

CHAPTER 2875
DEPARTMENT OF COMMERCE
REGULATION OF SECURITIES

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2875.0150 ISOLATED SALES.

[For text of subpart 1, see M.R. 1985]

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

A. the following sales shall be excluded if made within 48 hours of a sale to another purchaser, which other sale is included in such computation:

(1) the sale to any relative or spouse of a purchaser and any relative of such spouse, who has the same home as such purchaser; and

(2) the sale to any trust or estate in which a purchaser and any of the persons related to him as specified in subitem (1) or (3) collectively have more than 50 percent of the beneficial interest (excluding contingent interest); and

(3) the sale to any corporation or other organization of which a purchaser and any of the persons related to him as specified in subitem (1) or (2) collectively are the beneficial owners of more than 50 percent of the equity securities (excluding directors' qualifying shares) or equity interests; and

[For text of subp 2, items B and C, see M.R. 1985]

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

[For text of subps 3 and 4, see M.R. 1985]

Statutory Authority: *MS s 45.023, 80A.05, 80A.12 subd 5; 80A.14 subd 4; 80A.25 subd 1*

History: *10 SR 275*

2875.0180 PERSONS TO WHOM SALES HAVE BEEN MADE.

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

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

Subp. 2. *[Repealed, 10 SR 275]*

[For text of subps 3 to 5, see M.R. 1985]

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REGULATION OF SECURITIES 2875.1051

Statutory Authority: *MS s 45.023; 80A.05; 80A.12 subd 5; 80A 14 subd 4, 80A.25 subd 1*

History: *10 SR 275*

2875.0185 EFFECTIVE DATES OF STATEMENT OF ISSUER.

The exemption set forth in Minnesota Statutes, section 80A.15, subdivision 2, paragraph (h) shall only be effective for a period of one year commencing from ten days after the date on which the statement of issuer is filed with the commissioner.

Statutory Authority: *MS s 45.023, 80A.05, 80A.12 subd 5; 80A.14 subd 4, 80A.25 subd 1*

History: *10 SR 275*

2875.1051 REGULATION OF BUSINESS OF FINANCIAL PLANNING.

Subpart 1. Definition. "Business of financial planning" means providing, or offering to provide, financial planning services or financial counseling or advice, on a group or individual basis. Any person who, on advertisements, cards, signs, circulars, letterheads, or in any other manner, indicates that he or she is a "financial planner," "financial counselor," "financial advisor," "investment counselor," "estate planner," "investment advisor," "financial consultant," or any other similar designation or title or combination thereof, is considered to be representing himself or herself to be engaged in the business of financial planning.

Subp. 2. Prohibition. It is a "manipulative, deceptive, or fraudulent device or contrivance" within the meaning of Minnesota Statutes, section 80A.03, for any person to represent on advertisements, cards, signs, circulars, letterheads, or in any other manner, that he or she is engaged in the business of financial planning unless he or she provides a disclosure document to the client. The document must be signed by the client, and a copy must be left with the client. The disclosure document must contain the following:

A. the basis of any fees, commissions, or other compensation received by him or her in connection with the rendering of financial planning services or financial counseling or advice in the following language:

"My compensation may be based on the following:

- (a) ... commissions generated from the products I sell you,
- (b) ... fees, or
- (c) ... a combination of (a) and (b). [Comments]";

B. the name and address of any company or firm that supplies the financial services or products offered or sold by him or her in the following language:

"I am authorized to offer or sell products and/or services issued by or through the following firms(s):

[List];

The products will be traded, distributed, or placed through the clearing/trading firm(s) of:

[List]";

C. the license(s) held by the person under Minnesota Statutes, chapter 60A, 80A, or 82 in the following language:

"I am licensed in Minnesota as a(n):

- (a) ... insurance agent,
- (b) ... securities agent or broker/dealer,
- (c) ... real estate broker or salesperson,
- (d) ... investment adviser", and

D. the specific identity of any financial products or services (by category,

for example mutual funds, stocks; or limited partnerships) the person is authorized to offer or sell in the following language:

"The license(s) entitles me to offer and sell the following products and/or services:

- (a) ... securities, specifically the following: [List],
- (b) ... real property,
- (c) ... insurance,
- (d) ... other: [List]."

Statutory Authority: *MS s. 45.023, 60A 17; 80A.25; 82.28.*

History: *10 SR 274*

2875.1590 BANKS, SAVINGS INSTITUTIONS, AND SAVINGS AND LOAN ASSOCIATIONS.

Subpart 1. Licensing requirement. The term "broker-dealer" as defined in Minnesota Statutes, section 80A.14, subdivision 4 includes a bank, savings institution, or savings and loan association that:

A. solicits brokerage business for which it receives transaction-related compensation, unless the bank, savings institution, or savings and loan association enters into a contractual or other arrangement with a broker-dealer licensed under Minnesota Statutes, chapter 80A pursuant to which the broker-dealer will offer brokerage services on or off the premises of the bank, savings institution, or savings and loan association provided that:

(1) the broker-dealer is clearly identified as the person performing the brokerage services;

(2) bank, savings institution, or savings and loan association employees perform only clerical and ministerial functions in connection with brokerage transactions unless the employees are licensed agents pursuant to Minnesota Statutes, chapter 80A;

(3) bank, savings institution, or savings and loan association employees do not receive, directly or indirectly, compensation for any brokerage activities unless the employees are licensed agents pursuant to Minnesota Statutes, chapter 80A; and

(4) the services are provided by the broker-dealer on a basis in which all customers are fully disclosed;

B. directly or indirectly receives transaction related compensation for providing brokerage services for trust, managing agency, or other accounts to which the bank, savings institution, or savings and loan association provides advice; provided, however, that this item does not apply if the bank, savings institution, or savings and loan association executes transactions through a broker-dealer licensed under Minnesota Statutes, chapter 80A and:

(1) each account independently chooses the broker-dealer through which execution is effected;

(2) bank, savings institution, or savings and loan association employees do not receive, directly or indirectly, compensation for any brokerage activities or compensation based upon the number of accounts choosing to use the broker-dealer, and

(3) the brokerage services are provided by the broker-dealer on a basis in which all customers are fully disclosed;

C. deals in or underwrites securities.

Subp. 2. Applicability. This part shall not apply to any bank, savings institution, or savings and loan association that engages in one or more of the following activities only:

A. effects transactions in commercial paper, bankers' acceptances, or commercial bills;

B effects transactions for the investment portfolio of affiliated companies;

C. effects transactions as part of a program for the investment or reinvestment of deposit funds into any no-load open-end investment company registered pursuant to the Investment Company Act of 1940 that attempts to maintain a constant net asset value per share or has an investment policy calling for investment of at least 80 percent of its assets in debt securities maturing in 13 months or less;

D. effects transactions as part of any bonus, profit-sharing, pension, retirement, thrift, savings, incentive, stock purchase, stock ownership, stock appreciation, stock option, dividend reinvestment, or similar plan for employees or shareholders of an issuer or its subsidiaries; or

E. effects transactions pursuant to Minnesota Statutes, section 80A.15, subdivision 2, paragraph (g) and the rules adopted under that provision.

Subp. 3. **Exemptions.** The commissioner, upon written request, or upon a motion, shall exempt a bank, savings institution, or savings and loan association, either conditionally or on specific terms and conditions, where the commissioner determines that the activities of the bank, savings institution, or savings and loan association are not within the intended meaning and purpose of this part.

Subp. 4. **Transaction related compensation.** For the purposes of this part, the term "transaction related compensation" means monetary profit in excess of cost recovery for providing brokerage execution services.

Statutory Authority: *MS s 45 023; 80A.05, 80A.14 subd 4; 80A.25 subd 1*

History: *10 SR 2290*

2875.2410 ESCROW AGREEMENTS.

Subpart 1. **Conditions of registration.** As a condition of registration of securities by an issuer, restrictions on transferability of all cheap stock owned by officers, directors, or persons owning greater than ten percent of the then outstanding stock of the issuer, may be required for a period of up to three years. The restrictions on transferability may be by means of escrow of shares, legending of share certificates, or by other means, as may be determined by the commissioner upon the facts and circumstances of each case to be necessary for the protection of public investors, or by any combination of the foregoing.

[For text of subps 2 and 3, see M.R. 1985]

Statutory Authority: *MS s 45 023, 80A 05; 80A.12 subd 5; 80A 14 subd 4; 80A 25 subd 1*

History: *10 SR 275*

2875.2490 ANNUAL SHAREHOLDERS' REPORT.

So long as a registration statement is effective, other than for industrial revenue bonds, within 150 days of the end of the fiscal year, the registrant shall distribute an annual report to all shareholders. Said annual report shall contain a balance sheet, income statement, statement of changes in financial position, all of which must be audited by an independent certified public accountant with his opinion expressed thereon, and such other information as may be necessary for complete disclosure.

Statutory Authority: *MS s 45.023; 80A.05; 80A 12 subd 5, 80A.14 subd 4, 80A 25 subd 1*

History: *10 SR 275*

2875.2500 REPORT FORM.

So long as a registration statement is effective, other than for industrial revenue bonds, the issuer shall file an annual report in such form, and containing

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such information as the commissioner prescribes. At a minimum, the annual report shall contain the following:

[For text of items A to T, see M R 1985]

Statutory Authority: *MS s 45.023, 80A.05; 80A 12 subd 5; 80A 14 subd 4; 80A 25 subd 1*

History: *10 SR 275*

2875.2510 REPORT FILINGS.

Subpart 1. Alternate filings. Any issuer filing annual reports under the Securities Exchange Act of 1934 may file, in lieu of the report required by part 2875.2500, a duplicate copy of the annual report filed with the Securities and Exchange Commission.

Any issuer filing reports under the Investment Company Act of 1940 may file, in lieu of the report required by part 2875.2500, a current updated prospectus as filed with the Securities and Exchange Commission or a copy of the annual report required to be filed with the Securities and Exchange Commission.

Subp. 2. Filing of annual report or prospectus. The annual report or prospectus required by parts 2875.2500 and 2875.2510 shall be filed on or prior to the 90th day (or 120th day in the case of issuers registered under the Investment Company Act of 1940) following the close of the issuer's fiscal year, except that if the information required by part 2875.2500, item S is not reasonably available at such time, such information may be filed on or before the 150th day following the close of the issuer's fiscal year.

Subp. 3. Contents regarding registration of industrial revenue bonds. So long as a registration is effective for industrial revenue bonds, as an annual report there must be filed with the commissioner financial statements of the person or persons directly liable to make payments for the purpose of paying principal and interest. Notwithstanding parts 2875.0950 and 2875.0960, unless the foregoing financial statements are otherwise audited by independent certified public accountants, the financial statements filed need not be so audited, unless required by the commissioner, but must be prepared in accordance with generally accepted accounting principles unless otherwise permitted by order.

Statutory Authority: *MS s 45.023; 80A.05; 80A 12 subd 5; 80A.14 subd 4, 80A 25 subd 1*

History: *10 SR 275*

2875.3000 MINIMUM INVESTMENT REQUIRED.

[For text of subpart 1, see M R. 1985]

Subp 2. Fair value of equity investment. "Fair value of the equity investment" shall mean the higher of:

A. the total of all sums irrevocably conveyed to the issuer in cash, together with the reasonable value of all tangible assets irrevocably conveyed to the issuer, and together with an evaluation by a qualified independent appraiser or other reasonable demonstration of value of intangible assets including, but not limited to, patents, licenses, technologies, trademarks, and technical or professional services contributed by the promoters, as adjusted by the retained earnings of the issuer subsequent to the dates of such conveyances, payments, or contributions; or

B. the total shareholders' equity as set forth in a certified balance sheet prepared in accordance with parts 2875.0950 and 2875.0960, less the value assigned to any intangible assets for which no reasonable demonstration of value has been provided.

[For text of subps 3 and 4, see M.R. 1985]

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REGULATION OF SECURITIES 2875.3000

Statutory Authority: *MS s 45 023; 80A.05, 80A 12 subd 5; 80A.14 subd 4, 80A 25 subd 1*

History: *10 SR 275*

2875.3920 [Repealed, 10 SR 275]

2875.3930 [Repealed, 10 SR 275]