

**CHAPTER 2875**  
**DEPARTMENT OF COMMERCE**  
**REGULATION OF SECURITIES**

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**2875.0145 REGULATION D.**

“Regulation D” as used in Minnesota Statutes, section 80A.15, subdivision 2, paragraph (h), and in this chapter means regulation D promulgated by the Securities and Exchange Commission, Code of Federal Regulations, title 17, sections 230.501 to 230.508, as amended effective April 19, 1989.

**Statutory Authority:** *MS s 45.023; 80A.25*

**History:** *14 SR 517*

**2875.0146 RULE 701.**

“Rule 701” as used in this chapter means rule 701 promulgated by the Securities and Exchange Commission, Code of Federal Regulations, title 17, section 239.701, effective May 20, 1988.

**Statutory Authority:** *MS s 45 023; 80A.25*

**History:** *14 SR 517*

**2875.0150 ISOLATED SALES.**

**Subpart 1. Up to ten sales.** Up to ten sales of securities of an issuer in any 12 consecutive months shall be exempted by Minnesota Statutes, section 80A.15, subdivision 2, clause (a), provided, that in the case of sales by an issuer except sales of securities registered under the Securities Act of 1933 or exempted by section 3(b) of that act, the seller reasonably believes that all buyers are purchasing for investment.

**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):

*[For text of subp 2, items A to C, see M.R.]*

D. the sales to any “accredited investor” within the meaning of rule 501(a) of regulation D shall be excluded.

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

**Statutory Authority:** *MS s 45 023; 80A.25*

**History:** *14 SR 517*

**2875.0160 RECOGNIZED MANUALS APPROVED BY COMMISSIONER.**

“Recognized manuals approved by the commissioner,” as that term is used in Minnesota Statutes 1978, section 80A.15, subdivision 2, clause (b), are limited to the following:

- A. Standard & Poor’s Corporation Records;
- B. Moody’s Industrial Manual and Industrial News Reports;

C. Moody's Bank & Finance Manual and Bank & Finance News Reports;

D. Moody's Transportation Manual and Transportation News Reports;

E. Moody's Public Utility Manual and Public Utility News Reports;

F. Moody's OTC Industrial Manual and OTC Industrial News Reports;

G. Moody's International Manual.

Provided that the issuer, as of the date of the balance sheet required by Minnesota Statutes, section 80A.15, subdivision 2, clause (b)(1), had a net worth of at least \$250,000 and had at least 200 shareholders.

**Statutory Authority:** *MS s 45.023; 80A.25*

**History:** *14 SR 517*

### **2875.0170 FINANCIAL INSTITUTION OR INSTITUTIONAL BUYER.**

The term "financial institution or institutional buyer" contained in Minnesota Statutes, sections 80A.14, subdivision 4, clause (5), and 80A.15, subdivision 2, paragraph (g), and the term "institutional investors" contained in Minnesota Statutes, section 80A.04, subdivision 3, includes but is not limited to a corporation with a class of equity securities registered under section 12(b) or 12(g) of the Securities Exchange Act of 1934, as amended; and a person who is an "accredited investor" within the meaning of rule 501(a) of regulation D.

**Statutory Authority:** *MS s 45.023; 80A.25*

**History:** *14 SR 517*

### **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 rule 501(e) of regulation D.

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. 2a. Sales to 35 persons.** The number of persons to whom sales may be made pursuant to the exemption contained in Minnesota Statutes, section 80A.15, subdivision 2, paragraph (h), is increased to 35 persons if the sales are made in compliance with regulation D or rule 701.

**Subp. 3. When exemptions withdrawn.** Exemption withdrawals:

A. The exemption contained in Minnesota Statutes, section 80A.15, subdivision 2, paragraph (h), is withdrawn for any security representing an interest in, or formed for the purpose of investing in, any oil and gas venture, or any partnership, joint venture, group, or association formed principally for the purpose of exploring for oil and gas or developing oil and gas reserves unless the security is sold in compliance with rule 506 of regulation D.

B. The exemption contained in Minnesota Statutes, section 80A.15, subdivision 2, paragraph (h), is withdrawn for any security representing an interest in, or issued for the purpose of investing in, any animal breeding, animal feeding, animal leasing, or similar venture, unless said security is sold in compliance with rule 506 of regulation D.

*[For text of subp 3, items C to G, see M.R.]*

*[For text of subs 4 and 5, see M.R.]*

**Statutory Authority:** *MS s 45.023; 80A.25*

**History:** *14 SR 517*

**2875.0400 SCOPE AND APPLICATION.**

Subpart 1. **Generally.** Rules are divided into separate areas, based upon the type of security involved. However, parts 2875.3000 to 2875.3120 shall apply to all securities, and should be followed in all instances unless they are inconsistent with another part in the appropriate area for the type of security proposed to be registered. In that instance, the area requirements will apply. This part and parts 2875.3000 to 2875.7280 shall not apply to securities or transactions exempted by Minnesota Statutes 1978, section 80A.15, subdivision 1 or 2, as amended, nor shall they apply to securities registered by notification.

- A. Equity securities regulation, parts 2875.3000 to 2875.3120;
- B. Senior securities regulation, parts 2875.3500 to 2875.3540;
- C. Investment companies regulation, parts 2875.3900 to 2875.4330;
- D. Real estate limited partnerships, parts 2875.4500 to 2875.5280;
- E. Oil and gas programs, parts 2875.5600 to 2875.5780;
- F. Cattle feeding programs, parts 2875.6100 to 2875.6260;
- G. Real estate investment trusts, parts 2875.7100 to 2875.7280; and
- H. Commodity pool guidelines, parts 2875.8100 to 2875.8450, and 2875.9900 to 2875.9970.

Subp. 2. **Scope of rules pertaining to real estate limited partnerships.** Rules pertaining to real estate partnerships shall be applied to real estate partnerships and, to the extent practical, to limited partnerships to which no other specific rules apply. Particularly, such nonreal estate limited partnerships shall meet the standards provided in parts 2875.4510 to 2875.4550, 2875.5000 to 2875.5120, and 2875.5140 to 2875.5280. With respect to the remaining rules, parts 2875.4560 to 2875.4610 and part 2875.5135, variance from the established standards may be permitted provided that the variance is justified and provides investor protection equal to that afforded by the rules.

**Statutory Authority:** *MS s 45.023; 80A.25*

**History:** *14 SR 517*

**2875.0410 EFFECTIVE DATE OF INCORPORATIONS BY REFERENCE.**

Unless otherwise indicated, whenever a reference is made in this chapter to a federal or state statute, rule, decision, or opinion, the reference shall be deemed to refer to the version of the statute, rule, decision, or opinion as of December 1, 1980.

**Statutory Authority:** *MS s 45.023; 80A.25*

**History:** *14 SR 517*

**2875.0960 FINANCIAL STATEMENTS.**

Subpart 1. **Content.** Whenever in these rules financial statements of an issuer or other person are required by a particular part or form without further description, the requirement refers to a balance sheet as of a date within 135 days before the date of the application, and profit and loss statements for each of the three fiscal years preceding the date of the balance sheet and for the period, if any, between the close of the last of these fiscal years and the date of the balance sheet. The balance sheet as of a date within 135 days before the date of the application need not be audited. However, if the balance sheet is not audited and the application is for a registration, there shall be filed in addition an audited balance sheet as of the end of the person's last fiscal year. If the last fiscal year ended within 90 days of the date of the application, there shall be filed an audited balance sheet as of the end of the person's next preceding fiscal year. The income statements and statement of changes in financial position shall be audited up to the date of the last audited balance sheet filed, if any.

Subp. 2. **Delays.** If amendments or other delays cause the financial state-

ments described in subpart 1 to become more than 134 days old as of the effective date of the registration statement, then updated financial statements as of a date within 135 days of the effective date shall be filed if the company has no established record of earnings or is currently showing losses or a weak financial condition. If the company has an established record of earnings and is in sound financial condition, a paragraph containing later information as to sales; net income, and financial condition may be added in lieu of updating the financial statements, in the discretion of the commissioner. However, in no case shall the financial statements be more than six months old as of the effective date of the registration statement. If a delay carries beyond the end of the fiscal year, and by applying due diligence the registrant and accountant can have the audit completed before the effective date, certified statements should be filed as of the end of the fiscal year.

**Statutory Authority:** *MS s 45.023; 80A.25*

**History:** *14 SR 517*

### **2875.1010 INVESTMENT ADVISORY CONTRACTS.**

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

Subp. 1a. **Exception.** Subpart 1, item A, does not apply to an investment advisory contract that provides for compensation to the investment adviser on the basis of a share of the capital gains upon, or the capital appreciation of, the funds, or any portion of the funds, of a client if all the conditions in items A to D are satisfied, or if the condition specified in item E is satisfied.

*[For text of subp 1a, items A to D, see M.R.]*

E. The client entering into the contract subject to this subpart is a person specified in Minnesota Statutes, section 80A.04, subdivision 3, or other institutional investor as designated by rule or order of the commissioner under Minnesota Statutes, section 80A.04, subdivision 3.

*[For text of subp 2, see M.R.]*

**Statutory Authority:** *MS s 45.023; 80A.25*

**History:** *14 SR 517*

### **2875.3030 OPTIONS, WARRANTS, AND CHEAP STOCK TO UNDERWRITERS.**

Options, warrants, and cheap stock issued to underwriters or other persons as compensation, in whole or in part, for the sale of securities, shall meet all of the following criteria:

*[For text of items A and B, see M.R.]*

C. Neither the exercise of the options or warrants, nor the resale, transfer, or assignment (except as provided in item D) of any cheap stock may be accomplished for a period of one year from the effective date of the registration statement.

D. During the one-year period following the effective date of the registration statement, the securities shall be nontransferable except by will, pursuant to the laws of descent and distribution, or pursuant to the operation of laws, provided, however, the securities may be transferred without payment therefor to:

- (1) partners of the underwriter if the underwriter is a partnership;
- (2) persons who are both officers and shareholders of the underwriter if the underwriter is a corporation; or
- (3) employees of the underwriter.

*[For text of items E to J, see M.R.]*

**Statutory Authority:** *MS s 45.023; 80A.25*

**History:** *14 SR 517*

**2875.3050 COMMISSIONS AND EXPENSES.**

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

**Subp. 1a. Reasonable selling expenses.** Selling expenses shall at all times be reasonable, and, unless good cause for an exception is shown, shall not exceed the following percentages for the specified types of companies or securities based upon percentages of the aggregate offering price:

- A. finance, mortgage, and related companies, ten percent;
- B. bonds, notes, debentures, and secured issuers, ten percent;
- C. common stocks, 15 percent;
- D. preferred stocks and other stock senior to common stock, 15 percent;
- E. investment companies, ten percent;
- F. REITS, ten percent; and
- G. investment contracts, ten percent.

*[For text of subps 2 to 4, see M.R.]*

**Statutory Authority:** *MS s 45.023; 80A.25*

**History:** *14 SR 517*

**2875.7100 DEFINITIONS.**

*[For text of subps 1 to 3, see M.R.]*

**Subp. 4. Real estate investment trust (REIT).** "Real estate investment trust (REIT)" means a corporation, trust, or association, other than a real estate syndication, that is engaged primarily in investing in equity interests in real estate, including fee ownership and leasehold interests, or in loans secured by real estate or both.

**Statutory Authority:** *MS s 45.023; 80A.25*

**History:** *14 SR 517*