments.

A. After a MNvest notice filing has become effective, and while the MNvest offering is still in progress, the MNvest issuer must amend or supplement the information required by subpart 1 as necessary so that the MNvest issuer does not make any untrue statement of a material fact, or omit to state a material fact necessary in order to make the statement made, in light of the circumstances under which it is made, not misleading.

B. A copy of the amended documents required by item A as changed, revised, or supplemented and clearly marked to show changes from the previously filed version must be filed with the administrator not more than ten days after the amendment occurs. No additional fee is required for amendment filings made under this subpart.

C. If amendments are made to the disclosure document required under *Minnesota Statutes*, section 80A.461, subdivision 3, clause (11), item (ii), the MNvest issuer must direct the portal operator facilitating the MNvest offering to:

(1) make the amended disclosure document available to all prospective purchasers in the MNvest offering; and

(2) deliver the amended disclosure document to all purchasers who have already invested in the MNvest offering.

2876.3051 ESCROW AND IMPOUNDMENT.

A MNvest issuer must comply with the escrow requirements found in *Minnesota Statutes*, section 80A.461, subdivision 3, clause (8). The escrow and impoundment of funds is subject to the following:

A. All funds from purchasers of a MNvest offering must be deposited in the depository impound account controlled by the escrow agent within three business days after receipt by the MNvest issuer.

B. All purchaser funds must remain in escrow until the earliest of the following:

Proposed Rules

(1) the total amount deposited with the escrow agent reaches at least the minimum offering amount set by the MNvest issuer;

(2) twelve months have expired from the effective date of the MNvest offering without the minimum offering amount having been deposited with the escrow agent; or

(3) the MNvest offering reaches the stipulated expiration date set by the MNvest issuer pursuant to *Minnesota Statutes, section 80A.461, subdivision 4, clause (2)*, without the minimum offering amount having been deposited with the escrow agent.

C. If the MNvest issuer does not raise the minimum offering amount by the earlier of 12 months from the effective date of the MNvest offering or the stipulated expiration date, the MNvest issuer must immediately notify the escrow agent that funds received from each purchaser and held in escrow for the MNvest offering must be refunded in full to the purchasers.

D. When the minimum offering amount for a MNvest offering is deposited with the escrow agent, the MNvest issuer must issue securities to purchasers of the MNvest offering within five days of the MNvest issuer's receipt of funds released from escrow for the MNvest offering.

2876.3052 RECORDS RETENTION REQUIREMENTS FOR MNVEST ISSUERS.

MNvest issuers must retain records related to MNvest offerings made pursuant to *Minnesota Statutes, section 80A.461*, for five years after the close of the MNvest offering. Retained records must include a copy of the following:

A. the MNvest notice form and accompanying documents filed with the administrator as part of the MNvest issuer's initial notice filing, and any subsequently amended MNvest notice forms and documents filed with the administrator;

B. records of all purchaser payments deposited into the escrow impound account, including information on when the payments were either released to the MNvest issuer or refunded to the purchaser;

C. records of all written communications sent to or received from purchasers in a MNvest offering while the offering is ongoing;

D. all agreements and compensation arrangements made between the MNvest issuer and the portal operator through which the MNvest issuer's securities are offered;

E. all escrow agreements between the escrow agent, the MNvest issuer, and, if applicable, the portal operator through which the MNvest issuer's securities are offered; and

F. all records used to establish compliance with *Minnesota Statutes, section 80A.461, subdivision 9*.

2876.3053 PORTAL OPERATOR REGISTRATION.

Subpart 1. Form and submission. A portal operator registration application made pursuant to *Minnesota Statutes, section 80A.461*, must be filed on a MNvest portal operator registration form, available on the Department of Commerce Web site or upon request from the administrator. The portal operator registration form must be mailed or delivered electronically to the administrator, along with the appropriate fee, at the address listed on the MNvest portal operator registration form. Information provided on or with the MNvest portal operator registration form must include, at minimum, the following:

A. the names, contact information, and titles of all control persons of the portal operator;

B. the Web addresses of the MNvest portal;

C. documentation meeting the requirements of *Minnesota Statutes, section 80A.461, subdivision 7, paragraph (a), clause (2)*;

D. information as to whether the portal operator is, or intends to be, a MNvest issuer;

E. information as to whether control persons of the MNvest portal are agents, representatives, or control persons of another portal operator, a broker-dealer, or an investment adviser and, if applicable, the names and Central Registration Depository (CRD) or Investment Adviser Registration Depository (IARD) numbers of each portal operator, broker-dealer, or investment adviser so associated with each control person of the MNvest portal;

Proposed Rules

F. a written explanation of the portal operator's use of a third party's software program or other services in developing, operating, or maintaining the MNvest portal;

G. a written explanation of the steps taken by the portal operator to verify the Minnesota residency of individuals purchasing securities through the MNvest portal pursuant to *Minnesota Statutes*, section 80A.461, subdivision 6, clause (3), item (i);

H. a written explanation as to how the portal operator calculates and collects fees pursuant to *Minnesota Statutes*, section 80A.461, subdivision 7, paragraph (c), clause (3); and

I. any other information the administrator may reasonably require to determine the portal operator's compliance with *Minnesota Statutes*, section 80A.461.

Subp. 2. Fees. A person filing a MNvest registration form with the department shall include a nonrefundable \$200 fee, made payable to the Department of Commerce. A MNvest registration form submitted to the department without the correct fee payment will not be reviewed by the department, and will remain ineffective and incomplete until the correct fee is submitted.

Subp. 3. Effectiveness of registration. A portal operator registration does not become effective until the administrator has declared the registration effective.

Subp. 4. Incomplete applications. A portal operator registration application that does not contain all information required by this part and by *Minnesota Statutes*, section 80A.461, subdivision 7, paragraph (a), or that does not include a correct fee payment, is incomplete. A registration application that remains incomplete 45 days after the administrator notifies the applicant of the reason for incompleteness is deemed denied effective on the 46th day after the administrator's notification.

Subp. 5. Post effective amendments.

A. After a portal operator registration has been declared effective, the portal operator shall amend or supplement the MNvest registration form to contain further material information, if any, necessary to make the information in the MNvest registration form not misleading or incorrect.

B. A copy of the MNvest registration form as changed, revised, or supplemented and clearly marked to show changes from the previously filed version must be filed with the administrator.

Subp. 6. Registration renewal. To renew a portal operator registration, the portal operator must submit a MNvest portal operator registration form marked to indicate it is an application for renewal, along with the fee required by *Minnesota Statutes*, section 80A.461, subdivision 7, paragraph (b), to the administrator at least 15 days prior to the expiration of the portal operator's registration. Unless an order is in effect under *Minnesota Statutes*, section 80A.67, a complete application for renewal of a portal operator registration automatically becomes effective 16 days after the administrator receives the renewal application, or immediately upon the expiration of the portal operator's existing registration, whichever occurs later.

Subp. 7. Sales report. The portal operator must provide to the administrator upon request a final sales report of an offering or offerings completed through the portal. A sales report must contain, at a minimum, the total amount raised through the offerings; the number of investors that purchased securities through the offerings; and whether, if funds were held in escrow, the funds were released to the MNvest issuer.

2876.3054 REPORTING REQUIREMENTS.

Subpart 1. Offerings reports. MNvest issuers and portal operators must provide to the administrator upon request a report of a MNvest offering or MNvest offerings occurring or completed in reliance on *Minnesota Statutes*, section 80A.461. The report must be provided to the administrator within 30 days of the administrator's request, or at a sooner date specified by the administrator.

Subp. 2. Contents of issuer reports. Reports requested from MNvest issuers pursuant to this part must contain:

A. the minimum offering amount set by the MNvest issuer for a MNvest offering;

B. the total amount of money raised through the MNvest offering;

Proposed Rules

C. the name and address of each purchaser involved in the MNvest offering;

D. the amount of money raised from each individual purchaser in the MNvest offering; and

E. confirmation as to whether and when purchasers' funds held in escrow for the MNvest offering were released to the MNvest issuer or returned to purchasers.

Subp. 3. Contents of portal operator reports. Reports requested from portal operators pursuant to this part must contain, for each MNvest offering conducted through the MNvest portal in the requested period:

A. all of the information required in subpart 2, items A to D; and

B. the date the portal operator received from each purchaser the certification required under Minnesota Statutes, section 80A.461, subdivision 5.

2876.3055 PROTECTION OF PURCHASER INFORMATION.

Subpart 1. Cybersecurity policy.

A. Portal operators and MNvest issuers must take reasonable steps to ensure that purchasers' financial and personal information is properly secured. Reasonable steps include, at a minimum, the development and implementation of a written cybersecurity policy that outlines the MNvest issuer's or portal operator's policies and procedures for preventing and responding to cybersecurity attacks and data breaches resulting in the disclosure or potential disclosure of purchasers' confidential or personally identifiable information.

B. The cybersecurity policy required in item A must specifically include the MNvest issuer's or portal operator's procedures to establish compliance with *Minnesota Statutes, section 325E.61*.

C. MNvest issuers and portal operators must publish the cybersecurity policy required by this subpart on the portal operator's or MNvest issuer's Web site, with a prominent link to the cybersecurity policy on the Web site's homepage.

Subp. 2. Reporting of a cybersecurity attack or data breach. MNvest issuers and portal operators must report to the administrator any action taken by the MNvest issuer or portal operator to meet the reporting requirements of *Minnesota Statutes, section 325E.61*.

A. The report sent to the administrator must not include any confidential or personally identifiable information of those individuals whose data were improperly accessed or acquired, unless the information is requested by the administrator. The report must include:

(1) a general description of the type of data that were accessed or acquired;

(2) the number of individuals whose data were improperly accessed or acquired; and

(3) a description of the steps taken by the MNvest issuer or portal operator to notify the individuals whose data were improperly accessed or acquired.

B. The report must be mailed or sent electronically to the administrator within 60 days of the MNvest issuer's or portal operator's discovery of the cybersecurity attack or data breach.

2876.3056 LIMITS ON AVAILABILITY.

Minnesota Statutes, section 80A.461, is not available for the following types of offerings:

A. offerings involving petroleum exploration or production, mining, or other extractive industries;

B. offerings relating to investments in virtual, digital, or crypto currencies;

C. offerings conducted concurrently through multiple MNvest portals;

D. offerings involving an investment company as defined and classified under Section 4 of the Investment Company Act of 1940; and

E. offerings in which it is proposed to issue stock or other equity interest in an entity that has not yet defined its business operations, has no business plan, has no stated investment goal for the funds being raised, or plans to engage in a merger or acquisition with

Proposed Rules

an unspecified business entity.

2876.3057 RESTRICTIONS ON RESALE.

Securities offered under *Minnesota Statutes*, section 80A.461, have not been registered under federal or state securities laws and, therefore, cannot be resold unless the securities are registered or qualified for an exemption from registration under federal and state law. In addition, MNvest issuers shall make the disclosures required by *Code of Federal Regulations*, title 17, section 230.147(f).

2876.3058 INVESTOR RIGHT OF CANCELLATION.

In an offering conducted under *Minnesota Statutes*, section 80A.461, an investor may cancel an investment commitment for any reason until such time as the target minimum offering amount identified in the MNvest notice form corresponding with the offering and filed with the administrator has been raised.

2876.3059 ANTIFRAUD PROVISION.

Minnesota Statutes, section 80A.461, and parts 2876.3050 to 2876.3060 do not exempt any person, including control persons and employees of MNvest issuers and portal operators, from the antifraud provisions of *Minnesota Statutes*, section 80A.68, and do not provide relief from any other provisions of the Minnesota Securities Act or *Minnesota Statutes*, chapter 45, other than as expressly stated.

2876.3060 RESTRICTIONS ON USE OF THE TERM "MNVEST."

Subpart 1. **Web site addresses.** The word "MNvest" must not be used in an Internet URL address or domain name:

A. owned by a portal operator or MNvest issuer; or

B. that automatically redirects a prospective purchaser to a MNvest portal. In addition, no MNvest portal shall hold itself out as being the "official" MNvest portal, the "only" MNvest portal, or otherwise describe itself using words of similar import, as determined by the administrator.

Subp. 2. **Misrepresentations regarding recommendations or endorsements.** A person shall not make any representation, or use any device, title, descriptive name, or identifier that has the tendency or capacity to confuse or mislead a Minnesota resident to believe that a MNvest issuer, MNvest offering, or MNvest portal is endorsed, sponsored, sanctioned, or recommended by MNvest.

Minnesota Department of Commerce

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

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

Introduction. The Department of Commerce intends to adopt rules without a public hearing following the procedures in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. You may submit written comments on the proposed rules and may also submit a written request that a hearing be held on the rules until December 31, 2015.

Agency Contact Person. You must submit comments or questions on the rules and written requests for a public hearing to the agency contact person. The agency contact person is Susan Bergh at the Minnesota Department of Commerce, 85 7th Place East, Suite 500, St. Paul, Minnesota 55101, phone 651-539-1456, email to rules.commerce@state.mn.us. Consumers with hearing or speech disabilities may contact the Department of Commerce via their preferred Telecommunications Relay Service.

Subject of Rules and Statutory Authority. The proposed modifications to the rules are intended to facilitate public investment in Minnesota businesses while protecting Minnesota investors from fraud, identity theft, and misuse of their investments, through rule requirements for advertising, cybersecurity, records retention, and data privacy. The statutory authority to adopt the rules is *Minnesota Statutes*, sections 80A.82 (a)(1) and 45.023. A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed.

Comments. You have until 4:30 p.m. on December 31, 2015, to submit written comment in support of or in opposition to the proposed rules and any part or subpart of the rules. Your comment must be in writing and the agency contact person must receive it by the due date. The Department encourages comment. Your comment should identify the portion of the proposed rules addressed and the reason for the comment. You are encouraged to propose any change desired. You must also make any comments about the legality of the proposed rules during this comment period.

Request for a Hearing. In addition to submitting comments, you may also request that the Department hold a hearing on the rules. Your request must be in writing and the agency contact person must receive it by 4:30 p.m. on December 31, 2015. Your written request for a public hearing must include your name and address. You must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and the agency cannot count it when determining whether it must hold a public hearing. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

Withdrawal of Requests. If 25 or more persons submit a valid written request for a hearing, the Department will hold a public hearing unless a sufficient number withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the agency must give written notice of this to all persons who requested a hearing, explain the

actions the agency took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

Alternative Format. Upon request, the Department can make this Notice available in an alternative format, such as large print, Braille, or cassette tape. To make such a request, please contact the agency contact person at the address or telephone number listed above.

Modifications. The Department may modify the proposed rules as a result of public comment. The modifications must be supported by comments and information submitted to the agency, and the adopted rules may not be substantially different than these proposed rules, unless the agency follows the procedure under *Minnesota Rules*, part 1400.2110. If the proposed rules affect you in any way, the Department encourages you to participate in the rulemaking process.

Statement of Need and Reasonableness. The statement of need and reasonableness contains a summary of the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. It is now available from the agency contact person. You may review, or obtain copies at the cost of reproduction, by contacting the agency contact person.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. You should direct questions about this requirement to the Campaign Finance and Public Disclosure Board at: Suite 190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone 651-539-1180 or 1-800-657-3889.

Adoption and Review of Rules. If no hearing is required, the agency may adopt the rules after the end of the comment period. The agency will then submit the rules and supporting documents to the Office of Administrative Hearings for review for legality. You may ask to be notified of the date the Department submits the rules to the office. If you want to be so notified, or want to receive a copy of the adopted rules, or want to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

11-18-15

Date



Mike Rothman
Commissioner of Commerce

1.1 **Department of Commerce**

1.2 **Proposed Permanent Rules Governing Securities; Regulating MNvest Offerings**

1.3 **2876.1000 DEFINITIONS.**

1.4 Subpart 1. General terms and scope. The terms used in this chapter that are not
1.5 defined in this part have the meanings given them in Minnesota Statutes, chapter 80A.

1.6 Subp. 2. Control person. For purposes of this chapter, "control person" means a
1.7 partner, officer, director, or manager, but does not include a person whose primary duties
1.8 are ministerial or clerical.

1.9 **2876.3050 MNVEST NOTICE FILING.**

1.10 Subpart 1. Form and submission. A notice filing made pursuant to Minnesota
1.11 Statutes, section 80A.461, subdivision 3, clause (11), must be filed on the MNvest notice
1.12 form, available on the Department of Commerce Web site or upon request from the
1.13 administrator, not less than ten days before the beginning of the MNvest offering. The
1.14 MNvest notice form must be mailed or delivered electronically to the administrator, along
1.15 with the appropriate fee, at the address listed on the MNvest notice form. Information
1.16 provided on or with the MNvest notice form must include the following:

1.17 A. the name and contact information of the MNvest issuer making the filing;

1.18 B. identifying information for the MNvest portal through which the MNvest
1.19 issuer's securities are to be offered, including an indication as to whether the MNvest
1.20 issuer has registered, or intends to register, as a portal operator;

1.21 C. the minimum offering amount to be raised through the MNvest offering, and
1.22 a written explanation of how the minimum offering amount will be used to implement the
1.23 MNvest issuer's business plan;

1.24 D. the name and contact information of the escrow agent holding purchasers'
1.25 payments pursuant to Minnesota Statutes, section 80A.461, subdivision 3, clause (8);

2.1 E. a written affirmation that the MNvest issuer has exercised reasonable care
2.2 to confirm that it is not disqualified from making the MNvest offering under Minnesota
2.3 Statutes, section 80A.461, subdivision 9;

2.4 F. a copy of a disclosure document including all information required under
2.5 Minnesota Statutes, section 80A.461, subdivision 4;

2.6 G. a copy of a representative example of advertising used to promote the
2.7 MNvest offering or solicit prospective purchasers;

2.8 H. a copy of the MNvest issuer's balance sheet and income statement made
2.9 available to prospective purchasers pursuant to Minnesota Statutes, section 80A.461,
2.10 subdivision 3, clause (4); and

2.11 I. any other information the administrator may reasonably require to determine
2.12 the MNvest issuer's compliance with Minnesota Statutes, section 80A.461.

2.13 Subp. 2. Fees. Notice filing fee payments made pursuant to Minnesota Statutes,
2.14 section 80A.461, subdivision 3, clause (11), item (iii), are nonrefundable. Fee payments
2.15 must be made payable to the Department of Commerce.

2.16 Subp. 3. Incomplete filings. A notice filing that does not contain all information
2.17 required by this part and by Minnesota Statutes, section 80A.461, subdivision 3, clause
2.18 (11), or that does not include a correct fee payment, is incomplete and ineffective.

2.19 Subp. 4. Effective period. Except while a stop order is in effect under Minnesota
2.20 Statutes, section 80A.48, paragraph (a), a complete notice filing made for purposes of
2.21 Minnesota Statutes, section 80A.461, subdivision 3, clause (11), automatically becomes
2.22 effective ten days after receipt by the administrator and remains effective for one year
2.23 following the date of effectiveness.

2.24 Subp. 5. Post effective amendments.

3.1 A. After a MNvest notice filing has become effective, and while the MNvest
3.2 offering is still in progress, the MNvest issuer must amend or supplement the information
3.3 required by subpart 1 as necessary so that the MNvest issuer does not make any untrue
3.4 statement of a material fact, or omit to state a material fact necessary in order to make the
3.5 statement made, in light of the circumstances under which it is made, not misleading.

3.6 B. A copy of the amended documents required by item A as changed, revised,
3.7 or supplemented and clearly marked to show changes from the previously filed version
3.8 must be filed with the administrator not more than ten days after the amendment occurs.
3.9 No additional fee is required for amendment filings made under this subpart.

3.10 C. If amendments are made to the disclosure document required under
3.11 Minnesota Statutes, section 80A.461, subdivision 3, clause (11), item (ii), the MNvest
3.12 issuer must direct the portal operator facilitating the MNvest offering to:

3.13 (1) make the amended disclosure document available to all prospective
3.14 purchasers in the MNvest offering; and

3.15 (2) deliver the amended disclosure document to all purchasers who have
3.16 already invested in the MNvest offering.

3.17 **2876.3051 ESCROW AND IMPOUNDMENT.**

3.18 A MNvest issuer must comply with the escrow requirements found in Minnesota
3.19 Statutes, section 80A.461, subdivision 3, clause (8). The escrow and impoundment of
3.20 funds is subject to the following:

3.21 A. All funds from purchasers of a MNvest offering must be deposited in the
3.22 depository impound account controlled by the escrow agent within three business days
3.23 after receipt by the MNvest issuer.

3.24 B. All purchaser funds must remain in escrow until the earliest of the following:

4.1 (1) the total amount deposited with the escrow agent reaches at least the
4.2 minimum offering amount set by the MNvest issuer;

4.3 (2) twelve months have expired from the effective date of the MNvest
4.4 offering without the minimum offering amount having been deposited with the escrow
4.5 agent; or

4.6 (3) the MNvest offering reaches the stipulated expiration date set by the
4.7 MNvest issuer pursuant to Minnesota Statutes, section 80A.461, subdivision 4, clause (2),
4.8 without the minimum offering amount having been deposited with the escrow agent.

4.9 C. If the MNvest issuer does not raise the minimum offering amount by the
4.10 earlier of 12 months from the effective date of the MNvest offering or the stipulated
4.11 expiration date, the MNvest issuer must immediately notify the escrow agent that funds
4.12 received from each purchaser and held in escrow for the MNvest offering must be
4.13 refunded in full to the purchasers.

4.14 D. When the minimum offering amount for a MNvest offering is deposited with
4.15 the escrow agent, the MNvest issuer must issue securities to purchasers of the MNvest
4.16 offering within five days of the MNvest issuer's receipt of funds released from escrow
4.17 for the MNvest offering.

4.18 **2876.3052 RECORDS RETENTION REQUIREMENTS FOR MNVEST ISSUERS.**

4.19 MNvest issuers must retain records related to MNvest offerings made pursuant to
4.20 Minnesota Statutes, section 80A.461, for five years after the close of the MNvest offering.
4.21 Retained records must include a copy of the following:

4.22 A. the MNvest notice form and accompanying documents filed with the
4.23 administrator as part of the MNvest issuer's initial notice filing, and any subsequently
4.24 amended MNvest notice forms and documents filed with the administrator;

5.1 B. records of all purchaser payments deposited into the escrow impound
 5.2 account, including information on when the payments were either released to the MNvest
 5.3 issuer or refunded to the purchaser;

5.4 C. records of all written communications sent to or received from purchasers in
 5.5 a MNvest offering while the offering is ongoing;

5.6 D. all agreements and compensation arrangements made between the MNvest
 5.7 issuer and the portal operator through which the MNvest issuer's securities are offered;

5.8 E. all escrow agreements between the escrow agent, the MNvest issuer, and, if
 5.9 applicable, the portal operator through which the MNvest issuer's securities are offered; and

5.10 F. all records used to establish compliance with Minnesota Statutes, section
 5.11 80A.461, subdivision 9.

5.12 **2876.3053 PORTAL OPERATOR REGISTRATION.**

5.13 Subpart 1. Form and submission. A portal operator registration application made
 5.14 pursuant to Minnesota Statutes, section 80A.461, must be filed on a MNvest portal
 5.15 operator registration form, available on the Department of Commerce Web site or upon
 5.16 request from the administrator. The portal operator registration form must be mailed or
 5.17 delivered electronically to the administrator, along with the appropriate fee, at the address
 5.18 listed on the MNvest portal operator registration form. Information provided on or with
 5.19 the MNvest portal operator registration form must include, at minimum, the following:

5.20 A. the names, contact information, and titles of all control persons of the portal
 5.21 operator;

5.22 B. the Web addresses of the MNvest portal;

5.23 C. documentation meeting the requirements of Minnesota Statutes, section
 5.24 80A.461, subdivision 7, paragraph (a), clause (2);

6.1 D. information as to whether the portal operator is, or intends to be, a MNvest
6.2 issuer;

6.3 E. information as to whether control persons of the MNvest portal are agents,
6.4 representatives, or control persons of another portal operator, a broker-dealer, or an
6.5 investment adviser and, if applicable, the names and Central Registration Depository
6.6 (CRD) or Investment Adviser Registration Depository (IARD) numbers of each portal
6.7 operator, broker-dealer, or investment adviser so associated with each control person of
6.8 the MNvest portal;

6.9 F. a written explanation of the portal operator's use of a third party's software
6.10 program or other services in developing, operating, or maintaining the MNvest portal;

6.11 G. a written explanation of the steps taken by the portal operator to verify the
6.12 Minnesota residency of individuals purchasing securities through the MNvest portal
6.13 pursuant to Minnesota Statutes, section 80A.461, subdivision 6, clause (3), item (i);

6.14 H. a written explanation as to how the portal operator calculates and collects
6.15 fees pursuant to Minnesota Statutes, section 80A.461, subdivision 7, paragraph (c),
6.16 clause (3); and

6.17 I. any other information the administrator may reasonably require to determine
6.18 the portal operator's compliance with Minnesota Statutes, section 80A.461.

6.19 Subp. 2. Fees. A person filing a MNvest registration form with the department shall
6.20 include a nonrefundable \$200 fee, made payable to the Department of Commerce. A
6.21 MNvest registration form submitted to the department without the correct fee payment
6.22 will not be reviewed by the department, and will remain ineffective and incomplete until
6.23 the correct fee is submitted.

6.24 Subp. 3. Effectiveness of registration. A portal operator registration does not
6.25 become effective until the administrator has declared the registration effective.

7.1 Subp. 4. **Incomplete applications.** A portal operator registration application that
7.2 does not contain all information required by this part and by Minnesota Statutes, section
7.3 80A.461, subdivision 7, paragraph (a), or that does not include a correct fee payment,
7.4 is incomplete. A registration application that remains incomplete 45 days after the
7.5 administrator notifies the applicant of the reason for incompleteness is deemed denied
7.6 effective on the 46th day after the administrator's notification.

7.7 Subp. 5. **Post effective amendments.**

7.8 A. After a portal operator registration has been declared effective, the portal
7.9 operator shall amend or supplement the MNvest registration form to contain further
7.10 material information, if any, necessary to make the information in the MNvest registration
7.11 form not misleading or incorrect.

7.12 B. A copy of the MNvest registration form as changed, revised, or supplemented
7.13 and clearly marked to show changes from the previously filed version must be filed with
7.14 the administrator.

7.15 Subp. 6. **Registration renewal.** To renew a portal operator registration, the portal
7.16 operator must submit a MNvest portal operator registration form marked to indicate it
7.17 is an application for renewal, along with the fee required by Minnesota Statutes, section
7.18 80A.461, subdivision 7, paragraph (b), to the administrator at least 15 days prior to
7.19 the expiration of the portal operator's registration. Unless an order is in effect under
7.20 Minnesota Statutes, section 80A.67, a complete application for renewal of a portal operator
7.21 registration automatically becomes effective 16 days after the administrator receives the
7.22 renewal application, or immediately upon the expiration of the portal operator's existing
7.23 registration, whichever occurs later.

7.24 Subp. 7. **Sales report.** The portal operator must provide to the administrator upon
7.25 request a final sales report of an offering or offerings completed through the portal. A
7.26 sales report must contain, at a minimum, the total amount raised through the offerings; the

8.1 number of investors that purchased securities through the offerings; and whether, if funds
8.2 were held in escrow, the funds were released to the MNvest issuer.

8.3 **2876.3054 REPORTING REQUIREMENTS.**

8.4 Subpart 1. Offerings reports. MNvest issuers and portal operators must provide
8.5 to the administrator upon request a report of a MNvest offering or MNvest offerings
8.6 occurring or completed in reliance on Minnesota Statutes, section 80A.461. The report
8.7 must be provided to the administrator within 30 days of the administrator's request, or at a
8.8 sooner date specified by the administrator.

8.9 Subp. 2. Contents of issuer reports. Reports requested from MNvest issuers
8.10 pursuant to this part must contain:

8.11 A. the minimum offering amount set by the MNvest issuer for a MNvest offering;

8.12 B. the total amount of money raised through the MNvest offering;

8.13 C. the name and address of each purchaser involved in the MNvest offering;

8.14 D. the amount of money raised from each individual purchaser in the MNvest
8.15 offering; and

8.16 E. confirmation as to whether and when purchasers' funds held in escrow for the
8.17 MNvest offering were released to the MNvest issuer or returned to purchasers.

8.18 Subp. 3. Contents of portal operator reports. Reports requested from portal
8.19 operators pursuant to this part must contain, for each MNvest offering conducted through
8.20 the MNvest portal in the requested period:

8.21 A. all of the information required in subpart 2, items A to D; and

8.22 B. the date the portal operator received from each purchaser the certification
8.23 required under Minnesota Statutes, section 80A.461, subdivision 5.

9.1 **2876.3055 PROTECTION OF PURCHASER INFORMATION.**

9.2 **Subpart 1. Cybersecurity policy.**

9.3 A. Portal operators and MNvest issuers must take reasonable steps to ensure
9.4 that purchasers' financial and personal information is properly secured. Reasonable steps
9.5 include, at a minimum, the development and implementation of a written cybersecurity
9.6 policy that outlines the MNvest issuer's or portal operator's policies and procedures for
9.7 preventing and responding to cybersecurity attacks and data breaches resulting in the
9.8 disclosure or potential disclosure of purchasers' confidential or personally identifiable
9.9 information.

9.10 B. The cybersecurity policy required in item A must specifically include the
9.11 MNvest issuer's or portal operator's procedures to establish compliance with Minnesota
9.12 Statutes, section 325E.61.

9.13 C. MNvest issuers and portal operators must publish the cybersecurity policy
9.14 required by this subpart on the portal operator's or MNvest issuer's Web site, with a
9.15 prominent link to the cybersecurity policy on the Web site's homepage.

9.16 **Subp. 2. Reporting of a cybersecurity attack or data breach.** MNvest issuers and
9.17 portal operators must report to the administrator any action taken by the MNvest issuer or
9.18 portal operator to meet the reporting requirements of Minnesota Statutes, section 325E.61.

9.19 A. The report sent to the administrator must not include any confidential or
9.20 personally identifiable information of those individuals whose data were improperly
9.21 accessed or acquired, unless the information is requested by the administrator. The report
9.22 must include:

9.23 (1) a general description of the type of data that were accessed or acquired;

9.24 (2) the number of individuals whose data were improperly accessed or
9.25 acquired; and

10.1 (3) a description of the steps taken by the MNvest issuer or portal operator
10.2 to notify the individuals whose data were improperly accessed or acquired.

10.3 B. The report must be mailed or sent electronically to the administrator within
10.4 60 days of the MNvest issuer's or portal operator's discovery of the cybersecurity attack
10.5 or data breach.

10.6 **2876.3056 LIMITS ON AVAILABILITY.**

10.7 Minnesota Statutes, section 80A.461, is not available for the following types of
10.8 offerings:

10.9 A. offerings involving petroleum exploration or production, mining, or other
10.10 extractive industries;

10.11 B. offerings relating to investments in virtual, digital, or crypto currencies;

10.12 C. offerings conducted concurrently through multiple MNvest portals;

10.13 D. offerings involving an investment company as defined and classified under
10.14 Section 4 of the Investment Company Act of 1940; and

10.15 E. offerings in which it is proposed to issue stock or other equity interest in an
10.16 entity that has not yet defined its business operations, has no business plan, has no stated
10.17 investment goal for the funds being raised, or plans to engage in a merger or acquisition
10.18 with an unspecified business entity.

10.19 **2876.3057 RESTRICTIONS ON RESALE.**

10.20 Securities offered under Minnesota Statutes, section 80A.461, have not been
10.21 registered under federal or state securities laws and, therefore, cannot be resold unless
10.22 the securities are registered or qualified for an exemption from registration under federal
10.23 and state law. In addition, MNvest issuers shall make the disclosures required by Code of
10.24 Federal Regulations, title 17, section 230.147(f).

11.1 **2876.3058 INVESTOR RIGHT OF CANCELLATION.**

11.2 In an offering conducted under Minnesota Statutes, section 80A.461, an investor may
11.3 cancel an investment commitment for any reason until such time as the target minimum
11.4 offering amount identified in the MNvest notice form corresponding with the offering and
11.5 filed with the administrator has been raised.

11.6 **2876.3059 ANTIFRAUD PROVISION.**

11.7 Minnesota Statutes, section 80A.461, and parts 2876.3050 to 2876.3060 do not
11.8 exempt any person, including control persons and employees of MNvest issuers and portal
11.9 operators, from the antifraud provisions of Minnesota Statutes, section 80A.68, and do not
11.10 provide relief from any other provisions of the Minnesota Securities Act or Minnesota
11.11 Statutes, chapter 45, other than as expressly stated.

11.12 **2876.3060 RESTRICTIONS ON USE OF THE TERM "MNVEST."**

11.13 Subpart 1. Web site addresses. The word "MNvest" must not be used in an Internet
11.14 URL address or domain name:

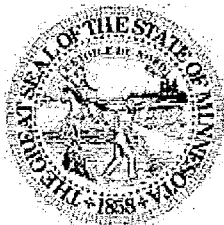
11.15 A. owned by a portal operator or MNvest issuer; or

11.16 B. that automatically redirects a prospective purchaser to a MNvest portal. In
11.17 addition, no MNvest portal shall hold itself out as being the "official" MNvest portal,
11.18 the "only" MNvest portal, or otherwise describe itself using words of similar import, as
11.19 determined by the administrator.

11.20 Subp. 2. Misrepresentations regarding recommendations or endorsements. A
11.21 person shall not make any representation, or use any device, title, descriptive name, or
11.22 identifier that has the tendency or capacity to confuse or mislead a Minnesota resident to
11.23 believe that a MNvest issuer, MNvest offering, or MNvest portal is endorsed, sponsored,
11.24 sanctioned, or recommended by MNvest.

Office of the Revisor of Statutes

Administrative Rules



TITLE: Proposed Permanent Rules Governing Securities; Regulating MNvest Offerings

AGENCY: Department of Commerce

MINNESOTA RULES: Chapter 2876

The attached rules are approved for
publication in the State Register

A handwritten signature in black ink, appearing to read "Paul M. Marinac", written over a horizontal line.

Paul M. Marinac
Deputy Revisor

November 20, 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,



Susan Bergh
Rules Coordinator
Minnesota Department of Commerce

Enclosure: Statement of Need and Reasonableness



85 7TH PLACE EAST, SUITE 500
SAINT PAUL, MINNESOTA 55101-2198
MN.GOV/COMMERCE
651.539.1500 FAX: 651.539.1547
AN EQUAL OPPORTUNITY EMPLOYER

November 20, 2015

Senator James Metzen, Chair
Commerce Committee
MN State Senate
75 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Representative Joe Hoppe, Chair
Commerce and Regulatory Reform
Committee
543 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Senator David Tomassoni, Chair
Environment, Economic Development
and Agriculture Division
MN State Senate
75 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Representative Pat Garafalo, Chair
Job Growth and Energy Affordability
485 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Senator Paul Gazelka, Ranking Minority
Member
Commerce Committee
MN State Senate
145 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Representative Joe Atkins, Ranking
Minority Member
Commerce and Regulatory Reform
349 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Senator Bill Ingebrigtsen, Ranking Minority
Member
Environment, Economic Development and
Agriculture Division
MN State Senate
143 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

Representative Tim Mahoney, Ranking
Minority Member
Job Growth and Energy Affordability
345 State Office Building
100 Rev. Dr. Martin Luther King Jr. Blvd.
St. Paul, MN 55155

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

Dear Legislators:

Executive Summary: The Department of Commerce intends to adopt rule amendments that are intended to facilitate public investment in Minnesota businesses under the "MNvest Registration Exemption", while simultaneously protecting Minnesota investors from fraud, identity theft, and misuse of their investments, through proposed rule requirements for advertising, cybersecurity, records retention, and data privacy.

Minnesota Statutes, section 14.116, states:

"14.116 NOTICE TO LEGISLATURE.

When an agency mails notice of intent to adopt rules under section 14.14 or 14.22, the agency must send a copy of the same notice and a copy of the statement of need and reasonableness to the chairs and ranking minority party members of the legislative policy and budget committees with jurisdiction over the subject matter of the proposed rules and to the Legislative Coordinating Commission.

We plan to publish the Notice of Intent to Adopt Rules in the November 30, 2015, State Register and are now mailing the Notice under section 14.14 or 14.22.

As required by section 14.116, the Department is sending you a copy of the notice and the Statement of Need and Reasonableness. For your information, we are also enclosing a copy of the proposed rules.

If you have any questions about these rules, please contact me at 651-539-1456.

Yours very truly,



Susan Bergh
Rules Coordinator
Minnesota Department of Commerce

Enclosures: Notice of Intent to Adopt Rules
Statement of Need and Reasonableness
Proposed Rules

cc: lcc@lcc.leg.mn
sen.terri.bonoff@senate.mn
rep.jenifer.loon@house.mn

Minnesota Department of Commerce

CERTIFICATE OF GIVING ADDITIONAL NOTICE UNDER THE ADDITIONAL NOTICE PLAN

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

I certify that on November 20, 2015, at St. Paul, Ramsey County, Minnesota, I gave notice pursuant to the Additional Notice Plan approved by the Office of Administrative Hearings on November 13, 2015. Specifically:

- I mailed 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

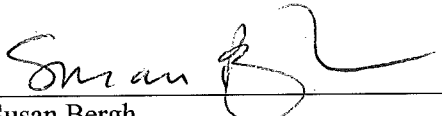
Ira Rheingold
National Association of Consumer Advocates
30 Rhode Island Ave NW
Washington, DC 20036

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

I accomplished this mailing by depositing a copy in the United States mail with postage prepaid.

- I placed a summary of the notice of rulemaking on the Department of Commerce web page at www.commerce.state.mn.us.



Susan Bergh
Rules Coordinator

Additional Notice List:

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

Rick Barkley, Minnesota District Director
SCORE Assoc., SCORE Minnesota District
330 South 2nd Ave, Suite 430
Minneapolis, MN 55401

Ira Rheingold
National Assoc. of Consumer Advocates
30 Rhode Island Ave NW
Washington, DC 20036

Anya Coverman, Deputy Director of Policy
No. Am. Securities Admin Assoc (NASAA)
750 First Street NE, Suite 1140
Washington, DC 20002

Audrey Britton, Public Policy Director
Small Business Minnesota
PO Box 46265
Plymouth, MN 55446

Mary Hamel, Executive Director
Twin Cities Metro IBA
2190 Como Avenue
Saint Paul, MN 55108

Chris Hanson, CEO
The Databank
800 Washington Ave N, Suite 500
Minneapolis, MN 55401

Brad Lehrman
Soffer Charbonnet Law Group
7300 France Avenue South, Suite 210
Minneapolis, MN 55435

Mark Schroeder, Co-Chair
Consumer Litigation Section, MSBA
600 Nicollet Mall, Suite 380
Minneapolis, MN 55402

David Goodwin, Co-Chair
Consumer Litigation Section, MSBA
600 Nicollet Mall, Suite 380
Minneapolis, MN 55402

Jonathan Levy, Chair of Securities Cmte
Business Law Section
Minnesota State Bar Association
600 Nicollet Mall, Suite 380
Minneapolis, MN 55402

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

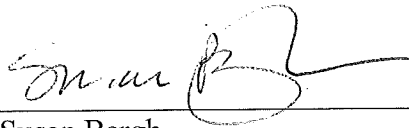
Zach Robbins
Winthrop & Weinstine
Capella Tower, Suite 3500
225 South Sixth Street
Minneapolis, MN 55402

Minnesota Department of Commerce

**CERTIFICATE OF MAILING THE NOTICE OF INTENT TO ADOPT RULES
WITHOUT A PUBLIC HEARING TO THE RULEMAKING MAILING LIST**

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

I certify that on November 20, 2015, at least 33 days before the end of the comment period, at St. Paul, Ramsey County, Minnesota, I mailed (1) the Notice of Intent to Adopt Rules, and (2) the proposed rules by depositing a copy in the United States mail with postage prepaid, to all persons and associations on the rulemaking mailing list established by Minnesota Statutes, section 14.14, subdivision 1a.

A handwritten signature in black ink, appearing to read "Susan Bergh", is written over a horizontal line.

Susan Bergh
Rules Coordinator

Minnesota Department of Commerce

CERTIFICATE OF ACCURACY OF THE MAILING LIST

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

I certify that the list of persons and associations who have requested that their names be placed on the Department of Commerce rulemaking mailing list under Minnesota Statutes, section 14.14, subdivision 1a, is accurate, complete, and current as of November 20, 2015. A copy of the mailing list is attached to this Certificate.



Carolyn Thompson
Office and Administrative Specialist Principal

<p>Roger Steinbach Regional Director – Gov’t Relations Insurance Services Office, Inc. 2525 Cabot Drive, Suite 105 Lisle, IL 60532</p>	<p>Michael J. Ahern Dorsey & Whitney 50 South Sixth Street, Suite 1500 Minneapolis, MN 55402</p>	<p>Andrea Rau Minnesota Citizens Concerned for Life 4249 Nicollet Avenue South Minneapolis MN 55409</p>
<p>American Bankers Insurance Group Government Affairs Department 11222 Quail Roost Drive Miami, FL 33157</p>	<p>John F. Apitz, Esq. Messerli & Kramer, P.A. 145 University Avenue West, Suite 450 St. Paul, MN 55103-2044</p>	<p>Sylvia Ford Compliance Analyst Kanawha Insurance Company 210 South White Street, P.O. Box 610 Lancaster, SC 29721</p>
<p>Melodie D. Mollet Protective 14755 N. Outer Forty Drive, Suite 400 Chesterfield, MO 63017</p>	<p>Teresa L. Prince Nabors Giblin & Nickerson 2502 Rocky Point Drive Tampa, FL 33607</p>	<p>Greg Bergstrom 475 State Office Building St. Paul, MN 55155</p>
<p>Elaine M. Love, CPCU Government Affairs Representative Farmers Insurance Group – Minnesota 5390 Barrington Way Shorewood, MN 55331</p>	<p>Patricia A. Borowski, CPIW PIA National 400 North Washington Street Alexandria, VA 22341</p>	<p>Ruth Hilt, Compliance/Legal Central States Health & Life Co of Omaha 1212 N 96th Street Omaha, NE 68114-2274</p>
<p>David M. Aafedt Winthrop & Weinstine Capella Tower, Suite 3500 225 South Sixth Street Minneapolis, MN 55402</p>	<p>J. Rogers Chambers AAA Minnesota Insurance Agency 5400 Auto Way Minneapolis, MN 55416-2576</p>	<p>Dave Schulz StateScape/State Analysis, Inc. 114 N Patrick Street Alexandria, VA 22314</p>
<p>Peder K. Davisson Davisson & Associates, PA 3649 Brunswick Avenue North Minneapolis, MN 55422</p>	<p>C. Warren Coulter Assistant General Counsel Cooper Communities Inc. 903 N. 47th Street Rogers AR 72756-9615</p>	<p>Thomas D. Feinberg Leonard Street & Deinard 150 South Fifth St., #2300 Minneapolis, MN 55402</p>
<p>Becky Szurovy Compliance Manager 400 Galleria Parkway, Suite 1000 Atlanta, GA 30339</p>	<p>Jean Dawson Minnesota Government Report B-12 Press Room State Capitol St. Paul, MN 55155</p>	<p>Maralee German Senior Compliance Analyst Primerica Life Insurance Company 3120 Breckenridge Blvd. Duluth, GA 30099-0001</p>
<p>Nicole Breland Benesch Freidlander 2300 BP America Building 200 Public Square Cleveland, OH 44114-2378</p>	<p>Timothy L. Horner Warner Norcross & Judd LLP 900 Fifth Third Center 111 Lyon Street NW Grand Rapids, MI 49503-2487</p>	<p>Patrick R. Shane Faegre & Benson 2200 Wells Fargo Center 90 S 7th Street Minneapolis, MN 55402</p>
<p>C. Lee Gomes Associate Vice President A.G. Edwards & Sons, Inc. One North Jefferson St. Louis, MO 63103</p>	<p>Maggie Bass, Paralegal Lindquist & Vennum PLLP 4200 IDS Center 80 South Eighth Street Minneapolis, MN 55402</p>	<p>Eric O. Madson Robins Kaplan Miller & Ciresi LLP 2800 LaSalle Plaza 800 LaSalle Avenue Minneapolis, MN 55402-2015</p>
<p>Ellen Lieberman, Counsel Debevoise & Plimpton LLP 919 Third Avenue New York, NY 10022</p>	<p>Carl N. Duncan, Esq. 5718 Tanglewood Drive Bethesda, MD 20817</p>	<p>Kathy Hoefling Licensing Specialist Legal Department American General Finance Inc. P.O. Box 59 Evansville, IN 47701-0059</p>

<p>Alan M. Parness, Esq. Cadwalder, Wickersham & Taft LLP One World Financial Center New York, NY 10281</p>	<p>Jackson National Life Compliance Department 5901 Executive Drive P.O. Box 24068 Lansing, MI 48909</p>	<p>Teresa L. Prince 2502 Rocky Point Drive Suite 1060 Tampa, FL 33607</p>
<p>Christina Pierson Government Affairs Representative MN Rural Electric Association 11640 73rd Avenue North Maple Grove, MN 55369</p>	<p>Lisa J. Hartzell Mairs & Power Inc. W-1520, First National Bank Building 332 Minnesota Street St. Paul, MN 55101-1363</p>	<p>David C. Jenson Leonard, Street and Deinard Professional Association 150 South Fifth Street, Suite 2300 Minneapolis, MN 55402</p>
<p>Paula Auerbach American Council of Life Insurers 101 Constitution Avenue, Suite 700 Washington, DC 20001-2133</p>	<p>Larry Gardner Assistant Vice President, Product Drafting Jackson National Life Insurance 1 Corporate Way Lansing MI 48951</p>	<p>Gerald P. Kenney, Esq. CCC Information Services World Trade Center Chicago 444 Merchandise Mart Chicago, IL 60654-1005</p>
<p>Jen Randolph Reise Briggs & Morgan 2200 IDS Center 80 South 8th Street Minneapolis, MN 55402</p>	<p>Gerard A. Wendelken Insurance Services Office, Inc. 545 Washington Blvd. Jersey City, NJ 07310-1686</p>	<p>Joe R. Elms Vice President American Modern Life Insurance Co 7000 Midland Boulevard Amelia, OH 45102-2607</p>
<p>John Knapp, Esq. Winthrop & Weinstine Suite 3500 225 South Sixth Street Minneapolis MN 55402-4629</p>	<p>Joe Crumley 5120 IDS Center Minneapolis, MN 55402</p>	<p>Joellen Kush (S45) Jackson National Life Insurance Co. 1 Corporate Way Lansing MI 48951</p>
<p>Maria Manuele State Relations & Compliance American International Group 70 Pine Street, 22nd Floor New York, NY 10270</p>	<p>Robin Lackner HealthPartners 8100 34th Avenue South P.O. Box 1309 Minneapolis, MN 55402</p>	<p>Sandra Stevenson, Senior Consultant National Regulatory Services 323A Main Street P.O. Box 71 Lakeville, CT 06039</p>
<p>Evelyn Kuserk ECRI 5200 Butler Pike Plymouth Meeting, PA 19462</p>	<p>Dominic Sposeto Dominic Sposeto & Associates 2824 Irving Avenue South Minneapolis, MN 55408</p>	<p>James A. Mulder Association of Minnesota Counties 125 Charles Avenue St. Paul, MN 55103-2108</p>
<p>Tobi Tanzer HealthPartners 8100 34th Avenue South P.O. Box 1309 Minneapolis, MN 55402</p>	<p>Gary K. Thaden Minnesota Mechanical Contractors 766 Transfer Road St. Paul, MN 55114</p>	<p>Wendy Pellow Stateside Associates 2300 Clarendon Blvd., Suite 407 Arlington, VA 22201</p>
<p>Gwendolyn E. Bunche Primerica Life Insurance Co. 3120 Breckenridge Boulevard Duluth, GA 30199-0001</p>	<p>Jeff Reed HealthPartners 8100 34th Avenue South P.O. Box 1309 Minneapolis, MN 55402</p>	<p>Ann C. Jett CIGNA W-26 900 Cottage Grove Road Bloomfield, CT 06002</p>
<p>Edward A. Taylor Wilson Elser Moskowitz Edelman & Dicker 150 East 42nd Street New York, NY 10017-5639</p>	<p>Karen Barr Investment Council Assn. of America 1050 17th Street NW, Suite 725 Washington, DC 20036</p>	<p>Sam Ruhle Office of Administrative Hearings 600 North Robert Street St. Paul, MN 55101</p>

<p>MCCL 4249 Nicollet Avenue Minneapolis, MN 55409</p>	<p>Lisa Struz Physicians Mutual 2600 Dodge Street Omaha, NE 68131 lisa.struz@PhysiciansMutual.com</p>	<p>Kristina Spinneweber Compliance Assurance Corporation StoneRiver Risk & Compliance intake@complyfast.com</p>
<p>The Manhattan Toy Company 300 First Avenue North, Suite 200 Minneapolis, MN 55401</p>	<p>Jay E. Holloman, CLU, ChFC Director of Financial Products Pekin Insurance 2505 Court Street Pekin, IL 61558 Jholloman@pekininsurance.com</p>	<p>Angela Mansfield ucdoiscorro@ucci.com</p>
<p>Randy Moberg Werner Electric 7450 95th Street South Cottage Grove, MN 55016</p>	<p>Stephanie Berry, Legal Analyst Delta Dental of CA, NY, PA & Affiliates 11155 International Drive, MS D41 Rancho Cordova, CA 95670 sberry@delta.org</p>	<p>lcc@lcc.leg.mn</p>
<p>Shawn E. Seiler NTP Wireless Solution Lead, Site Acquisition 8400 Normandale Lake Blvd. Ste 920 Minneapolis, MN 55437</p>	<p>Joan P. Burnhardt New Business Department Supervisor Western Fraternal Life Association 1900 First Avenue NE Cedar Rapids, IA 52402 jburnhar@wflains.org</p>	<p>adam.fowler@helioscomp.com JDunlop@RESMinn.com LAHEDINE@hotmail.com vbstenswick@hotmail.com</p>
<p>Adam Fowler Helios-Government Affairs 175 Kelsey Lane Tampa, FL 33619</p>	<p>Donna Robinson, IDM Specialist Amerisafe, Inc. 2301 Hwy. 190 West DeRidder, LA 70634 drobenson@amerisafe.com</p>	<p>dragnfly@arvig.net moulive@hotmail.com David.Jungst@mn.nacdnet.net</p>
	<p>Jill B. Garcia, Community Dev Officer Nonprofit Assistance Fund 2801 21st Avenue South, Suite 210 Minneapolis, MN 55407 jbgarcia@nonprofitassistancefund.org</p>	<p>drjungst@hotmail.com mhankey@newenergyequity.com Scott.Stephens@nrg.com</p>
	<p>Maureen Bensily Compliance Research Analyst Wolters Kluwer Financial Services 130 Turner Street, 4th Floor Waltham, MA 02453 Maureen.Bensily@wolterskluwer.com</p>	<p>Jessica.K.Peterson@xcelenergy.com cadieux@umn.edu</p>
	<p>Tammy Simpson, Product Compliance EquiTrust Life Insurance Company 7100 Westown Pkwy, Suite 200 West Des Moines, IA 50266 Tammy.Simpson@EquiTrust.com</p>	
	<p>Germaine G. Gabriel, Regulatory Counsel Stateside Associates 2300 Clarendon Blvd., Suite 407 Arlington, VA 22201 gmg@stateside.com</p>	



85 7TH PLACE EAST, SUITE 500
SAINT PAUL, MINNESOTA 55101-2198
MN.GOV/COMMERCE
651.539.1500 FAX: 651.539.1547
AN EQUAL OPPORTUNITY EMPLOYER

November 9, 2015

Marianne Conboy
Executive Budget Officer
Minnesota Management and Budget Office
658 Cedar St., Suite 400
St. Paul, MN 55155

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

Dear Ms. Conboy:

Minnesota Statutes, section 14.131, requires that an agency engaged in rulemaking consult with the Commissioner of Management and Budget "to help evaluate the fiscal impact and fiscal benefits of the proposed rule on units of local government."

Enclosed for your review are copies of the following documents on proposed rules governing annuity mortality tables.

1. The Governor's Office Proposed Rule and SONAR Form (signed by Commissioner Mike Rothman).
2. The 11/9/15 Revisor's draft of the proposed rule.
3. The 11/9/15 draft of the SONAR.

I am also delivering copies of these documents to the Governor's Office.

If you or any other representative of the Commissioner of Management and Budget has questions about the proposed rule, please call me at 651-539-1456. Please send any correspondence about this matter to me at the following address: Susan Bergh, Minnesota Department of Commerce, 85-7th Place East, Suite 500, St. Paul MN 55101.

Yours very truly,

Susan Bergh
Rules Coordinator
Department of Commerce

STATE OF MINNESOTA
OFFICE OF ADMINISTRATIVE HEARINGS

In the Matter of the Adopted Rules of the
State Department of Commerce Governing
MNvest Securities Regulation, Minnesota
Rules, Chapter 2876

**ORDER ON REVIEW OF
ADDITIONAL NOTICE PLAN AND
NOTICE OF INTENT TO ADOPT**

This matter came before Administrative Law Judge Eric L. Lipman upon the Minnesota Department of Commerce's (Department) request for a legal review under Minn. R. 1400.2060 and 1400.2080.

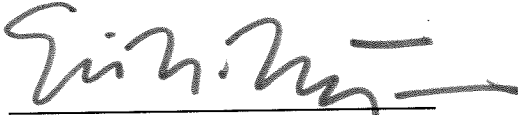
On November 9, 2015, the Department filed documents with the Office of Administrative Hearings seeking review and approval of its Additional Notice Plan and Notice of Intent to Adopt Rules Without a Hearing.

Based upon a review of the written submissions by the Department, including its plan to notify a wide range of business, venture capital and consumer organizations in Minnesota, about the rulemaking proceeding:

IT IS HEREBY ORDERED THAT:

1. The Additional Notice Plan is **APPROVED**.
2. The Notice of Hearing is **APPROVED** contingent upon compliance with Minn. R. 2080, subp. 2 (2015); which provides that the Notice of Intent to Adopt include "the calendar date that the comment period ends, which must be at least 30 days after the date of publication."

Dated: November 13, 2015


ERIC L. LIPMAN
Administrative Law Judge



85 7TH PLACE EAST, SUITE 500
SAINT PAUL, MINNESOTA 55101-2198
MN.GOV/COMMERCE
651.539.1500 FAX: 651.539.1547
AN EQUAL OPPORTUNITY EMPLOYER

November 9, 2015

The Honorable Tammy L. Pust
Chief Administrative Law Judge
Office of Administrative Hearings
600 North Robert Street
P.O. Box 64620
Saint Paul, Minnesota 55164-0620

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

Dear Chief Judge Pust:

The Department of Commerce requests that you review and approve our Additional Notice Plan for giving Notice of Intent to Adopt Rules Without a Public Hearing under Minnesota Statutes, section 14.22. The Additional Notice Plan is regarding the Department's proposed rules governing the MNvest securities exemption, relating to the offer and sale of intrastate securities in order to raise capital through local investment, often described as "equity crowdfunding."

Enclosed with this letter are the documents for the Office of Administrative Hearings' review, as required by Minnesota Rules, part 1400.2060, subpart 2, item B:

- (1) The proposed rules.
- (2) A draft of the Statement of Need and Reasonableness under part 1400.2070, containing our proposed Additional Notice Plan. Our Additional Notice Plan is described on pages 7 - 9.
- (3) The proposed Notice of Intent to Adopt Rules Without a Public Hearing under part 1400.2080.

Part 1400.2060, subpart 2, item B, also requires an explanation of why we believe our Additional Notice Plan complies with Minnesota Statutes, section 14.22, i.e., why our Additional Notice Plan constitutes reasonable efforts to notify persons or classes of persons who might be significantly affected by the rules. We believe our Additional Notice Plan complies with the statute because it includes Minnesota businesses, entrepreneurs and industry groups whose utilization of the MNvest Securities Exemption will be affected by these proposed rule amendments.

Please call me at 651-539-1456 if you have any questions.

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
Department of Commerce

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 7th Place East, St. Paul, MN 55101, phone: (651) 539-1456, email 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 months¹ 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

¹ 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 years 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.

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.

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.

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.

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
Commissioner of Commerce

Minnesota Department of Commerce

NOTICE OF INTENT TO ADOPT RULES WITHOUT A PUBLIC HEARING

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

Introduction. The Department of Commerce intends to adopt rules without a public hearing following the procedures in the rules of the Office of Administrative Hearings, *Minnesota Rules*, parts 1400.2300 to 1400.2310, and the Administrative Procedure Act, *Minnesota Statutes*, sections 14.22 to 14.28. You may submit written comments on the proposed rules and may also submit a written request that a hearing be held on the rules until December 31, 2015.

Agency Contact Person. You must submit comments or questions on the rules and written requests for a public hearing to the agency contact person. The agency contact person is Susan Bergh at the Minnesota Department of Commerce, 85 7th Place East, Suite 500, St. Paul, Minnesota 55101, phone 651-539-1456, email to rules.commerce@state.mn.us. Consumers with hearing or speech disabilities may contact the Department of Commerce via their preferred Telecommunications Relay Service.

Subject of Rules and Statutory Authority. The proposed modifications to the rules are intended to facilitate public investment in Minnesota businesses while protecting Minnesota investors from fraud, identity theft, and misuse of their investments, through rule requirements for advertising, cybersecurity, records retention, and data privacy. The statutory authority to adopt the rules is *Minnesota Statutes*, sections 80A.82 (a)(1) and 45.023. A copy of the proposed rules is published in the *State Register* and attached to this notice as mailed.

Comments. You have until 4:30 p.m. on December 31, 2015, to submit written comment in support of or in opposition to the proposed rules and any part or subpart of the rules. Your comment must be in writing and the agency contact person must receive it by the due date. The Department encourages comment. Your comment should identify the portion of the proposed rules addressed and the reason for the comment. You are encouraged to propose any change desired. You must also make any comments about the legality of the proposed rules during this comment period.

Request for a Hearing. In addition to submitting comments, you may also request that the Department hold a hearing on the rules. Your request must be in writing and the agency contact person must receive it by 4:30 p.m. on December 31, 2015. Your written request for a public hearing must include your name and address. You must identify the portion of the proposed rules that you object to or state that you oppose the entire set of rules. Any request that does not comply with these requirements is not valid and the agency cannot count it when determining whether it must hold a public hearing. You are also encouraged to state the reason for the request and any changes you want made to the proposed rules.

Withdrawal of Requests. If 25 or more persons submit a valid written request for a hearing, the Department will hold a public hearing unless a sufficient number withdraw their requests in writing. If enough requests for hearing are withdrawn to reduce the number below 25, the agency must give written notice of this to all persons who requested a hearing, explain the

actions the agency took to effect the withdrawal, and ask for written comments on this action. If a public hearing is required, the agency will follow the procedures in *Minnesota Statutes*, sections 14.131 to 14.20.

Alternative Format. Upon request, the Department can make this Notice available in an alternative format, such as large print, Braille, or cassette tape. To make such a request, please contact the agency contact person at the address or telephone number listed above.

Modifications. The Department may modify the proposed rules as a result of public comment. The modifications must be supported by comments and information submitted to the agency, and the adopted rules may not be substantially different than these proposed rules, unless the agency follows the procedure under *Minnesota Rules*, part 1400.2110. If the proposed rules affect you in any way, the Department encourages you to participate in the rulemaking process.

Statement of Need and Reasonableness. The statement of need and reasonableness contains a summary of the justification for the proposed rules, including a description of who will be affected by the proposed rules and an estimate of the probable cost of the proposed rules. It is now available from the agency contact person. You may review, or obtain copies at the cost of reproduction, by contacting the agency contact person.

Lobbyist Registration. *Minnesota Statutes*, chapter 10A, requires each lobbyist to register with the State Campaign Finance and Public Disclosure Board. You should direct questions about this requirement to the Campaign Finance and Public Disclosure Board at: Suite 190, Centennial Building, 658 Cedar Street, St. Paul, Minnesota 55155, telephone 651-539-1180 or 1-800-657-3889.

Adoption and Review of Rules. If no hearing is required, the agency may adopt the rules after the end of the comment period. The agency will then submit the rules and supporting documents to the Office of Administrative Hearings for review for legality. You may ask to be notified of the date the Department submits the rules to the office. If you want to be so notified, or want to receive a copy of the adopted rules, or want to register with the agency to receive notice of future rule proceedings, submit your request to the agency contact person listed above.

11-18-15

Date



Mike Rothman
Commissioner of Commerce

1.1 **Department of Commerce**

1.2 **Proposed Permanent Rules Governing Securities; Regulating MNvest Offerings**

1.3 **2876.1000 DEFINITIONS.**

1.4 Subpart 1. General terms and scope. The terms used in this chapter that are not
1.5 defined in this part have the meanings given them in Minnesota Statutes, chapter 80A.

1.6 Subp. 2. Control person. For purposes of this chapter, "control person" means a
1.7 partner, officer, director, or manager, but does not include a person whose primary duties
1.8 are ministerial or clerical.

1.9 **2876.3050 MNVEST NOTICE FILING.**

1.10 Subpart 1. Form and submission. A notice filing made pursuant to Minnesota
1.11 Statutes, section 80A.461, subdivision 3, clause (11), must be filed on the MNvest notice
1.12 form, available on the Department of Commerce Web site or upon request from the
1.13 administrator, not less than ten days before the beginning of the MNvest offering. The
1.14 MNvest notice form must be mailed or delivered electronically to the administrator, along
1.15 with the appropriate fee, at the address listed on the MNvest notice form. Information
1.16 provided on or with the MNvest notice form must include the following:

1.17 A. the name and contact information of the MNvest issuer making the filing;

1.18 B. identifying information for the MNvest portal through which the MNvest
1.19 issuer's securities are to be offered, including an indication as to whether the MNvest
1.20 issuer has registered, or intends to register, as a portal operator;

1.21 C. the minimum offering amount to be raised through the MNvest offering, and
1.22 a written explanation of how the minimum offering amount will be used to implement the
1.23 MNvest issuer's business plan;

1.24 D. the name and contact information of the escrow agent holding purchasers'
1.25 payments pursuant to Minnesota Statutes, section 80A.461, subdivision 3, clause (8);

2.1 E. a written affirmation that the MNvest issuer has exercised reasonable care
2.2 to confirm that it is not disqualified from making the MNvest offering under Minnesota
2.3 Statutes, section 80A.461, subdivision 9;

2.4 F. a copy of a disclosure document including all information required under
2.5 Minnesota Statutes, section 80A.461, subdivision 4;

2.6 G. a copy of a representative example of advertising used to promote the
2.7 MNvest offering or solicit prospective purchasers;

2.8 H. a copy of the MNvest issuer's balance sheet and income statement made
2.9 available to prospective purchasers pursuant to Minnesota Statutes, section 80A.461,
2.10 subdivision 3, clause (4); and

2.11 I. any other information the administrator may reasonably require to determine
2.12 the MNvest issuer's compliance with Minnesota Statutes, section 80A.461.

2.13 Subp. 2. Fees. Notice filing fee payments made pursuant to Minnesota Statutes,
2.14 section 80A.461, subdivision 3, clause (11), item (iii), are nonrefundable. Fee payments
2.15 must be made payable to the Department of Commerce.

2.16 Subp. 3. Incomplete filings. A notice filing that does not contain all information
2.17 required by this part and by Minnesota Statutes, section 80A.461, subdivision 3, clause
2.18 (11), or that does not include a correct fee payment, is incomplete and ineffective.

2.19 Subp. 4. Effective period. Except while a stop order is in effect under Minnesota
2.20 Statutes, section 80A.48, paragraph (a), a complete notice filing made for purposes of
2.21 Minnesota Statutes, section 80A.461, subdivision 3, clause (11), automatically becomes
2.22 effective ten days after receipt by the administrator and remains effective for one year
2.23 following the date of effectiveness.

2.24 Subp. 5. Post effective amendments.

3.1 A. After a MNvest notice filing has become effective, and while the MNvest
3.2 offering is still in progress, the MNvest issuer must amend or supplement the information
3.3 required by subpart 1 as necessary so that the MNvest issuer does not make any untrue
3.4 statement of a material fact, or omit to state a material fact necessary in order to make the
3.5 statement made, in light of the circumstances under which it is made, not misleading.

3.6 B. A copy of the amended documents required by item A as changed, revised,
3.7 or supplemented and clearly marked to show changes from the previously filed version
3.8 must be filed with the administrator not more than ten days after the amendment occurs.
3.9 No additional fee is required for amendment filings made under this subpart.

3.10 C. If amendments are made to the disclosure document required under
3.11 Minnesota Statutes, section 80A.461, subdivision 3, clause (11), item (ii), the MNvest
3.12 issuer must direct the portal operator facilitating the MNvest offering to:

3.13 (1) make the amended disclosure document available to all prospective
3.14 purchasers in the MNvest offering; and

3.15 (2) deliver the amended disclosure document to all purchasers who have
3.16 already invested in the MNvest offering.

3.17 **2876.3051 ESCROW AND IMPOUNDMENT.**

3.18 A MNvest issuer must comply with the escrow requirements found in Minnesota
3.19 Statutes, section 80A.461, subdivision 3, clause (8). The escrow and impoundment of
3.20 funds is subject to the following:

3.21 A. All funds from purchasers of a MNvest offering must be deposited in the
3.22 depository impound account controlled by the escrow agent within three business days
3.23 after receipt by the MNvest issuer.

3.24 B. All purchaser funds must remain in escrow until the earliest of the following:

4.1 (1) the total amount deposited with the escrow agent reaches at least the
4.2 minimum offering amount set by the MNvest issuer;

4.3 (2) twelve months have expired from the effective date of the MNvest
4.4 offering without the minimum offering amount having been deposited with the escrow
4.5 agent; or

4.6 (3) the MNvest offering reaches the stipulated expiration date set by the
4.7 MNvest issuer pursuant to Minnesota Statutes, section 80A.461, subdivision 4, clause (2),
4.8 without the minimum offering amount having been deposited with the escrow agent.

4.9 C. If the MNvest issuer does not raise the minimum offering amount by the
4.10 earlier of 12 months from the effective date of the MNvest offering or the stipulated
4.11 expiration date, the MNvest issuer must immediately notify the escrow agent that funds
4.12 received from each purchaser and held in escrow for the MNvest offering must be
4.13 refunded in full to the purchasers.

4.14 D. When the minimum offering amount for a MNvest offering is deposited with
4.15 the escrow agent, the MNvest issuer must issue securities to purchasers of the MNvest
4.16 offering within five days of the MNvest issuer's receipt of funds released from escrow
4.17 for the MNvest offering.

4.18 **2876.3052 RECORDS RETENTION REQUIREMENTS FOR MNVEST ISSUERS.**

4.19 MNvest issuers must retain records related to MNvest offerings made pursuant to
4.20 Minnesota Statutes, section 80A.461, for five years after the close of the MNvest offering.
4.21 Retained records must include a copy of the following:

4.22 A. the MNvest notice form and accompanying documents filed with the
4.23 administrator as part of the MNvest issuer's initial notice filing, and any subsequently
4.24 amended MNvest notice forms and documents filed with the administrator;

5.1 B. records of all purchaser payments deposited into the escrow impound
5.2 account, including information on when the payments were either released to the MNvest
5.3 issuer or refunded to the purchaser;

5.4 C. records of all written communications sent to or received from purchasers in
5.5 a MNvest offering while the offering is ongoing;

5.6 D. all agreements and compensation arrangements made between the MNvest
5.7 issuer and the portal operator through which the MNvest issuer's securities are offered;

5.8 E. all escrow agreements between the escrow agent, the MNvest issuer, and, if
5.9 applicable, the portal operator through which the MNvest issuer's securities are offered; and

5.10 F. all records used to establish compliance with Minnesota Statutes, section
5.11 80A.461, subdivision 9.

5.12 **2876.3053 PORTAL OPERATOR REGISTRATION.**

5.13 Subpart 1. Form and submission. A portal operator registration application made
5.14 pursuant to Minnesota Statutes, section 80A.461, must be filed on a MNvest portal
5.15 operator registration form, available on the Department of Commerce Web site or upon
5.16 request from the administrator. The portal operator registration form must be mailed or
5.17 delivered electronically to the administrator, along with the appropriate fee, at the address
5.18 listed on the MNvest portal operator registration form. Information provided on or with
5.19 the MNvest portal operator registration form must include, at minimum, the following:

5.20 A. the names, contact information, and titles of all control persons of the portal
5.21 operator;

5.22 B. the Web addresses of the MNvest portal;

5.23 C. documentation meeting the requirements of Minnesota Statutes, section
5.24 80A.461, subdivision 7, paragraph (a), clause (2);

6.1 D. information as to whether the portal operator is, or intends to be, a MNvest
6.2 issuer;

6.3 E. information as to whether control persons of the MNvest portal are agents,
6.4 representatives, or control persons of another portal operator, a broker-dealer, or an
6.5 investment adviser and, if applicable, the names and Central Registration Depository
6.6 (CRD) or Investment Adviser Registration Depository (IARD) numbers of each portal
6.7 operator, broker-dealer, or investment adviser so associated with each control person of
6.8 the MNvest portal;

6.9 F. a written explanation of the portal operator's use of a third party's software
6.10 program or other services in developing, operating, or maintaining the MNvest portal;

6.11 G. a written explanation of the steps taken by the portal operator to verify the
6.12 Minnesota residency of individuals purchasing securities through the MNvest portal
6.13 pursuant to Minnesota Statutes, section 80A.461, subdivision 6, clause (3), item (i);

6.14 H. a written explanation as to how the portal operator calculates and collects
6.15 fees pursuant to Minnesota Statutes, section 80A.461, subdivision 7, paragraph (c),
6.16 clause (3); and

6.17 I. any other information the administrator may reasonably require to determine
6.18 the portal operator's compliance with Minnesota Statutes, section 80A.461.

6.19 Subp. 2. Fees. A person filing a MNvest registration form with the department shall
6.20 include a nonrefundable \$200 fee, made payable to the Department of Commerce. A
6.21 MNvest registration form submitted to the department without the correct fee payment
6.22 will not be reviewed by the department, and will remain ineffective and incomplete until
6.23 the correct fee is submitted.

6.24 Subp. 3. Effectiveness of registration. A portal operator registration does not
6.25 become effective until the administrator has declared the registration effective.

7.1 Subp. 4. **Incomplete applications.** A portal operator registration application that
7.2 does not contain all information required by this part and by Minnesota Statutes, section
7.3 80A.461, subdivision 7, paragraph (a), or that does not include a correct fee payment,
7.4 is incomplete. A registration application that remains incomplete 45 days after the
7.5 administrator notifies the applicant of the reason for incompleteness is deemed denied
7.6 effective on the 46th day after the administrator's notification.

7.7 Subp. 5. **Post effective amendments.**

7.8 A. After a portal operator registration has been declared effective, the portal
7.9 operator shall amend or supplement the MNvest registration form to contain further
7.10 material information, if any, necessary to make the information in the MNvest registration
7.11 form not misleading or incorrect.

7.12 B. A copy of the MNvest registration form as changed, revised, or supplemented
7.13 and clearly marked to show changes from the previously filed version must be filed with
7.14 the administrator.

7.15 Subp. 6. **Registration renewal.** To renew a portal operator registration, the portal
7.16 operator must submit a MNvest portal operator registration form marked to indicate it
7.17 is an application for renewal, along with the fee required by Minnesota Statutes, section
7.18 80A.461, subdivision 7, paragraph (b), to the administrator at least 15 days prior to
7.19 the expiration of the portal operator's registration. Unless an order is in effect under
7.20 Minnesota Statutes, section 80A.67, a complete application for renewal of a portal operator
7.21 registration automatically becomes effective 16 days after the administrator receives the
7.22 renewal application, or immediately upon the expiration of the portal operator's existing
7.23 registration, whichever occurs later.

7.24 Subp. 7. **Sales report.** The portal operator must provide to the administrator upon
7.25 request a final sales report of an offering or offerings completed through the portal. A
7.26 sales report must contain, at a minimum, the total amount raised through the offerings; the

8.1 number of investors that purchased securities through the offerings; and whether, if funds
8.2 were held in escrow, the funds were released to the MNvest issuer.

8.3 **2876.3054 REPORTING REQUIREMENTS.**

8.4 Subpart 1. Offerings reports. MNvest issuers and portal operators must provide
8.5 to the administrator upon request a report of a MNvest offering or MNvest offerings
8.6 occurring or completed in reliance on Minnesota Statutes, section 80A.461. The report
8.7 must be provided to the administrator within 30 days of the administrator's request, or at a
8.8 sooner date specified by the administrator.

8.9 Subp. 2. Contents of issuer reports. Reports requested from MNvest issuers
8.10 pursuant to this part must contain:

8.11 A. the minimum offering amount set by the MNvest issuer for a MNvest offering;

8.12 B. the total amount of money raised through the MNvest offering;

8.13 C. the name and address of each purchaser involved in the MNvest offering;

8.14 D. the amount of money raised from each individual purchaser in the MNvest
8.15 offering; and

8.16 E. confirmation as to whether and when purchasers' funds held in escrow for the
8.17 MNvest offering were released to the MNvest issuer or returned to purchasers.

8.18 Subp. 3. Contents of portal operator reports. Reports requested from portal
8.19 operators pursuant to this part must contain, for each MNvest offering conducted through
8.20 the MNvest portal in the requested period:

8.21 A. all of the information required in subpart 2, items A to D; and

8.22 B. the date the portal operator received from each purchaser the certification
8.23 required under Minnesota Statutes, section 80A.461, subdivision 5.

9.1 **2876.3055 PROTECTION OF PURCHASER INFORMATION.**

9.2 **Subpart 1. Cybersecurity policy.**

9.3 A. Portal operators and MNvest issuers must take reasonable steps to ensure
9.4 that purchasers' financial and personal information is properly secured. Reasonable steps
9.5 include, at a minimum, the development and implementation of a written cybersecurity
9.6 policy that outlines the MNvest issuer's or portal operator's policies and procedures for
9.7 preventing and responding to cybersecurity attacks and data breaches resulting in the
9.8 disclosure or potential disclosure of purchasers' confidential or personally identifiable
9.9 information.

9.10 B. The cybersecurity policy required in item A must specifically include the
9.11 MNvest issuer's or portal operator's procedures to establish compliance with Minnesota
9.12 Statutes, section 325E.61.

9.13 C. MNvest issuers and portal operators must publish the cybersecurity policy
9.14 required by this subpart on the portal operator's or MNvest issuer's Web site, with a
9.15 prominent link to the cybersecurity policy on the Web site's homepage.

9.16 **Subp. 2. Reporting of a cybersecurity attack or data breach.** MNvest issuers and
9.17 portal operators must report to the administrator any action taken by the MNvest issuer or
9.18 portal operator to meet the reporting requirements of Minnesota Statutes, section 325E.61.

9.19 A. The report sent to the administrator must not include any confidential or
9.20 personally identifiable information of those individuals whose data were improperly
9.21 accessed or acquired, unless the information is requested by the administrator. The report
9.22 must include:

9.23 (1) a general description of the type of data that were accessed or acquired;

9.24 (2) the number of individuals whose data were improperly accessed or
9.25 acquired; and

10.1 (3) a description of the steps taken by the MNvest issuer or portal operator
10.2 to notify the individuals whose data were improperly accessed or acquired.

10.3 B. The report must be mailed or sent electronically to the administrator within
10.4 60 days of the MNvest issuer's or portal operator's discovery of the cybersecurity attack
10.5 or data breach.

10.6 **2876.3056 LIMITS ON AVAILABILITY.**

10.7 Minnesota Statutes, section 80A.461, is not available for the following types of
10.8 offerings:

10.9 A. offerings involving petroleum exploration or production, mining, or other
10.10 extractive industries;

10.11 B. offerings relating to investments in virtual, digital, or crypto currencies;

10.12 C. offerings conducted concurrently through multiple MNvest portals;

10.13 D. offerings involving an investment company as defined and classified under
10.14 Section 4 of the Investment Company Act of 1940; and

10.15 E. offerings in which it is proposed to issue stock or other equity interest in an
10.16 entity that has not yet defined its business operations, has no business plan, has no stated
10.17 investment goal for the funds being raised, or plans to engage in a merger or acquisition
10.18 with an unspecified business entity.

10.19 **2876.3057 RESTRICTIONS ON RESALE.**

10.20 Securities offered under Minnesota Statutes, section 80A.461, have not been
10.21 registered under federal or state securities laws and, therefore, cannot be resold unless
10.22 the securities are registered or qualified for an exemption from registration under federal
10.23 and state law. In addition, MNvest issuers shall make the disclosures required by Code of
10.24 Federal Regulations, title 17, section 230.147(f).

11.1 **2876.3058 INVESTOR RIGHT OF CANCELLATION.**

11.2 In an offering conducted under Minnesota Statutes, section 80A.461, an investor may
11.3 cancel an investment commitment for any reason until such time as the target minimum
11.4 offering amount identified in the MNvest notice form corresponding with the offering and
11.5 filed with the administrator has been raised.

11.6 **2876.3059 ANTIFRAUD PROVISION.**

11.7 Minnesota Statutes, section 80A.461, and parts 2876.3050 to 2876.3060 do not
11.8 exempt any person, including control persons and employees of MNvest issuers and portal
11.9 operators, from the antifraud provisions of Minnesota Statutes, section 80A.68, and do not
11.10 provide relief from any other provisions of the Minnesota Securities Act or Minnesota
11.11 Statutes, chapter 45, other than as expressly stated.

11.12 **2876.3060 RESTRICTIONS ON USE OF THE TERM "MNVEST."**

11.13 Subpart 1. Web site addresses. The word "MNvest" must not be used in an Internet
11.14 URL address or domain name:

11.15 A. owned by a portal operator or MNvest issuer; or

11.16 B. that automatically redirects a prospective purchaser to a MNvest portal. In
11.17 addition, no MNvest portal shall hold itself out as being the "official" MNvest portal,
11.18 the "only" MNvest portal, or otherwise describe itself using words of similar import, as
11.19 determined by the administrator.

11.20 Subp. 2. Misrepresentations regarding recommendations or endorsements. A
11.21 person shall not make any representation, or use any device, title, descriptive name, or
11.22 identifier that has the tendency or capacity to confuse or mislead a Minnesota resident to
11.23 believe that a MNvest issuer, MNvest offering, or MNvest portal is endorsed, sponsored,
11.24 sanctioned, or recommended by MNvest.

Office of the Revisor of Statutes

Administrative Rules



TITLE: Proposed Permanent Rules Governing Securities; Regulating MNvest Offerings

AGENCY: Department of Commerce

MINNESOTA RULES: Chapter 2876

The attached rules are approved for
publication in the State Register

A handwritten signature in black ink, appearing to read "Paul M. Marinac", written over a horizontal line.

Paul M. Marinac
Deputy Revisor

Adopted Rules

A rule becomes effective after the requirements of *Minnesota Statutes* §§ 14.05-14.28 have been met and five working days after the rule is published in the *State Register*, unless a later date is required by statutes or specified in the rule. If an adopted rule is identical to its proposed form as previously published, a notice of adoption and a citation to its previous *State Register* publication will be printed. If an adopted rule differs from its proposed form, language which has been deleted will be printed with strikeouts and new language will be underlined. The rule's previous *State Register* publication will be cited.

KEY: Proposed Rules - Underlining indicates additions to existing rule language. ~~Strikeouts~~ indicate deletions from existing rule language. If a proposed rule is totally new, it is designated "all new material." **Adopted Rules** - Underlining indicates additions to proposed rule language. ~~Strikeout~~ indicates deletions from proposed rule language.

Minnesota Racing Commission (MRC)

Adopted Permanent Rules Relating to Horse Racing; Definitions; Televised Racing Days; Races; Pari-mutuel; Facilities and Equipment; Class C Licenses; Security Officers; Harness Races

The rules proposed and published at *State Register*, Volume 39, Number 42, pages 1475-1489, April 20, 2015 (39 SR 1475), are adopted as proposed.

Official Notices

Pursuant to *Minnesota Statutes* §§ 14.101, an agency must first solicit comments from the public on the subject matter of a possible rulemaking proposal under active consideration within the agency by publishing a notice in the *State Register* at least 60 days before publication of a notice to adopt or a notice of hearing, and within 60 days of the effective date of any new statutory grant of required rulemaking.

The *State Register* also publishes other official notices of state agencies and non-state agencies, including notices of meetings and matters of public interest.

Minnesota Department of Commerce (COMM)

REQUEST FOR COMMENTS for Possible Amendment to Rules Governing Securities Regulation of MNvest Offerings, *Minnesota Rules*, chapter 2876, Revisor's ID Number 4344

Subject of Rules. The Minnesota Department of Commerce requests comments on possible amendments to rules governing regulation of securities. The amendments are intended to add specifications for offerings of MNvest securities, plus any related changes necessary to accomplish this.

Persons Affected. The possible amendments to the rules would likely affect the following persons: broker-dealers; MNvest securities issuers; portal operators; and members of the public who invest in MNvest offerings.

Statutory Authority. *Minnesota Statutes*, sections 45.023 and 80A.82, authorize the Commissioner of Commerce to adopt and amend

Official Notices

rules necessary or appropriate for the regulation of securities offered in this state.

Public Comment. Interested persons or groups may submit comments or information on these possible rules in writing until further notice is published in the *State Register* that the Department intends to adopt or to withdraw the rules. The Department will not publish a notice of intent to adopt the rules until more than 60 days have elapsed from the date of this request for comments.

Rules Drafts. The Department has not yet drafted the possible amendments.

Agency Contact Person. Written comments or questions, requests to receive a draft of the rules, and requests for more information on these possible rules should be directed to: Susan Bergh, Rules Coordinator, Minnesota Department of Commerce, 85 7th Place East, Suite 500, St. Paul, MN 55101, **phone:** (651) 539-1456, **e-mail:** susan.bergh@state.mn.us. TTY users may contact the Department through the Minnesota Relay Service at 711 or call 1-800-627-3529.

Alternative Format. Upon request, this information can be made available in an alternative format, such as large print, Braille, or audio. To make such a request, please contact the agency contact person at the address or telephone number listed above.

NOTE: Comments received in response to this notice will not necessarily be included in the formal rulemaking record submitted to the administrative law judge if and when a proceeding to adopt rules is started. The agency is required to submit to the judge only those written comments received in response to the rules after they are proposed. If you submitted comments during the development of the rules and you want to ensure that the Administrative Law Judge reviews the comments, you should resubmit the comments after the rules are formally proposed.

Dated: 6 July 2015

Mike Rothman, Commissioner
Minnesota Department of Commerce

Minnesota Department of Health (MDH) Request for Proposals for Exceptions to the Nursing Home Moratorium

Purpose

The commissioner of health is accepting written proposals from nursing homes and certified boarding care homes requesting funding through the moratorium exception process, according to *Minnesota Statutes* 144A.073. The commissioner of health, in coordination with the commissioner of human services, may approve such requests under conditions listed in *Minnesota Statutes*. These conditions refer to categories of exceptions which are defined as:

- (a) "Conversion" means the relocation of a nursing home bed from a nursing home to an attached hospital.
- (b) "Relocation" means the movement of licensed nursing home beds or certified boarding care beds as permitted by state statute to promote equitable access across the state or to move the beds to another site.
- (c) "Renovation" means extensive remodeling of an existing facility with a total cost exceeding ten percent of the appraised value of the facility or \$200,000, whichever is less. A renovation may include the replacement or upgrade of existing mechanical or electrical systems.
- (d) "Replacement" means the construction of a complete new facility.
- (e) "Addition" means the construction of new space to an existing facility.
- (f) "Upgrading" means a change in the level of licensure of a bed from a boarding care bed to a nursing home bed in a certified boarding care facility.
- (g) "Phased project" means a proposal that identifies construction occurring with more than one distinct completion date. To be considered a distinct completion, each phase must have construction that is ready for resident use, as determined by the commissioner, that is not dependent on similar commissioner approval for future phases of construction. The commissioner of human services shall only allow rate adjustments for construction projects in phases if the proposal from a facility identifies construction in phases and each phase can be approved for use independent of the other phases.

Appropriation Available

The amount of the legislative appropriation available for the total annual additional costs to the Medical Assistance program for this

Minnesota Department of Commerce

REQUEST FOR COMMENTS

Possible Amendment to Rules Governing Securities Regulation of MNvest Offerings, *Minnesota Rules*, chapter 2876, Revisor's ID Number 4344.

Subject of Rules. The Minnesota Department of Commerce requests comments on possible amendments to rules governing regulation of securities. The amendments are intended to add specifications for offerings of MNvest securities, plus any related changes necessary to accomplish this.

Persons Affected. The possible amendments to the rules would likely affect the following persons: broker-dealers; MNvest securities issuers; portal operators; and members of the public who invest in MNvest offerings.

Statutory Authority. Minnesota Statutes, sections 45.023 and 80A.82, authorize the Commissioner of Commerce to adopt and amend rules necessary or appropriate for the regulation of securities offered in this state.

Public Comment. Interested persons or groups may submit comments or information on these possible rules in writing until further notice is published in the *State Register* that the Department intends to adopt or to withdraw the rules. The Department will not publish a notice of intent to adopt the rules until more than 60 days have elapsed from the date of this request for comments.


Rules Drafts. The Department has not yet drafted the possible amendments.

Agency Contact Person. Written comments or questions, requests to receive a draft of the rules, and requests for more information on these possible rules should be directed to: Susan Bergh, Rules Coordinator, Minnesota Department of Commerce, 85 7th Place East, Suite 500, St. Paul, MN 55101, Phone: (651) 539-1456, E-mail: susan.bergh@state.mn.us. TTY users may contact the Department through the Minnesota Relay Service at 711 or call 1-800-627-3529.

Alternative Format. Upon request, this information can be made available in an alternative format, such as large print, Braille, or audio. To make such a request, please contact the agency contact person at the address or telephone number listed above.

NOTE: Comments received in response to this notice will not necessarily be included in the formal rulemaking record submitted to the administrative law judge if and when a proceeding to adopt rules is started. The agency is required to submit to the judge only those written comments received in response to the rules after they are proposed. If you submitted comments during the development of the rules and you want to ensure that the Administrative Law Judge reviews the comments, you should resubmit the comments after the rules are formally proposed.

Date: 7/6/2015



Mike Rothman, Commissioner
Minnesota Department of Commerce